ALASKA WORKERS' COMPENSATION BOARD

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

ANTHONY L. PETERSON, Employee, Claimant, v. KENWORTH NORTHWEST, INC., Employer, and HARCO NATIONAL INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 200520076 AWCB Decision No. 19-0129 Filed with AWCB Fairbanks, Alaska on December 9, 2019

Anthony L. Peterson's (Employee) March 29, 2010 claim was heard in Fairbanks, Alaska on August 22, 2019, a date selected on June 7, 2019. An April 12, 2019 affidavit of readiness for hearing (ARH) request gave rise to this hearing. Employee appeared, represented himself and testified. Attorney Stacey Stone appeared and represented Kenworth Northwest, Inc. and Harco National Insurance Company (Employer). The record initially closed on August 22, 2019, but was reopened on September 23, 2019, to receive additional evidence and closed on October 25, 2019.

ISSUES

Employer contends Employee's claim should be dismissed under AS 23.30.110(c) because he did not file an ARH or request more time to do so within two years after Employer's post-claim controversion. It requests Employee's claim be dismissed.

Employee contends his claim should not be dismissed under AS 23.30.110(c) because he had three attorneys over the years and he relied on his attorneys to represent him. He contends after his last attorney withdrew, he timely pursued his claim. Employee requests an order denying Employer's request to dismiss.

1) **Is Employee's March 21, 2010 claim barred by AS 23.30.110(c)?**

Employee contends he is entitled to medical and transportation costs, including travel reimbursement and out-of-pocket medical costs. He contends all of the medical care he received for his left shoulder and lumbar spine has been work-related and reasonable and necessary. Employee contends he did not reach medical stability until after March 21, 2013. He seeks reimbursement of medical and transportation expenses, payment of outstanding medical bills and continuing medical care.

Employer contends Employee is not entitled to additional medical care other than incisional neuroma treatment. It contends he failed to present any evidence of unpaid out-of-pocket medical and transportation expenses and his request is untimely.

2) **Is Employee entitled to medical and transportation costs**?

Employee contends he is entitled to interest and penalties on benefits not paid when due. He seeks a penalty and interest award.

Employer contends no interest or penalty is due because Employee is entitled to no additional medical benefits.

3) **Is Employee entitled to penalties and interest?**

FINDINGS OF FACT

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

1) On June 8, 1999, Employee injured his left shoulder while removing vinyl flooring. (G. Bradly, M.D., chart note, June 8, 1999).

2) On December 15, 1999, Jeremy Becker, M.D., performed a left shoulder arthroscopy and thermal capsulorrhaphy for left shoulder posterior instability. (Becker operative note, December 15, 1999).

3) On January 24, 2000, Dr. Becker diagnosed left shoulder status-post thermal capsulorrhaphy for posterior instability and cervical whiplash after a motor vehicle accident. (Becker chart note, January 24, 2000).

4) On January 26, 2001, Employee complained of back pain following an injury on May 4, 2000. He also reported left leg pain with varying amounts of numbness and pain. Dr. Becker discussed a possible meralgia paresthetica diagnosis, which is a condition characterized by burning pain, numbness and tingling sensation on the outer surface of the thigh in the region supplied by the lateral femoral cutaneous nerve. (Becker chart note, January 26, 2001; Mosby's Medical Dictionary 6th Edition).

5) On July 1, 2004, Employee reported lower back pain from an injury on June 29, 2004 when a blower on a 10,000 gallon tank was knocked loose and he twisted his back trying to get out of the way. (Fairbanks Urgent Care Center, chart note, July 1, 2004).

6) On July 12, 2004, Employee reported another lower back injury when he operated a winch to tighten down a load and a coworker jumped on his back. His lower back hurt the next day and the pain was slightly worse on the left side. Employee was diagnosed with a lumbar strain with radicular symptomatology. (Clay Triplehorn, D.O., chart note, Jul 12, 2004).

7) On August 4, 2004, Employee's lumbar spine magnetic resonance imaging (MRI) revealed a broad-based disc bulge posteriorly at L5-S1 with central extrusion and associated elevation of the posterior longitudinal ligament and minimal consequence to the dural sac. (MRI report, August 4, 2004). His x-ray showed a normal lumbar spine with rudimentary ribs at L1. (X-ray report, August 4, 2004).

8) On November 17, 2005, Employee injured his left shoulder while working for Employer when he slipped on ice and fell, hitting his left shoulder and arm on a vehicle's rear bumper. (Report of Occupational Injury or Illness, November 18, 2005).

9) On November 17, 2005, Employee's left shoulder x-ray revealed no acute fracture or dislocation. He had decreased left shoulder active range of motion and overhead extension secondary to pain, was unable to perform internal and external rotation, and was tender to

palpitation, both anteriorly and posteriorly. Employee was prescribed Vicodin and ibuprofen. (Mark Wade, M.D., emergency report, November 17, 2005).

10) On November 18, 2005, Employee reported pain, numbness and tingling down his left arm since the work injury. He was released to return to work as tolerated. (Michael Weber, PA-C, chart note, November 18, 2005)

11) On November 22, 2005, Employee was limited to lifting less than 30 pounds. (Weber chart note, November 22, 2005).

12) On November 29, 2005, Employee's left shoulder symptoms had decreased somewhat but he noticed a burning sensation through the posterior shoulder as he increased his activity level. Occasionally he experienced a sharp twinge of left medial elbow pain and a tingling sensation in his hands. Employee had normal left shoulder range of motion and was very tender on the supraspinatus and impingement testing. (Weber chart note, November 22, 2005).

13) On December 5, 2005, Employee visited Shannon Wyman, D.C. and reported lower back pain beginning two weeks ago when he fell which was slowly worsening. Depending on his activities, he had shooting pain down his right leg. Employee received lumbar manipulation, including the L5-S1 level. (Wyman chart note, December 5, 2005).

14) On December 7, 2005, Employee's left shoulder pain had decreased but his low back pain increased over the prior week and he was quite uncomfortable with his right side pain greater than the left. Occasionally he had pain in his left leg. Lower back x-rays revealed no bony injury. He was diagnosed with a low back muscle strain and prescribed Skelaxin. (Weber chart note, December 7, 2005).

15) On December 17, 2005, Dr. Triplehorn recommended light duty with infrequent lifting no greater than 10 pounds and infrequent bending, twisting, pushing and pulling. (Triplehorn letter, December 13, 2005).

16) On December 27, 2005, Employee's lumbar spine MRI revealed degenerative disc disease with changes most prominent at the L5-S1 level, including a central disc focal protrusion with extruded disc material increased in volume slightly when compared to the August 4, 2004 MRI and annular tearing. (MRI report, December 27, 2005).

17) On January 5, 2006, Employee could not lift his arm over his shoulder without significant discomfort and he reported increased and different left shoulder pain after the work injury. His back pain increased significantly after the work injury, primarily with left gluteal and lower

extremity pain. Lawrence Stinson, M.D., assessed post-traumatic left subacromial bursitis related to the work injury, bilateral, although more markedly symptomatic left, L5-S1 facet arthropathy, and L5-S1 disc protrusion and spondylosis. He recommended physical therapy (PT) and a left subacromial bursa injection and bilateral L5-S1 face joint injections, which he performed on January 6, 2006, in addition to a left subacromial bursa injection. (Stinson chart note, January 5, 2006; Stinson procedure note, January 6, 2006).).

18) On January 19, 2006, Employee said he had no pain for several hours after his left subacromial bursa injection but he still could not use his left shoulder well. The facet injections helped his low back pain but the symptoms radiating into his left lower extremity were not significantly improved. Dr. Stinson diagnosed a left rotator cuff tear and a L5-S1 herniated nucleus pulposus with left lower extremity radiculitis. He recommended an MRI of Employee's left shoulder and a left L5-S1 transforaminal epidural steroid injection (ESI) which was performed on January 20, 2006. (Stinson chart note, January 19, 2006; Stinson procedure note, January 20, 2006).

19) On January 26, 2006, Employee's left shoulder MRI demonstrated no evidence of a rotator cuff tear. (MRI report, January 26, 2006).

20) On February 2, 2006, Dr. Stinson performed a left L5-S1 transforaminal ESI. (Stinson, procedure note, February 2, 2006).

21) On February 16, 2006, Employee stated he was better but still had persistent symptoms in his lumbosacral region extending into his left lower extremity. He felt he had plateaued in PT. Dr. Stinson referred him Rafael Prieto, M.D., for electromyogram (EMG) and nerve conduction studies and to Davis Peterson, M.D., for a surgical consultation. (Stinson progress note, February 16, 2006).

22) On February 24, 2006, Employee's electrodiagnostic studies were normal and there was no evidence of lumbar radiculopathy in his left lower extremity. Dr. Prieto diagnosed chronic L5-S1 discogenic back pain with intermittent left lumbar radiculitis. (Prieto procedure note, February 24, 2006).

23) On February 28, 2006, Employee said he woke up and could not move due to back pain. Deep massage of his back was not effective. He was given a Toradol injection and prescriptions for Valium, Vicodin and Tolectin. (Alena Anderson, M.D., chart note, February 28, 2006).

24) On March 2, 2006, Employee complained of a recent increase in lower lumbosacral back pain, spasms and left lower extremity symptoms. He was prescribed Valium and Norco. (Stinson chart note, March 2, 2006).

25) On March 3, 2006, Dr. Triplehorn released Employee to return to light duty work with lifting limited to less than 12 pounds. (Triplehorn chart note, March 3, 2006).

26) On March 7, 2006, Dr. Peterson evaluated Employee and diagnosed an extruded herniated nucleus pulposus at L5-S1 with underlying degenerative changes. He recommended an L5-S1 micro-discectomy. (Peterson chart note, March 7, 2006).

27) On March 10, 2006, Employee's lumbar spine MRI revealed: "Central disc herniation is present at L5-S1, which appears similar to the prior exam. There is caudal disc herniation, which may be more prominent on the current exam. . . ." (MRI report, March 10, 2006).

28) On March 28, 2006, Steven Schilperoort, M.D., an orthopedic surgeon, examined Employee for an Employer Medical Evaluation (EME). He diagnosed (1) pre-existing multilevel lumbar spine degenerative disc disease and facet degenerative joint disease not related to the work injury, (2) pre-existing central L5-S1 disc protrusion with no evidence of worsening as a consequence of the work injury, (3) hyper-lumbar lordosis with poor paraspinal condition, (4) status post left shoulder capsulorrhaphy not related to the work injury, (5) mechanical low back pain caused by his pre-existing lumbar spine degenerative disc disease and disc protrusion and (6) abnormal pain behaviors with disproportionate stated levels of pain to valid objective findings. Dr. Schilperoort opined the work injury caused a temporary aggravation of Employee's left shoulder scarring and limitation from the prior surgery, which reached baseline, and an aggravation of his pre-existing lumbar spine condition, which also returned to baseline. He concluded Employee's work injuries reached medical stability with no impairment and no further medical treatment was necessary. (Schilperoort EME report, March 28, 2006).

29) On March 30, 2006, Employee continued to have lumbar pain making it difficult to sit or walk. After traveling to Oregon for the EME, his left extremity radicular symptoms became much more pronounced and extended down to his foot and toes on a regular basis. Employee felt his pain was worsening and medication just took the edge off. Dr. Stinson assessed L5-S1 disc herniation with left lower extremity radiculitis and his symptoms were worse today than they were in the past. He believed Employee was a surgical candidate. (Stinson chart note, March 30, 2006).

30) On April 27, 2006, Dr. Stinson stated Employee was not a candidate for vocational retraining until his underlying work injury related symptomology was treated. He opined Employee was not medically stable. Dr. Stinson assessed an L5-S1 work injury related to a herniated nucleus pulposus with left lower extremity radiculitis symptoms. Employee did not have any back symptomology until after the work related accident. Dr. Stinson recommended he be tapered off Lyrica and Valium while Employee was going to pay for hydrocodone out-of-pocket. (Stinson progress note, April 27, 2006).

