

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

VERNON PATTON,)	
)	
Employee,)	
Claimant,)	
)	FINAL DECISION AND ORDER
v.)	
)	AWCB Case No. 201901294
CROWLEY HOLDINGS, INC.,)	
)	AWCB Decision No. 19-0131
Employer,)	
and)	Filed with AWCB Fairbanks, Alaska
)	on December 12, 2019
OLD REPUBLIC INSURANCE)	
COMPANY,)	
)	
Insurer,)	
Defendants.)	

Vernon Patton's (Employee) April 8, 2019 claim was heard in Fairbanks, Alaska on July 11, 2019, a date selected on May 30, 2019. An April 15, 2019 hearing request gave rise to this hearing. Attorney Kristina Miller appeared and represented Employee, who appeared and testified. Attorney Robert McLaughlin appeared and represented Crowley Holdings, Inc. and Broadspire Services (Employer). The record closed on July 15, 2019 upon receipt of Employer's objections to Employee's attorney fees.

ISSUES

Employee contends Employer violated AS 23.30.155(b) when it stopped payment on two compensation checks issued and deposited in his bank account. He seeks an order awarding him the amount of the compensation checks on which Employer stopped payment.

Employer contends Employee's claim is not ripe because its medical expert concluded Employee's disability did arise in the course and scope of his employment, so if a panel decides Employee's original claim in Employer's favor, the issues raised in this claim will be moot since Employee would not be entitled to the compensation he now seeks.

Both parties agree the facts concerning the checks and the stop payment orders are not in dispute.

1) Is Employee entitled to compensation when Employer stopped payment on checks issued before Employer controverted all benefits?

Employee contends stopping payment on the checks violated the exclusive remedy for Employer to recoup overcompensation under AS 23.30.155(j), which permits recoupment only through withholding of future payments. Employee also contends the Uniform Commercial Code is inapplicable under these circumstances because it applies to the sale of goods and financial institutions.

Employer contends, under AS 45.03.408, the bank that issued the check had not yet accepted the check and made the funds available to Employee so there were no advance payments or overpayments to which AS 23.30.155(j) would apply.

2) Did Employer violate the exclusive remedy for the recoupment of overpayments?

Employee contends he is entitled to a penalty and interest on the two checks deposited in his bank account because the compensation was not paid when it was due.

Employer contends no penalty of interest is due because it relied on a valid controversion.

3) Is Employee entitled to penalty and interest?

Employee contends he was aided by the services of his attorney and he seeks an award of reasonable attorney fees and costs.

Employer contends, since no compensation or penalties are due, neither are attorney fees.

4) Is Employee entitled to attorney fees and costs?

FINDINGS OF FACT

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

- 1) On January 15, 2019, Employee reported he injured his back when he was getting out of his truck to hand a customer a receipt. His zipper then got caught on the side of his truck, which caused him to slip on ice and fall to the ground. (First Report of Occupational Injury, January 24, 2019; Claim for Workers' Compensation, March 12, 2019).
- 2) On February 4, 2019, Employer began paying disability compensation at a rate of \$266 per week. (Secondary Report of Injury (SROI), February 4, 2019).
- 3) On February 14, 2019, Employer reported Employee's compensation rate had been increased to \$655.11 per week. (SROI, February 14, 2019).
- 4) On March 1, 2019, Employer issued a check for \$16.00 to Employee. (Employee's Exhibit A, March 1, 2019, Employee's Exhibit B, April 3, 2019).
- 5) On March 4, 2019, Kristina Miller entered her appearance as Employee's attorney. (Entry of Appearance, March 4, 2019).
- 6) On March 12, 2019, Employee sought temporary total disability (TTD) benefits, attorney fees and costs, penalty for late paid compensation, interest and a compensation rate adjustment, claiming his TTD rate should be \$730.19 per week. (Claim for Workers' Compensation Benefits, March 12, 2019).
- 7) On March 13, 2019, R. David Bauer, M.D., evaluated Employee on Employer's behalf. He diagnosed a contusion or strain of the lower back related to the work injury, which had resolved. Dr. Bauer opined Employee was medically stable by February 15, 2019. (Bauer report, March 13, 2019).
- 8) On March 19, 2019, Employer issued a check for \$759.79 to Employee. (Employee's Exhibit C, March 19, 2019; Employee's Exhibit D, April 1, 2019).
- 9) On March 25, 2019, Employer denied all benefits based on Dr. Bauer's EME report. It contended the work injury is the not substantial cause of Employee's need for medical treatment

or disability and that he reached medical stability on February 15, 2019. (Controversion Notice, March 25, 2019). Employer's notice does not set forth a date past which disability compensation is controverted, and neither does it assert an overpayment. (Observations).

10) On March 27, 2019, Employee deposited the \$759.79 check. (Employee's Exhibit D, March 19, 2019).

11) On March 29, 2019, Employee deposited the \$16.00 check. (Employee's Exhibit B, March 1, 2019).

12) On April 1, 2019, Employee's bank informed him the \$759.79 check was unpaid by the financial institution on which the funds were to be drawn so the "funds have been withdrawn from [his] account." (Deposited Item Returned notice, April 1, 2019).

13) On April 3, 2019, Employee's bank informed him the \$16.00 check was unpaid by the financial institution on which the funds were to be drawn so the "funds have been withdrawn from [his] account." (Deposited Item Returned notice, April 3, 2019).

14) On April 8, 2019, Employee sought "reimbursement of TTD payments prior to controversion." "The reimbursement Employee seeks is for checks issued by Employer, and deposited into his account, on which Employer stopped payment." Employee also sought penalty, interest and attorney fees and costs. (Amended Claim for Workers' Compensation Benefits, April 8, 2019; Employee's Hearing Brief, July 2, 2019).

15) On April 15, 2019, Employer controverted all benefits. It also answered Employee's April 8, 2019 claim, denying it was liable for TTD, interest and penalty. That same day, Employee also filed an affidavit of readiness for hearing (ARH) on his April 8, 2019 claim. (Controversion Notice, April 15, 2019, Employer's Answer, April 15, 2019).

16) No other workers' compensation case is known where litigation ensued after an employer stopped payment on a compensation check prior to controversion. (Experience).

17) On June 13, 2019, Employer reported Employee had been paid compensation from January 21, 2019 through March 13, 2019. (SROI, June 13, 2019).

18) On July 3, 2019, Employee requested attorney fees and costs as follows: 17 hours billed at a rate of \$350 per hour for attorney Kristina Miller's work, .3 hours billed at a rate of \$400 per hour for attorney Robert Groseclose's work, 7.9 hours billed at a rate of \$200 per hour, or \$1,580, as paralegal costs and \$2.30 for copy services, totaling \$7,302.30. (Employee's attorney fees and costs affidavit, July 3, 2019).

19) The descriptions of work performed on Employee's attorney fees affidavit are above-average in their specificity and all work performed was relevant to his April 8, 2019 claim. (Experience; observations).

20) Employee did not submit an affidavit from the paralegal and he did not supplement his fees following the hearing. (Observations).

21) Employee moved to admit exhibits into evidence at hearing, without objection from Employer, including his Exhibits A and C, which appear to be check stubs from the two checks at issue. (Record; observations). Employee's Exhibit A is for a check in the amount of \$16.00, and includes a memo, "LUNCH ON 03/13/19," and a service date of "03/13/2019-03/13/2019." (Employee's Exhibit A, March 1, 2019). His Exhibit C is a check in the amount of \$759.79, and includes a memo, "Temporary Total Disability," and service dates of 01/21/2019-03/13/2019." (Employee's Exhibit