31) On April 28, 2006, Employer denied all benefits based on Dr. Schilperoort's March 28, 2006 EME report. (Controversion Notice, April 28, 2006).

32) On June 22, 2006, Dr. Stinson opined Employee was temporarily totally unable to return to work because of his ongoing pain. Dr. Stinson opined the work injury caused Employee's persistent and ongoing low back and left lower extremity symptoms. While Employee had pre-existing low back degenerative changes, the work-related injury led to his current clinical presentation. Dr. Stinson opined, "The majority of data actually supports [Employee's] care to this point including his referral to Dr. Peterson for surgical intervention." (Stinson chart note, June 22, 2006).

33) On July 13, 2006, Attorney Allen Cheek entered an appearance on behalf of Employee. (Entry of Appearance, July 13, 2006).

34) On October 25, 2006, Thomas Gritzka, M.D., an orthopedic surgeon, examined Employee for a Second Independent Medical Evaluation (SIME). He diagnosed status left shoulder stiffness post capsulorrhaphy and chronic recurrent lumbosacral sprain. Dr. Gritzka opined the work injury aggravated and combined with Employee's pre-existing degenerative lumbar spondylosis and caused a tear of the annulus fibrosis at L5-S1 and development of piriformis syndrome. He concluded the December 2005 MRI scan showed an increase in size of the intervertebral disc protrusion and a high intensity zone representing tears in the annulus fibrosis of the intervertebral disc. Dr. Gritzka recommended another series of steroid injections and a short course of PT. He stated Employee was not medically stable because there was a greater than 50 percent chance he would respond to another serious of epidural steroid injections but he could be deemed medically stable after the treatment. Dr. Gritzka opined Employee's "left shoulder complaints are related to the injury of 1998 for which Dr. Becker did a thermal capsulorrhaphy" and his "complaint of left shoulder pain and stiffness is related to the 11/17/05 injury on a more probable than not basis."

He determined out Employee's lumbar ranges of motion were impaired, his lumbar flexion range of motion was valid upon examination and Employee did not demonstrate any "non-anatomic pain behavior" at the time of the examination. Dr. Gritzka did not address whether Employee's left shoulder was medically stable but he noted Employee's left shoulder had decreased ranges of motion – forward flexion 120 degrees, extension 40 degrees, abduction 125 degrees and external rotation 70 degrees. (Gritzka SIME report, October 25, 2006).

35) On October 30, 2006, Dr. Gritzka reviewed additional records from 1999 and 2000 and stated they did not change his October 26, 2006 opinions. The work injury aggravated Employee's pre-existing left shoulder and low back conditions and he still recommended repeat lumbar epidural steroid injections. (Gritzka addendum SIME report, October 30, 2006).

36) On November 7, 2006, Employee testified that in September 2004, he went to work at Taiga Adventures tearing down remote camps. (Employee Deposition at 34).

37) On December 3, 2006, Dr. Gritzka opined the work injury reinjured Employee's left shoulder resulting in his current shoulder pain. He stated Employee's work activities at Taiga Adventures more likely than not contributed to his low back deterioration. Dr. Gritzka opined the work injury was the substantial cause of Employee's current low back complaints and need for medical treatment because an MRI scan showed a high intensity zone associated with an increase in the size of the L5-S1 protrusion. He said,

> High intensity zones represent relatively acute tears of the annulus fibrosis; they are objective evidence of a physical disruption of the annulus with secondary edema fluid. Annular tears result in weakness of the annulus fibrosis with herniation o[r] enlargement of herniation or disk bulging if already present. They represent a physical weakening of the annulus. Hence, the MRI scan finding of 03/10/06 objectify a worsening of [Employee's] L5 S1 intervertebral disk herniation. Since this worsening is associated with a high intensity zone, more probably than not the worsening was due to the incident of 11/17/05. (Gritzka addendum SIME report, December 3, 2006).

38) On March 2, 2007, Dr. Stinson performed a lumbar discography which revealed a concordant pain response at L5-S1 but not at adjacent levels above. He confirmed extravasation of contrast into epidural space at L5-S1. Dr. Stinson recommended a L5-S1 lumbar nucleoplasty. (Stinson medical report, March 2, 2007).

39) On March 29, 2007, Employee continued to experience significant low back and bilateral lower extremity radiculitis symptoms. His primary care physician placed him on paroxetine for depression. (Stinson progress note, March 29, 2007).

40) On April 17, 2007, the parties filed a compromise and release (C&R) settlement agreement. In exchange for a waiver of Employee's entitlement to past temporary total disability (TTD), a compensation rate adjustment, interest and penalties, Employee received $13,800 for past TTD benefits and an additional $3,200 to settle a compensation rate dispute, interest and penalty. Employer agreed to pay TTD from April 26, 2006 until medical stability. (C&R settlement agreement, April 17, 2007).

41) On May 3, 2007, Attorney Cheeks withdrew as attorney for Employee. (Notice of Withdrawal, May 3, 2007).

42) On May 31, 2007, Carol Slonimski, Ph.D., evaluated Employee and diagnosed an anxiety disorder, not otherwise specified. His main stressors were childrearing issues and financial strain. She opined there was no further need for psychological intervention. (Slonimski psychological report, May 31, 2007).

43) On June 8, 2007, Dr. Stinson performed a bilateral L5-S1 decompressive nucleoplasty and a post-nucleoplasty L5-S1 discogram. (Stinson procedure notes, June 8, 2007).

44) On June 21, 2007, Employee reported the second day after a nucleoplasty he had increased back pain but resolution of left lower extremity pain. On the third day after the procedure, a child accidentally tipped over the chair he was sitting in and he fell backwards and landed heavily on his back. Employee developed recurrent low back and left lower extremity symptoms although not to pre-treatment levels. He tripped again three days before this appointment but was wearing his brace and did not notice any significant increased symptoms after the fall. Dr. Stinson prescribed Rozerem and PT. (Stinson progress note, June 21, 2007).

45) On July 5, 2007, Employee stated he was doing well until he became the sole caretaker for his children. He experienced a mild increase in low back pain which was still better than before the nucleoplasty. Dr. Stinson referred Employee for a psychological examination because his stress, depression and fatigue were interfering with his expected recovery. (Stinson chart note, July 5, 2007).

46) On July 19, 2007, Employee complained of cramping and spasms in the thoracic region due to using the back brace. Dr. Stinson recommended he discontinue the brace, except for sitting or

strenuous activities and PT, and methadone tapering. He also prescribed Xanax instead of Valium, which Employee was going to taper off. (Stinson progress note, July 19, 2007).

47) On August 2, 2007, Employee stated his back pain was significantly reduced eight weeks after the nucleoplasty procedure. His main complaints were left lateral thigh numbness and ongoing left shoulder pain and decreased range of motion. Dr. Stinson recommended a left subacromial bursa injection and left lateral femoral cutaneous nerve injection. (Stinson, progress note, August 2, 2007).

48) On September 14, 2007, Dr. Stinson performed a left lateral femoral cutaneous nerve injection. (Stinson procedure note, September 14, 2007).

49) On September 27, 2007, Employee's back pain was under good control although his left thigh pain was intense. A left femoral cutaneous nerve injection did nothing for his left thigh symptoms. Employee was considering returning to work within two to four weeks after more PT. Dr. Stinson prescribed Lidoderm patches and PT. (Stinson progress note, September 27, 2007).

50) On October 22, 2007, Employee underwent PT at Advanced Physical Therapy. (PT progress note, October 22, 2007).

51) On November 20, 2007, Employee underwent a physical work performance evaluation. His overall capability for work was in the medium range, exerting 50 pounds of force occasionally, 25 pounds of force frequently and 10 pounds of force constantly to move objects. Employee was incapable of tolerating an eight hour day at a medium level work. He self-limited on 15 percent of the tasks due to pain. (Deborah Benson, PT, COMPT, Physical Work Performance Evaluation Summary, November 20, 2007).

52) On December 6, 2007, Employee felt like he was ready to go back to some kind of vocational activity. He continued to have some left thigh meralgia paresthetica intermittently, mild lumbar symptomology occasionally, but it was no longer a significant factor, and left shoulder pain which occasionally limited his lifting. Dr. Stinson recommended a combination of transcutaneous electrical nerve stimulation (TENS) unit and Lidoderm patches. (Stinson progress note, December 6, 2007).

53) On January 3, 2008, Employee complained of left shoulder pain and dysfunction preventing him from lifting his arm above his shoulder, interfering with grooming and hygiene activities. He stated it was similar to the left shoulder bursitis he had in the past and would like to try an injection. Employee's mild lower back symptoms did not preclude him from most activities and his left thigh

paresthetic sensation was unchanged. Dr. Stinson recommended a left subacromial bursa injection and referred him for a permanent partial impairment (PPI) rating. (Stinson progress note, January 3, 2008).

54) On January 19, 2008, Dr. Stinson performed a left subacromial bursa injection. (Stinson procedure note, January 29, 2008).

55) On January 25, 2008, Richard Cobden, M.D., examined Employee and opined he was not able to return to full duty as a warehouseman and should be considered for vocational rehabilitation. He found Employee medically stable and provided a 13 percent PPI rating for his lumbar spine but did not consider the left shoulder because it was pre-existing with no significant disability. (Cobden chart note, January 25, 2008).

56) On January 25, 2008, the police brought Employee to the emergency department to obtain medical clearance for him to remain in custody after becoming "somewhat unruly" while attempting to board a flight to Anchorage. He said his brother was in the intensive care unit in Anchorage dying. Employee took alprazolam and pain medication for his back and he drank two alcoholic beverages. He was diagnosed with "acute alcohol and benzodiazepine intoxication with narcotic use." (Maria Mandich, M.D., emergency room report, January 25, 2008).

57) On February 1, 2008, Dr. Stinson performed bilateral L5-S1 and left L4-5 interfacetal joint injections. (Stinson procedure note, February 1, 2008).

58) On February 14, 2008, Employee reported the February 1, 2008 injections significantly reduced his pain almost 100 percent for two days. However, the symptoms began to recur and felt worse once the pain came back four to five days later. Dr. Stinson recommended bilateral L5-S1 and left L4-5 medial branch radiofrequency rhizotomies. (Stinson progress note, February 14, 2008).

59) On February 19, 2008, Dr. Stinson released Employee to return to work with restrictions, including frequent and occasional lifting limited to 30 pounds or less. (Stinson Return to Work Recommendation, February 19, 2008).

60) On February 28, 2008, Employee stated he was sitting in a flexed lumbar spine position when he sneezed and he developed acute onset of significant midline low back pain with bilateral lower extremity radiculitis symptoms. It felt as bad as his original injury. Employee had increased paresthesia in the lateral and posterior aspects of both lower extremities down into his toes and his left toes were paresthetic. Dr. Stinson diagnosed an acute low back pain reoccurrence which was

consistent with a discogenic etiology symptomology and likely represented an exacerbation or worsening of his work injury. (Stinson progress note, February 28, 2008).

61) On February 28, 2008, Employee's lower back MRI showed moderate L5-S1, moderate L3-4 and mild to moderate L4-5 spondylosis; multilevel moderate to severe bilateral lumbar neural foraminal narrowing; and moderate L5-S1 disc and overall lumbar spine facet degenerative disease. (MRI report, February 28, 2008).

62) On March 14, 2008, Dr. Stinson performed an L5-S1 translaminal ESI. (Stinson procedure note, March 14, 2008).

63) On March 27, 2008, Dr. Stinson performed left L4, L5, S1 and alar medial branch radiofrequency rhizotomies. (Stinson procedure note, March 27, 2008).

64) On March 31, 2008, Employee visited Advanced Medical Centers of Alaska for a rash which was painful to touch. (Advanced Medical Centers of Alaska chart note, March 31, 2008).

65) On April 2, 2008, Employee visited Advanced Medical Centers of Alaska to check his rash which was worsening. (Advanced Medical Centers of Alaska chart note, April 2, 2008).

66) On April 25, 2008, Dr. Stinson performed right L4, L5, S1 and alar medial branch radiofrequency rhizotomies. (Stinson procedure notes, April 25, 2008).

67) On May 8, 2008, Employee stated he increased his physical activities and had an increase in lumbar muscle tenderness. Dr. Stinson prescribed Flector patches, recommended he gradually increase his activities and refilled his Xanax. (Stinson progress report, May 8, 2008).

68) On July 22, 2008, Employee woke up with burning hypersensitivity down his left lower extremity to the foot and increased back pain. Dr. Stinson diagnosed recurrent lumbago and left lower extremity radiculitis. (Stinson progress note, July 22, 2008).

69) On September 25, 2008, Employee experienced a significant increase in low back pain associated with significant thoracolumbar and cervical paraspinal muscle spasms, causing him to develop occipital neuralgia headaches. Occasionally he had left thigh meralgia paresthetica. (Stinson progress note, September 25, 2008).

70) On September 26, 2008, Dr. Stinson performed bilateral greater occipital nerve injections. (Stinson procedure notes, September 26, 2008).

71) On October 29, 2008, Employee hit a moose with his vehicle and the steering wheel jammed his left arm upon impact. He reported left shoulder pain. (Corrine Leistikow, M.D., chart note, October 29, 2008).

72) On November 6, 2008, Employee's left shoulder MRI revealed a Bankart type labral injury and mild glenoid sclerosis and deformity. (MRI report, November 6, 2008).

73) On December 3, 2008, the board approved a C&R settlement agreement that Employee signed on October 29, 2008. It stated,

> To resolve all disputes among the parties with respect to compensation for disability (whether the same be temporary total, temporary partial, permanent partial impairment, or permanent total), penalties, interest, or reemployment benefits, or AS 23.30.041(k) benefits, or AS 23.30.041(g) job dislocation, the employer will pay the employee the sum of $12,300.00 for vocational rehabilitation benefits. Except as provided below, the employee agrees to accept this amount in full and final settlement and discharge of all obligations, payments, benefits, and compensation which might be presently due or might become due to the employee at any time in the future under the Alaska Workers' Compensation Act, except for future medical benefits.
>
> Except as otherwise provided in this Agreement, the parties agree that the employer has paid all compensation and medical benefits which are due as of the date the employee signs this Settlement Agreement and that the right of the employer to contest liability for medical and related transportation benefits is also not waived by the terms of this Agreement.
>
> Except as provided below, the employee agrees to accept this amount in full and final settlement and discharge of all obligations, payments, benefits, and compensation which might be presently due or might become due to the employee at any time in the future under the Alaska Workers' Compensation Act, except for future medical benefits. (C&R settlement agreement, November 7, 2008).

74) On December 9, 2008, Employee said he had severe pain in his left shoulder since he hit the moose which affected his sleep. W. Laurence Wickler, M.D., examined his shoulder and opined he may have a superior labral anterior-posterior (SLAP) lesion and/or recurring Bankart lesion. (Wickler letter, December 9, 2008).

75) On January 23, 2009, Employer denied medical bills for dates of service of March 31, 2008 and April 2, 2008 contending it was for a rash unrelated to the work injury. (Controversion Notice, January 23, 2009).

76) On March 20, 2009, Employee visited Fairbanks Memorial Hospital's emergency department for a headache that started a few days ago when his child accidentally punched him in the nose so hard his nose was on the side of his face. He was given IV morphine and Dilaudid. (Emergency room report, March 20, 2009).

77) On March 26, 2009, Employee complained of recurrent left lumbosacral pain the same as what he experienced previously with his work injury. He felt the injections and procedures had worn off. (Stinson progress notes, March 26, 2009).

78) On March 26, 2009, Employee underwent drug testing and tested positive for high levels of Demerol and a toxic metabolite of Demerol. (Drug test report, March 26, 2009).

79) On March 27, 2009, Dr. Stinson performed left L4-L5 and L5-S1 interfacetal injections. (Stinson procedure notes, March 27, 2009).

80) On April 24, 2009, Dr. Stinson replied to a letter from Rx Third Party Solutions requesting a letter of medical necessity for alprazolam, meperitab and promethazine stating, "This medication is medically necessary for his workers' compensation injury. This has been detailed in his progress notes for several months. This therapeutic measure enhances his functioning from the chronic effects of his WC injuries." (Stinson reply, April 24, 2009).

81) On May 18, 2009, Employee reported increasing left lumbar pain interfering with his activities of daily living. Dr. Stinson stated the medial branch nerves may be re-growing since the last lumbar facet radiofrequency rhizotomies. (Stinson progress report, May 18, 2009).

82) On May 20, 2009, Dr. Stinson performed an examination under fluoroscopy, left sided L3-L4, bilateral L4-L5 and left L5-S1 facet joint injections. (Stinson procedure note, May 20, 2009).

83) On June 15, 2009, Employee stated the injections helped his pain considerably for two weeks but now all of the symptoms recurred. (Stinson progress note, June 15, 2009).

84) On June 17, 2009, Dr. Stinson performed left L3, L4, L5, S1 and alar medial branch radiofrequency rhizotomies. (Stinson procedure note, June 17, 2009).

85) On July 23, 2009, Employee's lumbar spine MRI showed a three millimeter central and paracentral disc extrusion at L5-S1 with three millimeter inferior migrational component centrally that did not compromise the central canal with focal extension into the right foraminal area. (MRI report, July 23, 2009).

86) On July 27, 2009, Dr. Stinson diagnosed a new L5-S1 disc herniation and extrusion in the same disc that was injured at work. (Stinson progress note, July 27, 2009).

87) On July 31, 2009, Dr. Stinson performed a caudal ESI. (Stinson procedure note, July 31, 2009).

88) On August 4, 2009, John Swanson, M.D., an orthopedic surgeon examined Employee for an EME. He diagnosed (1) pre-existing spondylosis of the lumbar spine including arthritis of the facet joints and degenerative disc disease, (2) stable lumbar strain related to the work injury, (3)

pre-existing probably left meralgia paresthetica, (3) prior left shoulder injury and thermal capsulorrhaphy, (4) stable left shoulder strain related to the work injury, (5) cervical spondylosis, (6) physical dependence and possible psychological addition to narcotics, (7) history of stress, anxiety, depression and dysthymia with somatic focus and subjective complaints outweighing objective abnormalities and (8) symptom magnification with probable secondary gain. Upon examination, Employee had five out of the eight Waddell tests positive which indicated significant symptom magnification. Dr. Swanson opined Dr. Gritzka's October 30, 2006 examination also indicated Employee had symptom magnification because he failed to perform two of the eight Waddell's tests and three of the six that were performed were positive. He noted Employee's August 4, 2004 x-ray demonstrated ribs on his first lumbar vertebra which indicated an anatomic abnormality present since birth caused by an abnormal genetic allele. There are several abnormal genetic alleles, such as "vitamin D receptor gene polymorphism" and "aggregan gene polymorphism," that are associated with early onset lumbar spine spondylosis. Dr. Swanson opined it was probable Employee inherited one of those abnormal genetic alleles which produced the anatomic L1 rib abnormality and his early onset spondylosis. His waxing and waning symptoms demonstrated in the medical record were typical for pre-existing lumbar spine spondylosis. Dr. Swanson concluded Employee's lumbar spine symptoms are due to the underlying pre-existing lumbar spine spondylosis. The work injury caused a lumbar sprain and Employee reached medical stability without any impairment by July 17, 2006. He opined there was no evidence there was a pathological worsening of his underlying pre-existing lumbar spine spondylosis after the work injury. Dr. Swanson concluded the high intensity zone on the December 27, 2005 MRI was not an indication of a pathological worsening because it was present in more than 50 percent of asymptomatic individuals undergoing MRI scans in studies. Employee had only mild, inconsistent pain in his left shoulder in his follow up evaluations after the work injury. Dr. Swanson opined Employee sustained a left shoulder strain and it would have been physiologically stable and without impairment by July 17, 2006 at the latest. The Bankart lesion present on the November 6, 2008 MRI indicated it occurred spontaneously or was caused by the October 2008 motor vehicle accident and was unrelated to the work injury. Dr. Swanson opined narcotic medications were not reasonable or necessary for nonmalignant pain because there was no significant improvement in pain levels or significant improvement in function and the adverse effects outweighed their benefits. Steroid injections, trigger point injections, nerve blocks, facet

blocks and stellate ganglion blocks were not indicated, reasonable or necessary as none of them produced lasting benefits and the risks of such injections outweighed any potential benefit. Radiofrequency ablation and rhizotomies were neither reasonable nor necessary because there are no controlled trials demonstrating they are better than placebo and Employee did not experience any significant lasting benefit. Dr. Swanson opined there was no valid objective indication for surgical decompression because none of the EMG studies demonstrated radiculopathy, he had no evidence of radiculopathy and his July 23, 2009 MRI demonstrated no evidence of extruded or free disc fragments to indicate a herniated disc. A spinal cord stimulator was not reasonable or necessary because there are no valid objective controlled studies demonstrating they are better than placebo for treating chronic back pain and the side effects outweighed any potential benefit. A lumbar disc replacement was contraindicated and was not reasonable or necessary because it would not improve his facet joint arthritis symptoms at L5-S1 and because of the risks associated, including loosing components which may require another surgery and expose Employee to aorta or vena cava damage and death. Dr. Swanson opined acupuncture was not indicated, nor reasonable or necessary because it failed to benefit Employee and there are no controlled trials indicating it was better than placebo. PT had not benefited Employee significantly and there was no indication it was better than placebo for chronic low back pain. Employee did not need a formal directed exercise program or gym program because they have not been demonstrated to be more effective than routine daily activity and home exercises. Dr. Swanson concluded Employee required no further medical evaluation or treatment for the work injuries. The current substantial cause of his need for lumbar spine treatment was his pre-existing spondylosis and psychosocial factors and for his need for left shoulder treatment was the prior injury, capsulorrhaphy and October 2008 motor vehicle accident. (Swanson EME report, August 4, 2009).

89) On September 9, 2009, Estrada Bernard, Jr., M.D., a neurosurgeon, opined Employee needed a fusion or disc arthroplasty and not a decompression discectomy. (Bernard medical report, September 9, 2009).

90) On September 21, 2009, Employee visited Fairbanks Memorial Hospital for blistering and itching of both hands. His son had been admitted for a streptococcus infection and there was concern Employee had a similar infection. Employee was diagnosed with an acute rash and was directed to frequently wash his hands and use Benadryl for itching. (Emergency report, September 21, 2009).

91) On October 5, 2009, Employee followed up for low back pain and left lower extremity radicular pain. Dr. Stinson referred him to Paul Jensen, M.D., for a neurological evaluation. (Stinson progress report, October 5, 2009).

92) On October 29, 2009, Dr. Jensen examined Employee and wrote a letter to Dr. Stinson stating, "I agree that [Employee] is an excellent candidate for an L5-S1 disc replacement." (Jensen letter, October 29, 2009).

93) On January 5, 2010, Dr. Stinson evaluated Employee's back and leg pain. He sneezed three days ago and when he woke up the next morning, he could barely move. It was like his usual back and leg pain but worse. Employee had been in a stooped uncomfortable position and his medication did not "touch" his pain. Dr. Stinson assessed known L5-S1 disc herniation and lower extremity radiculitis after sneezing. He directed Employee to go to the emergency room for imaging and pain medication, which Employee refused. Dr. Stinson recommended he see Dr. Jensen. (Stinson, chart note, January 5, 2010).

94) On January 5, 2010, Dr. Jensen evaluated Employee's low back pain and severe bilateral lower extremity pain as an "urgent add-on" at Dr. Stinson's request. Employee had a dramatic increase in pain symptoms. Dr. Jensen recommended an MRI and referred him to the emergency room for pain medication and an MRI. (Jensen, chart note, January 5, 2010).

95) On January 5, 2010, Employee went to the emergency room for evaluation of low back pain after he was unable to lie flat for an MRI due to pain. He was provided Valium and Dilaudid intravenously and was able to undergo the MRI. (Maria Mandich, M.D., emergency room report, January 5, 2010).

96) On January 5, 2010, Employee's lumbar spine MRI revealed a prominent L5-S1 disc protrusion and diffuse neuroforaminal narrowing in part related to facet disease most evident at L5-S1. (MRI report, January 5, 2010).

97) On January 25, 2010, Dr. Jensen performed a L5-S1 anterior retroperitoneal discectomy and arthroplasty. Peter Marbarger, M.D., assisted and was in charge of the abdominal exposure of the anterior L5-S1 disc and wound closure. (Jensen operative report, January 25, 2010).

98) On January 30, 2010, Employee reported feeling like his incision popped while traveling home after surgery. He was diagnosed with acute postoperative abdomen pain and provided morphine and valium. (Jeoff Lanfear, A.N.P., chart note, January 30, 2010).

99) On February 9, 2010, Employee visited Jane Sonnenburg, PA-C, and reported significant improvement in low back pain since the surgery, abdominal incisional discomfort and left leg and right toe numbness. He requested a refill of MS Contin. PA-C Sonnenburg recommended Employee place gauze on his incision to help with moisture. She prescribed Levaquin and gabapentin and refilled MS Contin. (Sonnenburg chart note, February 9, 2010).

100) On March 17, 2010, Employee's back symptoms were better except for left-sided thoracolumbar muscle spasm exacerbated by wearing his brace. He also began to experience bilateral testicular pain about a week to 10 days after the surgery which he still had. Dr. Stinson diagnosed bilateral genitofemoral neuralgia, a potential complication of the disc replacement. Employee wanted to taper off morphine and Dr. Stinson recommended a plan. He prescribed clonidine and refilled Xanax. (Stinson progress note, March 17, 2010).

101) On March 22, 2010, Employer denied medical costs incurred after August 4, 2009, including narcotic medications, trigger point injections, steroid injections, nerve blocks, facet blocks, stellate ganglion blocks, radiofrequency ablation, rhizotomies, radiofrequency neurotomy, surgical decompression, spinal cord stimulator, lumbar desk replacement, acupuncture, chiropractic or osteopathic manipulations, PT and a directed exercise program or formal gym program, based upon Dr. Swanson's August 4, 2009 EME report. (Controversion Notice, March 22, 2010).

102) On March 29, 2010, Dr. Stinson added Zanaflex to help with muscle spasm and sleep. Once the muscle spasms were more controlled, he was going to use Clonidine patches to help withdrawal of opioid medication. (Stinson progress report, March 29, 2010).

103) On March 29, 2010, Employee sought medical costs, transportation costs, penalty, interest, a finding of unfair or frivolous controversion and attorney's fees and costs. (Workers' Compensation Claim, March 29, 2010).

104) On March 31, 2010, Attorney Allen Cheek entered an appearance on behalf of Employee. (Entry of Appearance, March 31, 2010).

105) On April 20, 2010, Employer denied medical and transportation costs incurred after August 4, 2009 based on Dr. Swanson's August 4, 2009 EME report and penalty and interest. It listed the same denied medical treatments as the March 22, 2010 controversion notice and contended the treatments were not reasonable or necessary. Employer served it upon Employee by mail. (Controversion Notice, April 20, 2010; Answer, April 20, 2010).

106) On July 13, 2010, Employee said his left fourth toe had been numb most of the time for the past month. He believed it was related to his back surgery. Employee's right side low back region was quite tender and he had left sided symptoms to a lesser extent. (Stinson progress report, July 13, 2010).

107) On June 29, 2010, Employee injured his right foot and ankle four days earlier when he caught his foot on stairs while descending four days earlier. He was seen in Glennallen and placed in a splint. Dr. Stinson sent him for foot x-rays and recommended he follow up with an orthopedist. (Stinson progress report, June 29, 2010).

108) On July 13, 2010, Employee complained his left fourth toe had been numb for months but elevating restored sensation. He also reported low back pain, more on the right side but there were some symptoms on the left. Dr. Stinson assessed prior surgery at L5-S1 with symptomatic facet arthropathy and numbness of the fourth toe. He recommended injection therapy. (Stinson progress note, July 13, 2010).

109) On July 27, 2010, Dr. Stinson performed an examination under fluoroscopy and a right L4-L5 interfacetal joint injection. (Stinson procedure note, July 27, 2010).

110) On October 4, 2010, Employee stated his low back pain with left lower extremity radiculitis symptoms interfered with his activities of daily living. When he woke in the morning, he had to crawl out of bed. Dr. Stinson recommended another lumbar steroid injection. (Stinson progress note, October 4, 2010).

111) On October 6, 2010, Dr. Stinson performed a left S1 transforaminal ESI. (Stinson procedure note, October 6, 2010).

112) On February 28, 2011, John Swanson, M.D., an orthopedic surgeon performed a records review EME. He diagnosed:

1. Pre-existing spondylosis of the lumbar spine with arthritis of the facet joints and degenerative disc disease
2. Pre-existing congenital anatomic abnormalities in the lumber spine, including:
    a. Short pedicles
    b. Spina bifida oculta at S1
    c. Accessory ribs at L1
3. Medically stable work-related Lumbar strain
4. Pre-existing left meralgia paresthetica
5. Pre-existing left acromioclavicular joint osteoarthritis
6. Pre-existing left shoulder congenital curved Type II acromion

7. 1999 left shoulder injury leading to the December 15, 1999 thermal capsulorrhaphy due to instability
8. Medically stable work-related left shoulder strain
9. Cervical spondylosis with uncovertebral and facet joint arthritis and degenerative disc disease
10. Physical dependence and possible psychological addition to narcotics
11. History of stress, anxiety, depression symptoms and dysthymia with somatic focus with subjective complaints outweighing objective abnormalities
12. History of symptom magnification with probable secondary gain.

Dr. Swanson opined the work injury was not the substantial cause of Employee's current lumbar condition or need for treatment; rather the substantial cause was his pre-existing spondylosis, facet joint arthritis and degenerative disc disease combined with his psychosocial factors. He opined the substantial cause of Employee's left shoulder medical treatment was his pre-existing acromioclavicular osteoarthritis, congenital curved type II acromion and the 1999 surgical procedure. His pre-existing L5-S1 spondylosis was the most significant factor of his need for the January 25, 2010 discectomy and disc replacement surgery. Employee's left shoulder was medically stable by May 17, 2006, and his lower back was medically stable one year after the surgery on January 25, 2011. Dr. Swanson opined the January 25, 2010 surgery was not reasonable or necessary for the process of recovery because Employee's severe L5-S1 facet joint osteoarthritis was a "contraindication" to an arthroplasty. He opined no further treatment was indicated and his need for medical treatment for the work injury ceased by May 17, 2006. (Swanson EME report, February 28, 2011).

113) On March 30, 2011, Employer denied all medical benefits incurred after May 16, 2006, based on Dr. Swanson's February 28, 2011 EME report. (Controversion Notice, March 30, 2011).

114) On April 5, 2011, Employee complained of left shoulder and right lumbosacral pain. Dr. Stinson recommended a lumbar facet joint injection, which he performed on April 19, 2011. (Stinson report, April 5, 2011; Stinson procedure note, April 19, 2011).

115) On July 19, 2011, Employee said he was trying to increase his activity by walking or biking but was limited by back and lower extremity radiculitis pain. Dr. Stinson recommended another lumbar ESI. (Stinson progress note, July 19, 2011).

116) On July 21, 2011, Employee requested a hearing on his March 29, 2010 "application" for benefits. (ARH, July 21, 2011). The claim had tentatively settled and he was filing an ARH in case the case did not settle as anticipated. (Advice of Counsel, July 21, 2011).

117) On July 29, 2011, Employer opposed Employee's July 21, 2011 ARH contending the parties tentatively reached settlement and a hearing was unnecessary, the ARH was filed in order to protect Employee's right to a hearing in case the settlement disintegrates and "neither party is adversely affected by tolling deadlines or postponing setting a hearing date." (Opposition, July 29, 2011).

118) On August 16, 2011, Dr. Stinson performed left L4, L5, L1 and alar medial branch radiofrequency rhizotomies. (Stinson procedure note, August 16, 2011).

119) On October 3, 2011, Employee's March 29, 2010 claim was set for hearing on March 1, 2012. (Prehearing Conference Summary, October 3, 2011).

120) On December 6, 2011, Dr. Stinson diagnosed lumbar spondylosis with stable mild lumbago and mild left lower extremity radiculitis and prescribed Demerol, Zanaflex and Xanax. (Stinson progress note, December 6, 2011).

121) On February 9, 2012, the parties stipulated to continue the hearing because the parties were in the process of negotiating settlement. (Stipulation, February 9, 2012).

122) On March 19, 2012, Employee reported slowly progressive bilateral lumbosacral pain similar to pain he experienced in the past. (Stinson progress note, March 19, 2012).

123) On March 21, 2012, Dr. Stinson performed a bilateral L4-5 and L5-S1 intrafacetal joint injection. (Stinson procedure note, March 21, 2012).

124) On April 16, 2012, the parties stipulated to an SIME and agreed not to set the March 21, 2010 claim for hearing until the SIME was completed. (Prehearing Conference Summary, April 16, 2012).

125) On December 17, 2012, Employee said his back pain was under good control lately with medications directed towards muscle relaxation. His chief complaint was pain in the abdominal surgical incision. It had always been at least a little tender but the pain was elevating to the point something had to be done because if it was touched or rubbed, Employee would get severe pain in the incision site and anteriorly to the genital area. Dr. Stinson recommended incisional neuroma injection therapy. He prescribed Xanax, Zanaflex and Meperidine. (Stinson progress note, December 17, 2012).

126) On March 21, 2013, James Coulter, M.D., examined Employee for an SIME. He identified several causes of Employee's left shoulder condition, including a June 8, 1999 work injury; the November 17, 2005 work injury; the October 29, 2008 vehicular injury which caused a superior labral anterior-posterior (SLAP) lesion; and development of a non-work related Bankart lesion.

Dr. Coulter stated the substantial relative contribution to Employee's current left shoulder condition for the June 8, 1999 injury was approximately 51 percent; for the November 17, 2005 work injury was about 30 percent and the October 2008 motor vehicle accident was about 19 percent. He identified several causes of Employee's lumbar condition, including the November 17, 2005 work injury, which caused a L5-S1 herniated nucleus pulposus; lumbar facet osteoarthritis, especially at L4-L5 and L5-S1; lumbar spondylosis, especially at L5-S1; and possible aggravation of his lumbar condition from heavy work during his employment at Taiga Adventures. Dr. Coulter stated the substantial relative contribution to Employee's lumbar condition for the November 17, 2005 work injury was over 51 percent; for facet osteoarthritis and the disc herniation was about 19 percent and for the degenerative changes as about 30 percent. He opined Employee's lumbar conditions were aggravated by and combined with the effects of the work injury to produce his need for medical treatment from November 17, 2005, to the present and the entire treatment rendered to date was related to the work injury. While the most significant factor causing Employee's left shoulder condition was the June 8, 1999 injury, Employee's left shoulder was aggravated by and combined with the effects of the work injury to produce his need for medical treatment from November 15, 2005, to the present. The treatment Employee received had been reasonable and necessary, including the January 25, 2010 surgical procedure for his lumbar spine symptoms and injections, PT, chiropractic care and work hardening for the aggravation of his shoulder symptoms. Dr. Coulter opined Employee's abdominal mid-incisional pain was related to a wound neuroma caused by a surgical genito-femoral nerve injury from the January 25, 2010 surgery. He recommended sympathetic ganglia anesthetic blocks into the posterior retroperitoneal area to relieve his post-op abdominal regional pain condition; and, if those failed he recommended surgical exploration of the wound neuroma. If a neuroma could not be found and his abdominal wound pain symptoms continued, he recommended a spinal cord stimulator, continued long term opiate use and other medications, including Neurontin or Lyrica. Dr. Coulter concluded Employee became habituated to Demerol, also known as meperidine, during treatment for the work injury but Employee reduced his intake since the January 25, 2010 surgery. He agreed with Dr. Swanson's assessment of pre-existing developmental congenital curved type II left acromion present since birth but disagreed with Dr. Swanson's opinions in his August 4, 2009 and February 28, 2011 reports because he believed the work injury was the substantial cause of Employee's left shoulder and lumbar conditions, he "should have had" surgical decompression

at L5-S1 or disc replacement and the narcotic medications, steroid injections, trigger point injections and nerve and facet blocks were reasonable and necessary. Dr. Coulter opined Employee was not medically stable from his January 25, 2010 surgery. No further lumbar operations, other than surgery for his neuroma if anesthetic blocks were ineffective, will be necessary because of the work injury and no additional left shoulder medical treatment will be required for the work injury. Employee's left shoulder injury reached medical stability. Dr. Coulter considered PT, acupuncture and chiropractic manipulations necessary palliative pain treatment for his lumbar spine after the work injury to the present. (Coulter SIME Report, March 21, 2013).

127) On May 6, 2013, Employer denied all medical benefits listed in the previous controversion notice except for injection therapy on an outpatient basis for incisional neuroma. (Controversion Notice, May 6, 2013).

128) On May 8, 2013, Employee wrote a letter to Attorney Cheek stating he was discharging him as his attorney effective immediately and requested a copy of his file, including receipts concerning out-of-pocket expenses Employer's attorney stated he had not received at the last prehearing conference. (Letter, May 8, 2013).

129) On May 13, 2015, Employee requested a hearing on his March 29, 2010 "application" for benefits. (ARH, May 13, 2015).

130) On May 16, 2013, Attorney Wenstrup entered an appearance on behalf of Employee. (ICERS event entry, entry of appearance, May 16, 2013).

131) On May 19, 2015, Employer opposed Employee's May 13, 2015 ARH contending discovery had not been completed because Employee's deposition may be taken again and an EME may be needed. (Opposition, May 19, 2015).

132) On June 15, 2015, the parties requested a follow up prehearing conference because Employer's attorney was waiting for discovery from Employee's attorney. (Prehearing Conference Summary, June 15, 2015).

133) On September 24, 2015, Employee's March 29, 2010 claim was set for hearing on April 7, 2016. The hearing date was "contingent upon" Employee's attorney providing discovery to Employer's attorney. (Prehearing Conference Summary, September 24, 2015).

134) On February 5, 2016, Attorney J. John Franich entered an appearance on behalf of Employee. (Entry of Appearance, February 5, 2016).

135) On March 8, 2016, Employer's attorney sought discovery in the form of medical bills Employee wanted it to pay and said Employer may be amenable to resolving the bills once documentation was provided. The parties agreed to cancel the April 7, 2016 hearing. (Prehearing Conference Summary, March 8, 2016).

136) On March 10, 2016, Advanced Pain Centers of Alaska sought $13,978.00 for unpaid medical costs. (Workers' Compensation Claim, March 10, 2016).

137) On March 29, 2016, Employer answered the March 10, 2016 claim and contended Employee was not entitled to medical benefits after May 16, 2007, except for incisional neuroma injection therapy, based upon Dr. Swanson's February 8, 2011 EME report because after that date, his need for medical treatment was due to his pre-existing left shoulder and lumbar spine conditions. It contended charges incurred on June 29, 2010 do not relate to the work injury and the $13,978 bill from Advanced Pain Centers of Alaska was for injections that were not for Employee's incisional neuroma. (Answer, March 29, 2016). Employer denied all benefits listed in its previous April 20, 2010 controversion except injection therapy on an outpatient basis for incisional neuroma. (Controversion Notice, March 29, 2016).

138) On July 26, 2016, Employer's attorney wrote a letter to Employee's attorney with a settlement offer. (Letter, July 26, 2016).

139) On August 4, 2016, Employee's attorney wrote a letter to Employer's attorney in response to a settlement offer. It listed outstanding balances with medical providers including $13,649.00 for Advance Pain Centers of Alaska, $39,941.79 for Alaska Regional Hospital, $3,576.84 for Fairbanks Memorial Hospital through TWS Collection, $24,000.00 for Paul Jensen, M.D., $6,000.00 for Dr. Marbarger. (Letter, August 4, 2016).

140) On August 24, 2016, Employer paid Advanced Pain Centers of Alaska $6,907.00. (Payment information screen shot, August 24, 2016).

141) On August 31, 2016, the Advanced Pain Centers of Alaska filed a letter stating, "This letter is to indicate that this account has reached a settlement on his claim. Please close out his claim with your company." (Letter, August 31, 2016).

142) On March 4, 2019, Attorney J. John Franich withdrew as attorney for Employee. (Notice of Withdrawal, March 4, 2019).

143) On April 12, 2019, Employee requested a hearing on his claim seeking "meds, transportation and out-of-pocket med." (ARH, April 12, 2019).

144) On April 19, 2019, Employer opposed Employee's April 12, 2019 ARH because it did not believe it was ready for hearing as "litigation had been inactive for about a year", the ARH did not reference a specific claim, no new discovery was provided by Employee and it was requesting updated releases from Employee to conduct discovery. (Opposition, April 19, 2019).

145) On April 19, 2019, Employer filed a medical summary stating "no new medical records." (Medical summary, April 19, 2019).

146) On April 23, 2019, Employer stated it was asserting an AS 23.30.110(c) defense against Employee's March 29, 2010 claim. (Prehearing Conference Summary, April 23, 2019).

147) On April 25, 2019, Employee filed a Medicare Set-Aside (MSA) Allocation Analysis dated January 15, 2012. (MSA Allocation Analysis, April 26, 2019).

148) On April 26, 2019, a workers' compensation officer mailed a copy of the MSA Allocation Analysis to Employer's attorney. (ICERs event entry, Evidence Filed, April 26, 2019).

149) On April 26, 2019, Employee filed documentation regarding prescriptions, medical bills and travel expenses. He included the July 6, 2016 letter; the August 4, 2016 letter; a print out of medications issued from by Advance Pain Centers of Alaska February 2, 2006 to January 12, 2012 with a written note stating, "All meds after 7/21/2006 controversion were paid by [Employee]" from with costs written in totaling $4,044.74; a prescription price quote form Wal-Mart Pharmacy dated "1-12-201" totaling $2,970.68 with no dates provided for the prescriptions; Alaska Airlines tickets with no cost provided for travel on August 4, 2009 from Anchorage to Fairbanks, on May 5, 2014 for travel from Anchorage to Fairbanks, and on January 22, 2015 from Anchorage to Fairbanks and back; statements from Alaska Neuroscience Associates, LLC, for the January 25, 2010 surgery totaling $24,000 which stated it was denied by "w/c" on May 3, 2010; a January 3, 2011 statement from Alaska Regional Hospital with a balance of $39,851.79 with a discharge date of January 27, 2010; a June 14, 2012 statement for Dr. Marbarger for $6,000; a June 2, 2015 letter from the claims administrator which stating a $937.12 check was issued to cover mileage from April 27 to May 1, 2015, and hotel and requesting receipts for meals to reimburse up to $60 per day, per person; and several indecipherable handwritten and typed notes regarding out mileage expenses. Employee submitted the following prescriptions receipts:

Table One.

Date	Prescription Number and Pharmacy	Description	Cost

March 31, 2008	0904464 Rx	Famciclovir 500 mg	$206.24
August 31, 2009	Family Medical Center	Hydrocodone/APAP	$20.25
August 31, 2009	Family Medical Center	Cyclobenzaprine HCL	$27.25
November 13, 2009	22092 Professional Pharmacy	Merperidine 50 mg	$73.69
November 13, 2009	302646 Professional Pharmacy	Alprazolam XR 1 mg	$172.39
February 9, 2010	22812 StoneRiver	Morphine	$67.03
February 9, 2010	0959141 StoneRiver	Levaquin	$96.88
February 9, 2010	959142 StoneRiver	Gabapentin	$150.95
March 17, 2010	7173357 Wal-Mart	Clonidine 0.02/24 HR	$148.78
March 30, 2010	639849 Cross Road Medical Center	Tizanidine	$56.11
January 23, 2011	2213296 Wal-Mart	Meperidine 50 mg	$18.32
May 27, 2011	4447948 Safeway Pharmacy	Alrpazolam XR 1 mg	$64.49
August 17, 2011	4623075 Fred Meyer	Alprazolam ER 1 mg	$132.69
August 17, 2011	2382129 Fred Meyer	Meperidine 50 mg	Not provided
October 14, 2011	1552465 Denali Pharmacy	Hydromorphone	$35.85
December 8, 2011	2212559 Wal-Mart	Meperidine 50 mg	$35.32
January 23, 2012	6801893 Wal-Mart	Tizanidine 4 mg	$17.46
January 23, 2012	4435770 Wal-Mart	Alprazolam ER 1 mg	$96.88
March 6, 2012	2213618 Wal-Mart	Meperidine 50 mg	$9.32
March 6, 2012	4436541 Wal-Mart	Alprazolam ER 1 mg	$23.54
March 23, 2012	4436882 Wal-Mart	Alprazolam ER 1 mg	Not provided
July 11, 2012	4438805 Wal-Mart	Alprazolam ER 1 mg	$97.62
July 11, 2012	2214590 Wal-Mart	Meperidine 50 mg	$18.32
December 18, 2012	4131548 Wal-Mart	Alprazolam ER 1 mg	$22.09
December 18, 2012	6715516 Wal-Mart	Tizanidine 4 mg	$17.88
December 18, 2012	2044076 Wal-Mart	Meperitab 50 mg	$25.84
December 21, 2012	4131548 Wal-Mart	Alprazolam ER 1 mg	$72.59
February 20, 2013	4442616 Wal-Mart	Alprazolam ER 1 mg	$112.54
February 20, 2013	6841116 Wal-Mart	Tizanidine 4 mg	$27.88

April 24, 2013	4443760 Wal-Mart	Alprazolam ER 1 mg	$29.72
April 24, 2013	2217019 Wal-Mart	Meperidine 50 mg	Not provided
May 15, 2015	N2380558 Banner Health	Hydromorphone	$10.00
		Total Costs	$1,887.92

Employee submitted medical bills from various medical providers for the following dates and costs:

Table Two.

Bill Date	Admission/Discharge Date	Medical Provider	Cost
February 18, 2008	January 25, 2008	Golden Heart Emergency Phys.	$236.00
March 22, 2009	March 11, 2009	Rx Third Party	$234.44
May 31, 2009	March 20, 2009	Banner Health, Fairbanks Memorial Hospital	$1,209.35
April 17, 2010	February 9, 2010	Banner Health, Fairbanks Memorial Hospital	$235.30
June 30, 2010	June 25, 2010	Cross Road Medical Center, Employee paid $100 of total	$180.00
September 13, 2010	June 28, 2010	Golden Heart Emergency Phys.	$275.00
February 7, 2011	January 5, 2010	Banner Health, Fairbanks Memorial Hospital	$3,575.84
February 7, 2011	June 29, 2010	Banner Health, Fairbanks Memorial Hospital	$143.45
February 12, 2013	March 21, 2012	South Anchorage Surgery Center, LLC	$6,063.00
July 30, 2015	May 19, 2015	Radiology Consultants, Inc.	$299.00

Employee submitted the following medical bills from Cornerstone Credit Services, LLC, with no service dates:

Table Three.

Bill Date	Cost
March 26, 2010	$492.18
August 24, 2010	$275.31
October 10, 2012	$6,931.11
January 18, 2018	$559.00
October 20, 2018	$1,925.00
Total	$10,182.60

Employee submitted the following medical bills for Transworld Systems for Fairbanks Memorial Hospital with no service dates:

Table Four.

Dates	Amount
July 16, 2009	$129.11
March 10, 2010	$206.80
December 2, 2010	$217.15
December 15, 2010	$217.15
December 29, 2010	$217.15
October 25, 2011	$155.00
May 17, 2012	$1,142.42
Total	$2,284.78

Employee submitted the following hotel receipts:

Table Five.

Beginning Date	End Date	Hotel Name	Cost
October 21, 2007	October 23, 2007	Comfort Inn Chena River	$194.38
November 18, 2007	November 22, 2007	Westmark Fairbanks Hotel Fairbanks	$298.08
December 3, 2007	December 3, 2007	Westmark Fairbanks Hotel Fairbanks	$74.52
December 23, 2007	December 24, 2007	Westmark Fairbanks Hotel Fairbanks	$74.52
January 7, 2008	January 8, 2008	Westmark Fairbanks Hotel Fairbanks	$74.52
January 17, 2008	January 18, 2008	Westmark Fairbanks Hotel Fairbanks	$74.52
January 21, 2008	January 22, 2008	Westmark Fairbanks Hotel Fairbanks	$74.52
October 4, 2009	October 6, 2009	Best Western Golden Lion Anchorage	$179.18
January 23, 2010	January 30, 2010	Best Western Golden Lion Anchorage	$448.15
March 28, 2010	March 29, 2010	Best Western Golden Lion Anchorage	$100.79
March 29, 2010	March 30, 2010	Residence Inn Marriott Anchorage	$200.48
April 22, 2010	April 23, 2010	Regency Fairbanks Hotel Fairbanks	$81.00
March 19, 2012	March 21, 2012	Springhill Suites Marriott Anchorage	$325.70
April 4, 2012	April 5, 2012	Regency Fairbanks Hotel Fairbanks	$273.44
April 6, 2015	April 7, 2015	Best Western Golden Lion Anchorage	$118.71
April 27, 2015	May 1, 2015	Best Western Golden Lion Anchorage	$474.84

Total	$3,067.35

Employee submitted the following receipts related to transportation and meals costs:

Table Six.

Date	Receipt Description	Amount
Undated	Vehicle Rental	$162.15
April 6, 2015	Hudson News receipt for cigarettes	$11.99
April 6, 2015	TGI Friday's meal receipt, excluding $12.55 tip	$47.45
April 6, 2015	Enterprise vehicle rental	$98.59
April 7, 2015	Holiday Stationstore receipt for fuel	$4.06
April 7, 2015	Chili's meal receipt, excluding $4.43 tip	$32.57
April 15, 2015	IHOP illegible	Not legible
April 15, 2015	IHOP illegible	Not legible
April 26, 2015	Holiday Stationstore receipt for several food items, some illegible	$40.60
April 28, 2015	Sea Gallery, excluding $14.55 tip	$98.45
April 29, 2015	Thirty Six Bistro meal receipt, largely illegible	$40.00
May 1, 2015	Fuel Stop illegible	Not legible
	Total Costs	$535.86

A workers' compensation officer mailed a copy of the documentation to Employer's attorney. (ICERS event entry, Evidence Filed, April 26, 2019).

150) On May 16, 2019, Employee requested a protective order contending the medical records Employer sought had nothing to do with his work injury. (Petition, May 16, 2019).

151) On June 7, 2019, Employee contended Employer's medical release sought medical information from 2015 to the present and the release was not relevant to his claim because he has not sought any medical treatment for his back during that period. Employer contended the release was relevant because Employee was receiving medical benefits. The designee ordered Employee to provide signed releases to Employer within 10 days. (Prehearing Conference Summary, June 7, 2019).

152) On June 14, 2019, Employee requested Employer provide him with an itemization of what it paid for medical benefits, out-of-pocket expenses and mileage after the 2008 C&R. (Employee letter, June 14, 2019).

153) On August 12, 2019, Employer filed a hearing brief contending it paid $192,887.02 in medical costs and $1,809.39 in transportation costs and it resolved all medical issues with the

Advanced Pain Centers so the only potential claim would be for limited out-of-pocket expenses related to the treatment from Advanced Pain Centers. It contended Employee failed to provide any documentation of unpaid expenses and his request for reimbursement was untimely. (Employer hearing brief, August 12, 2019).

154) Employee had trips on April 6 and April 29, 2015, for incisional neuroma injections with Advanced Pain Centers of Alaska. He received a partial travel reimbursement and the claims adjuster asked for receipts for meals and he provided them the next day but has not received reimbursement. (Employee).

155) Employee contends he has over $25,000 in unpaid out-of-pocket prescription medication expenses. Employee contends he has paid for plane tickets, hotels and food while traveling for medical treatment which he submitted receipts for and Employer has not reimbursed him. He contends he has outstanding medical bills totaling $24,000 with Dr. Jensen, roughly $39,000 with Alaska Regional Hospital, which he was sent to collections for, and $6,000 with Dr. Marbarger. Employee was seeking continuing medical treatment, specifically the incisional neuroma medical treatment and transportation costs. He contends he was seeking the medical benefits he and his attorney attempted to obtain by securing a MSA account. (Employee hearing arguments).

156) Employer contends Employee stated he was not seeking continuing or future medical benefits in the last prehearing conference where he disputed its entitlement to medical records after 2015. (Employer hearing arguments).

157) On September 23, 2019, the record reopened under 8 AAC 45.120(m) to receive additional evidence from Employer explaining which medical and transportation costs were paid as it was unclear which costs Employer paid and did not pay and when Employer paid the costs and medical records from April 2015. (Letter, September 23, 2019).

158) On October 23, 2019, Employer contended it paid all properly submitted medical and transportation expenses. It contended Employee failed to submit sufficient documentation regarding medical and transportation out-of-pocket expenses to allow Employer to verify whether expenses he incurred had been left unpaid. Employer contended the evidence requested placed the entire evidentiary burden on Employer to establish the presumption in Employee's favor and to establish his claim by a preponderance of the evidence. It contended it settled and paid all outstanding medical provider bills. Employer contended it settled the Alaska Regional Hospital bill totaling $39,851.29 on August 19, 2016, the Transworld Systems statements for amounts due

to Fairbanks Memorial hospital on May 4, 2017, and all bills from Dr. Jensen on August 12, 2016. It contended it settled all outstanding medical bills. Employer contended Employee failed to present evidence the medical bills he submitted were left unpaid. It also contended he did not submit evidence he submitted transportation reimbursement or out-of-pocket requests that were left unpaid. (Employer supplemental brief, October 23, 2019).

PRINCIPLES OF LAW

AS 23.30.010. Coverage. (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

. . . .

AS 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical . . . treatment . . . medicine . . . for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. It shall be additionally provided that, if continued treatment or care or both beyond the two year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require.

. . . .

(o) Notwithstanding (a) of this section, an employer is not liable for palliative care after the date of medical stability unless the palliative care is reasonable and necessary (1) to enable the employee to continue in the employee's employment at the time of treatment, (2) to enable the employee to continue to participate in an approved reemployment plan, or (3) to relieve chronic debilitating pain. A claim for palliative care is not valid and enforceable unless it is accompanied by a

> certification of the attending physician that the palliative care meets the requirements of this subsection. . . .

When the board reviews a claim for medical treatment made within two years of an undisputed work-related injury, its review is limited to whether the treatment sought is reasonable and necessary. *Philip Weidner & Associates, Inc. v. Hibdon*, 989 P.2d 727 (Alaska 1999). *Hibdon* addressed the issues of reasonable of medical treatment:

> The question of reasonableness is 'a complex fact judgment involving a multitude of variables.' However, where the claimant presents credible, competent evidence from his or her treating physician that the treatment undergone or sought is reasonably effective and necessary for the process of recovery, and the evidence is corroborated by other medical experts, and the treatment falls within the realm of medically accepted options, it is generally considered reasonable. (Citations omitted). (Id. at 732).

When reviewing a claim for continued treatment beyond two years from the date of injury, the Board has discretion to authorize "indicated" medical treatment "as the process of recovery may require." *Id*. With this discretion, the Board has latitude to choose from reasonable alternatives rather than limited review of the treatment sought. *Id*.

> **AS 23.30.097. Fees for medical treatment and services.**
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> (f) An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter.
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> (g) Unless the employer controverts a charge, the employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify the employee and the employee's health care provider in writing that payment will not be made timely and the reason for the nonpayment. The notification must be provided not later than the date that the payment is due under this subsection.

> **AS 23.30.110. Procedure on claims.**
> . . . .
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> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for hearing. . . . 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.
> . . . .

AS 23.30.110(c) requires an employee to prosecute a claim in a timely manner. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995). In *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910 (Alaska 1996), the injured worker requested a hearing within two years of the date of the employer's after claim controversion. The hearing request was cancelled because the parties were close to settling; however, the injured worker never ratified the proposed settlement. The Alaska Supreme Court reversed the dismissal of the claim holding AS 23.30.110(c) required an employee to request a hearing within two years of the date of the controversion and the injured worker satisfied his obligation because that is what he did. In *Huston v. Coho Electric*, 923 P.2d 818 (Alaska 1996), the Court reversed the dismissal of a claim under AS 23.30.110(c) holding that the time limit could not be restarted when the claimant agreed the issues had been resolved at a prehearing conference after the claimant timely requested a hearing. In *Pruitt v. Providence Extended Care*, 297 P.3d 891 (Alaska 2013), the claimant filed an ARH four years after the employer filed a controversion of her claim. She contended she was unaware her attorney withdrew and relied upon him to file the necessary paperwork. The Court affirmed the dismissal of her claim as she filed an ARH four years after the employer controverted her claim, she took no action for more than three years and her assertion regarding her attorney lacked credibility.

In *Tonoian v. Pinkerton Security*, AWCAC Decision No. 029 (January 30, 2017), the Commission affirmed the Board's decision dismissing the employee's claim because she simply failed to prosecute her claim. The Commission held a party must be prosecuting a claim reasonably and diligently to avoid the claim being dismissed under AS 23.30.110(c).

> **AS 23.30.120. Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a), benefits sought by an injured worker are presumed to be compensable, and the burden of producing evidence is placed on the employer. *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286 (Alaska 1991). The Alaska Supreme Court held the presumption of compensability applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). An employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski* at 292.

A three-step analysis is used to determine the compensability of a worker's claim. At the first step, the claimant need only adduce "some" "minimal" relevant evidence establishing a "preliminary link" between the injury claimed and employment. *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011). The evidence necessary to attach the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Witness credibility is not weighed at this step in the analysis. *Resler v. Universal Services Inc.*, 778 P.2d 1146, 1148-49 (Alaska 1989).

At the second step, once the preliminary link is established, the employer has the burden to overcome the presumption with substantial evidence. *Wien Air Alaska v. Kramer*, 807 P.2d 471 (Alaska 1991) (quoting *Smallwood* at 316). To rebut the presumption, an employer must present substantial evidence that either (1) something other than work was the substantial cause of the disability or need for medical treatment or (2) that work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc*., 973 P.2d 603 (Alaska 1999). At the second step

of the analysis, the employer's evidence is viewed in isolation, without regard to the claimant's evidence. Issues of credibility and evidentiary weight are deferred until after a determination whether the employer has produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994). If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065, 1075 (Alaska 1997). If the employer successfully rebuts the presumption, it drops out, and the employee must prove all elements of his case by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379 (Alaska 1991). At this last step of the analysis, evidence is weighed and credibility considered. To prevail, the claimant must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The presumption does not apply if there is no factual dispute. *Rockney v. Boslough Construction Co.*, 115 P.3d 1240 (Alaska 2005). If complications from the injury or treatment occur, subsequent treatment is compensable, and the employer is liable for continuing medical benefits. *Ribar v. H&S Earthmovers*, 618 P.2d 582 (Alaska 1980).

> **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). When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision. No. 087 (August 25, 2008).

> **AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer.
> . . . .
>
> (d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the

employer controverts the right to compensation after payments have begun, the employer shall file with the division and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of it. This amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
. . . .

(p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

AS 23.30.395. Definitions. In this chapter,
. . . .

(27) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

(28) "palliative care" means medical care or treatment rendered to reduce or moderate temporarily the intensity of pain caused by an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, or permanently alleviate or eliminate a medical condition;
. . . .

8 AAC 45.060. Service.
. . . .

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

8 AAC 45.120. Evidence.

. . . .

(m) The board will not consider evidence or legal memoranda filed after the board closes the hearing record, unless the board, upon its motion, determines that the hearing was not completed and reopens the hearing record for additional evidence or legal memoranda. The board will give the parties written notice of reopening the hearing record, will specify what additional documents are to be filed, and the deadline for filing the documents.

8 AAC 45.084. Medical travel expenses. (a) This section applies to expenses to be paid by the employer to an employee who is receiving or has received medical treatment.

(b) Transportation expenses include

(1) a mileage rate, for the use of a private automobile, equal to the rate the state reimburses its supervisory employees for travel on the given date if the usage is reasonably related to the medical examination or treatment;

(2) the actual fare for public transportation if reasonably incident to the medical examination or treatment. . . .

. . . .

(e) A reasonable amount for meals and lodging purchased when obtaining necessary medical treatment must be paid by the employer if substantiated by receipts submitted by the employee. Reimbursable expenses may not exceed the per diem amount paid by the state to its supervisory employees while traveling.

8 AAC 45.142. Interest.

. . . .

(b) The employer shall pay the interest

. . . .

(3) on late-paid medical benefits to (A) the employee or, if deceased, to the employee's beneficiary or estate, if the employee has paid the provider or the medical benefits; (B) to an insurer, trust, organization, or government agency, if the insurer, trust, organization, or government agency has paid the provider of the medical benefits; or (C) to the provider if the medical benefits have not been paid.

ANALYSIS

1) Is Employee's March 21, 2010 claim barred by AS 23.30.110(c)?

Under AS 23.30.110(c), Employee had to request a hearing within two years of Employer's April 20, 2010 controversion, or by April 23, 2012 (April 20, 2010 + 2 years + 3 days = April 23, 2012). 8 AAC 45.060(b). He requested a hearing on his claim on July 21, 2011, in case the parties failed to settle as anticipated. Therefore, Employee requested a hearing within two years of Employer's April 20, 2010 controversion. On October 3, 2011, the designee set the March 21, 2010 claim for hearing on March 1, 2012. However, on February 9, 2012, the parties stipulated to continue the hearing because the parties were negotiating settlement. Employer contends *Pruitt* applies to this case because Employee filed his ARH past the two-year deadline on April 12, 2019, and he relied on his attorneys to file it timely. However, unlike *Pruitt*, Employee's attorney filed an ARH on July 21, 2011. Pursuant to *Tipton* and *Huston*, Employee's July 21, 2011 ARH satisfied his obligation under AS 23.30.110(c). Employee reasonably and diligently prosecuted his claim. *Tonoian*. His March 21, 2010 claim will not be barred by AS 23.30.110(c).

2) Is Employee entitled to medical and transportation costs?

Employer denied all benefits on April 28, 2006, based upon Dr. Schilperoot's March 28, 2006 EME report, medical costs incurred after August 4, 2009 based upon Dr. Swanson's August 4, 2009 EME report on March 22, 2010, and on March 30, 2011, and all medical benefits incurred after May 16, 2006, based upon Dr. Swanson's February 28, 2011 EME report on March 30, 2011. It never withdrew its controversion notices yet it contends it paid $192,887.02 in medical costs, including all properly submitted medical and transportation expenses and costs, and that Employee is not entitled to any additional medical benefits. Employer contends it settled and paid all outstanding medical provider bills.

However, Employee contends there is $24,000 outstanding medical costs for Dr. Jensen and $6,000 for Dr. Marbarger, the surgeons who performed the January 25, 2010 discectomy and arthroplasty. Employee contends over $39,000 in medical costs are outstanding with Alaska Regional Hospital. He requests payment of those costs and other various outstanding medical bills, reimbursement of past transportation costs and out-of-pocket prescription medication costs, continuing medical treatment for the outpatient incisional neuroma and medical benefits he and his attorney attempted to obtain by pursuing a MSA account. The November 7, 2008 C&R settled

all past medical benefits up to October 29, 2008, when Employee signed it. Therefore, only medical costs incurred after October 29, 2008, are at issue in this case.

Before this decision can address specific medical costs and transportation costs, it must decide whether the work injury was the substantial cause of Employee's need for lumbar spine and left shoulder medical treatment and whether the treatment he received was reasonable and necessary. These are factual disputes to which the presumption of compensability applies. AS 23.30.095(a); AS 23.30.120; *Sokolowski*.

Employee's need for treatment to his lumbar spine shall be addressed first. He relies upon Drs. Gritzka and Coulter to contend the work injury was the substantial cause of his need for lumbar spine and left shoulder medical treatment and the medical treatment he received was reasonable and necessary. Without regard to credibility, the presumption of compensability attaches with Drs. Gritzka's and Coulter's SIME reports. *Tolbert*; *Wolfer*.

Without assessing credibility, Employer rebutted the presumption of compensability with Dr. Swanson's August 4, 2009 and February 28, 2011 EME reports. He opined the work injury caused a lumbar sprain which was medically stable by July 17, 2006, and Employee's pre-existing spondylosis and psychosocial factors caused his continuing need for lumbar treatment, including the January 25, 2010 surgery; the work injury caused a shoulder strain which was medically stable by July 17, 2006; Employee's continuing need for left shoulder treatment was caused by his prior injury and pre-existing osteoarthritis; and Employee needed no further treatment for his work injuries as of August 4, 2009; and the January 25, 2010 surgery was not reasonable or necessary. *Wolfer*; *Runstrom*; *Huit*.

Because Employer rebutted the presumption, Employee must prove all elements of his claim by a preponderance of the evidence. *Koons*. The December 27, 2005 MRI report demonstrates Employee's lumbar spine condition worsened after the work injury because it showed slightly more extruded disc material at L5-S1 when compared to the pre-work injury MRI. He reported increased lumbar pain and radiculitis on December 5, 2005. Employee also reported increasing pain and radiculitis in January 2006 and February 2006. Employee's March 11, 2006 MRI showed

his lumbar spine condition continued to worsen as the caudal disc herniation appeared more prominent. Dr. Stinson opined Employee had not reached medical stability on April 27, 2006. While acknowledging his pre-existing low back degenerative changes, Dr. Stinson opined the work injury caused his persistent and ongoing low back pain and left lower extremity symptoms on June 22, 2006. Dr. Schilperoot's March 28, 2006 EME report is given less weight than Dr. Stinson's because his opinion ignored Employee's increasing pain and radiculitis in January and February 2006 when he determined Employee's lower back had reached medical stability. AS 23.30.220; *Smith*; *Moore*.

Dr. Swanson first opined the work injury caused a lumbar sprain that was medically stable by July 17, 2006, and Employee's lumbar spine symptoms were due to pre-existing spondylosis. Next, he opined Employee's lower back reached medical stability one year after the January 25, 2010 surgery but Employee's pre-existing spondylosis was the most significant factor for Employee's need for the surgery. On March 21, 2013, Dr. Coulter opined the work injury aggravated and combined with Employee's pre-existing lumbar condition to produce his need for low back treatment, the treatment he received was reasonable and necessary, including the surgery, and Employee's lower back had not reached medical stability from the surgery. Dr. Swanson's opinions are given less weight than Dr. Coulter's because his opinion disregarded Employee's radiculitis which worsened after the work injury, his increase in pain symptoms after the work injury and the worsening of the L5-S1 disc herniation after the work injury as evidenced in the December 27, 2005 and March 10, 2006 lumbar spine MRIs when he concluded the work injury caused only a lumbar sprain. Further, Dr. Swanson attributed Employee's need for treatment to pre-existing spondylosis and failed to consider or address it was aggravated by the work injury. AS 23.30.220; *Smith*; *Moore*. Dr. Swanson is the only physician in the record who opined no additional lumbar spine medical treatment was reasonable or necessary by August 4, 2009, and the January 25, 2010 surgery was not reasonable or necessary because it was contraindicated. Employee's treating physician, Dr. Stinson, is given the most weight regarding reasonable and necessary medical treatment because he treated him for several years. *Id*. Drs. Bernard and Jensen opined Employee needed an L5-S1 discectomy. Dr. Coulter's opinion is given more weight because his examination of Employee was the most recent and because as the board's expert, it is less likely that his opinion is biased in favor of one party or the other. *Id*. The preponderance of

the evidence is that the work injury caused Employee's need for lumbar spine medical treatment and the medical treatment he received was reasonable and necessary. AS 23.30.010; AS 23.30.095(a); AS 23.30.120; *Hibdon*; *Koons*; *Saxton*.

Complications from work-related medical treatment are compensable and the employer is liable for continuing medical benefits. *Ribar*. Because the work injury was the substantial cause of Employee's need for the January 25, 2010 surgery and it was reasonable and necessary for the process of recovery, Employer is liable for continuing medical benefits for the incisional neuroma, a complication of that surgery. *Id*.

Employee reported increased left shoulder symptoms after the work injury and demonstrated decreased range of motion upon examination on November 17, 2005. He continued to experience pain and decreased range of motion and Dr. Stinson diagnosed work-related post-traumatic left subacromial bursitis on January 5, 2006, and recommended a left subacromial bursa injection. Dr. Schilperoot's March 28, 2006 EME report concluded the work injury aggravated Employee's left shoulder but it reached medical stability. He still had a decreased range of motion during Dr. Gritzka's October 25, 2006 examination. Dr. Gritzka's medical opinion regarding Employee's left shoulder contradicted itself because he first stated his left shoulder complaints were related to the prior injury for which he underwent surgery and then he stated the left shoulder pain and weakness was related to the work injury. His opinion will be given less weight. AS 23.30.122; *Smith*; *Moore*. Employee next sought left shoulder treatment in August 2007 when he reported ongoing left shoulder pain and decreased range of motion. He sought left shoulder medical treatment again on January 3, 2008, when Dr. Stinson referred him for a PPI rating and he was provided a zero PPI rating for his left shoulder. Then, Employee hit a moose while driving on October 29, 2008, and injured his left shoulder.

Dr. Swanson first opined Employee's left shoulder reached medical stability by July 17, 2006, at the latest, and then he stated it was by May 17, 2006. On August 4, 2009, he concluded after May 17, 2006, the cause of Employee's need for left shoulder treatment was the prior injury with capsulorrhaphy and the October 2008 motor vehicle accident and no further medical treatment for the work injury was needed. On March 21, 2013, after considering all of the causes of Employee's

need for left shoulder treatment, including the October 2008 accident, Dr. Coulter opined the work injury was the substantial cause of his need for left shoulder medical treatment because it aggravated and combined with his prior June 8, 1999 injury. He opined Employee's left shoulder reached medical stability and no additional left shoulder medical treatment was necessary. Dr. Coulter opined the medical treatment provided for Employee's left shoulder, including PT, chiropractic and massage therapy and work hardening exercises, was reasonable and necessary. Dr. Coulter's opinion is given more weight because his examination of Employee was the most recent and because as the board's expert, it is less likely that his opinion is biased in favor of one party or the other. AS 23.30.122; *Smith*; *Moore*. The preponderance of the evidence is the work injury caused Employee's need for left shoulder medical treatment starting November 17, 2005 and the medical treatment provided for Employee's left shoulder was reasonable and necessary. AS 23.30.010; AS 23.30.095(a); AS 23.30.120; *Hibdon*; *Koons*; *Saxton*.

Employer is ordered to pay for Employee's compensable left shoulder and lumbar spine medical care after October 29, 2008, in accordance with the Act. As evidenced by medical records on March 31, 2008, April 2, 2008, March 20, 2009, September 21, 2009 and June 29, 2010, Employee also received medical treatment for non-work related medical issues from the same medical providers he received work-related medical treatment. He is not entitled to medical benefits under the Act for medical treatment provided for non-work related medical issues.

Employee seeks the medical benefits he and his attorney attempted to obtain by securing a MSA account. An employer as part of a C&R settlement agreement can provide a MSA account to an injured worker; but the benefits under the Act do not include a MSA account. Therefore, Employer cannot be ordered to fund a MSA account. Employee may pursue a claim for medical benefits for medical treatment he contends the process of recovery from his work injury requires and/or for palliative medical treatment should Employer deny medical benefits. AS 23.30.095(a), (o).

Employee is entitled to reimbursement for past medical costs paid out-of-pocket arising out of the November 17, 2005 work injury incurred after October 29, 2008, including prescription costs. Employee contended Employer has not reimbursed him for prescriptions he paid for out-of-pocket for the work injury. The print out from Advanced Pain Centers of Alaska does not contain

prescription costs so there is insufficient itemization of the out-of-pocket costs in this document. AS 23.30.097(g). The price quote from Wal-Mart does not have dates the prescriptions were prescribed or filled so there is insufficient information to verify whether these prescriptions were prescribed for the work injury. However, Employee provided several prescription receipts and they are summarized in Table One. He is not entitled to reimbursement for the prescription receipt dated March 31, 2008, because the December 3, 2008 C&R settlement agreement settled past medical benefits up to October 29, 2008. Employer contends Employee failed to provide sufficient documentation to allow Employer to verify whether the remaining prescriptions were unpaid. Employee provided the actual receipts, which included the date the prescription was filled, the medication prescribed, the prescription number, the pharmacy that filled the prescription and, except for a three prescriptions, the amount he paid out-of-pocket. He provided sufficient information for Employer to review its own records to determine whether it reimbursed Employee for out-of-pocket costs for those prescription receipts. Employer contends it paid all properly submitted prescription costs. However, it failed to provide evidence indicating it reimbursed Employee for those prescription receipts. The medical records contains the medical provider's report prescribing the medication for prescriptions dated February 9, 2010, March 17, 2010, March 30, 2010, August 17, 2011, December 8, 2011, December 18, 2012 and December 21, 2012 for the work injury. The prescription receipts dated November 13, 2009, January 23, 2012, March 6, 2012, March 23, 2012 and July 11, 2012 correspond to prescriptions from the print out from Advanced Pain Centers of Alaska but there are no medical reports in the record for those prescriptions. There are no medical reports in the record for prescription receipts date August 31, 2009, January 23, 2011, May 27, 2011, October 14, 2011, February 20, 2013, April 24, 2013 and May 15, 2015. Employer is ordered to reimburse Employee for out-of-pocket prescriptions costs dated February 9, 2010, March 17, 2010, March 30, 2010, August 17, 2011, December 8, 2011, December 18, 2012 and December 21, 2012.

Employer Employee submitted 10 medical bills from several medical providers which are summarized in Table Two. He contends he submitted them to Employer but they have not been paid. Employee is not entitled to reimbursement for the medical bill dated February 18, 2008, because the C&R settled past medical benefits as of October 29, 2008. Employer contends it paid all properly submitted medical bills. However, it failed to provide evidence that it paid the nine

remaining medical bills or if it did not pay for them, an explanation of why it did not pay them. The medical record contains the medical provider's report describing the medical treatment provided for bills dated March 22, 2009, April 17, 2010, and February 7, 2011 and the medical treatment provided for those dates are related to the work-injury. The medical records for the bills dated May 31, 2009, and February 7, 2011 with a date of service of June 29, 2010, prove they are for non-work related medical issues and Employee is not entitled to medical benefits under the Act for those non-work related medical issues. There are no medical reports in the record corresponding with the June 30 and September 13, 2010, and July 30, 2015 bills. Employer is ordered to pay for past medical bills dated March 22, 2009, April 17, 2010, and February 7, 2011.

Employee submitted several bills from Cornerstone Credit Services, LLC, which he contends are for work-related medical treatment. They are summarized in Table Three. Those bills do not contain a date of service or the medical treatment received. There is insufficient information to determine whether these bills are for work-related medical treatment. Employer will not be ordered to pay for the Cornerstone Credit Services, LLC, bills.

Employee submitted statements from Alaska Neuroscience Associates, LLC, for the January 25, 2010 surgery totaling $24,000 which stated it was denied by "w/c" on May 3, 2010, a January 3, 2011 statement from Alaska Regional Hospital with a balance of $39,851.79 with a discharge date of January 27, 2010, a June 14, 2012 statement for Dr. Marbarger for $6,000 and seven bills from Transworld Systems. The bills from Transworld System are summarized in Table Four. Employer contended it settled medical bills with Alaska Regional Hospital, Transworld Systems and bills from Dr. Jensen. The Alaska Neuroscience Associates, LLC, bill, the Alaska Regional Hospital bill and Dr. Marbarger's bills are for Employee's January 25, 2010 surgery which this decision found compensable. Because the Transworld Systems statements do not include a date of service, or the medical treatment provided, it is unclear whether they are related to the work injury. Employer will not be ordered to pay for the Transworld System medical bills. Employer is ordered to pay for the medical costs for the January 25, 2010 lumbar spine surgery.

Employee is not entitled to reimbursement for transportation costs incurred on and before October 29, 2008, because the December 3, 2008 C&R settlement agreement settled all obligations,

payments, benefits, and compensation which might be presently due or might become due to the employee as of October 29, 2008. Employee is entitled to medical related transportation costs incurred after October 29, 2008, if he filed a log itemizing past transportation costs and provided receipts for lodging and meal expenses. AS 23.30.097(g); 8 AAC 45.084(a)(1), (2); AAC 45.084(e). Employee's handwritten and typed notes regarding travel were indecipherable. *Rogers & Babler*. Employee failed to file a log itemizing past transportation costs and failed to include receipts to document the actual cost for air travel. AS 23.30.097(g); 8 AAC 45.084(a)(1), (2). However, Employee submitted receipts for lodging for medical treatment. 8 AAC 45.084(e). The lodging receipts are summarized in Table Five. Employer contended it paid all properly submitted medical transportation costs, including lodging. However, it failed to provide evidence indicating it paid for receipts Employee provided and Employee contends he has not been reimbursed. There are medical records documenting medical treatment for the following lodging dates: January 23-30, 2010, March 28-30, 2010, and March 19-21, 2012. There are no medical records documenting Employee received medical treatment for the following lodging dates: April 22-23, 2010, April 4-5, 2012, and April 27-May 1, 2015. Employer's June 2, 2015 letter with a check from Employer stated it covered mileage and hotel dated April 27 to May 1, 2015. Therefore, Employee has been reimbursed for the lodging dated April 27-May 1, 2015. Employer is ordered to reimburse Employee for lodging dated January 23-30, 2010, March 28-30, 2010, and March 19-21, 2012.

Employee submitted receipts for meals and fuel expenses for April 2015, Employer's June 2, 2015 letter with a check stating it covered mileage and hotel for services dated April 27 to May 1, 2015, and directing him to submit receipts for meal reimbursement. A summary of the receipts he provided is in Table Six. Employee testified he sought medical treatment on April 6 and 29, 2015, and he submitted receipts for meals and fuel expenses the day after receiving the June 2, 2015 letter. There are no medical records documenting medical treatment received on April 6 and 29, 2015. However, Employer paid for transportation costs for medical treatment Employee received on April 29, 2015 but it failed to file any medical records. Both parties have the duty to file physician reports relating to the work injury. AS 23.30.095(h). It strains credulity for Employer to reimburse Employee for transportation costs without receiving the medical report. AS 23.30.097(g). Employee is entitled to reimbursement for meal expenses for April 27-May 1, 2015. He also included receipts dated April 15 and 26, 2015. There is no evidence Employee received

work-related medical treatment for either of those dates. He is not entitled to reimbursement for transportation expenses on April 6, 15 and 26, 2015. Employee is also not entitled to reimbursement for the undated vehicle rental expense because it does not itemize the date and it is unclear whether the expense was already reimbursed for the April 27-May 2, 2015 transportation or whether it was incurred for medical treatment received on another date. Employer is ordered to reimburse Employee for meal expenses for April 27-May 1, 2015 up to the per diem amount.

3) Is Employee entitled to penalties and interest?

Employee's March 21, 2010 claim also sought penalty and interest. Employee contended he was entitled to penalties from Employer on all paid benefits awarded. Employer must either pay workers' compensation benefits directly to the person entitled to them or deny those benefits. AS 23.30.155(a). An employer denies benefits by filing and serving a controversion notice. AS 23.30.155(d). Unless an employer timely files and serves a controversion notice, the employer's obligation to pay arises without any hearings or award. AS 23.30.155(a). If an employer fails to either timely pay benefits owed without an award within seven days after the benefits become due, or controvert benefits, the law provides for an additional 25 percent penalty. AS 23.30.155(e). Employer controverted Employee's right to medical benefits since April 28, 2006. Therefore, Employee is not entitled to penalty.

As a matter of law, Employee is entitled to interest on all benefits not paid when due. Employee is entitled to interest on all benefits awarded in this decision in accordance with the Act and the administrative regulations. AS 23.30.155(p); 8 AAC 45.142(b)(3).

CONCLUSIONS OF LAW

1) Employee's March 21, 2010 claim is not barred by AS 23.30.110(c).
2) Employee is entitled to medical and transportation costs.
3) Employee is entitled to interest but is not entitled to penalty.

ORDER

1) Employee's March 29, 2010 claim is granted in part and denied in part.

2) Employer is ordered to pay Employee's compensable past medical costs arising from the November 17, 2005 work injury in accordance with the Act after October 29, 2008, including the January 25, 2010 medical costs. To the extent Employee paid such medical costs out-of-pocket, Employer shall pay him. To the extent such medical costs remain unpaid, Employer shall pay the provider.

a) Employer is ordered to reimburse Employee for out-of-pocket prescriptions costs dated February 9, 2010, March 17, 2010, March 30, 2010, August 17, 2011, December 8, 2011, December 18, 2012 and December 21, 2012.

b) Employer is ordered to pay for past medical bills dated March 22, 2009, April 17, 2010, and February 7, 2011.

c) Employer is ordered to reimburse Employee for lodging dated January 23-30, 2010, March 28-30, 2010, and March 19-21, 2012.

d) Employer is ordered to reimburse Employee for meal expenses for April 27-May 1, 2015 up to the per diem amount.

3) Employer is ordered to pay interest on all medical benefits from the date due until the date paid. Employer shall pay interest to the person or entity entitled to the benefit.

Dated in Fairbanks, Alaska on December 9, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

Unavailable for signature
Sarah LeFebvre, Member

/s/
Lake Williams, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of ANTHONY L. PETERSON, employee / claimant v. KENWORTH NORTHWEST, INC, employer; HARCO NATIONAL INSURANCE COMPANY, insurer / defendants; Case No. 200520076; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on December 9, 2019.

/s/
Ronald C. Heselton, Office Assistant II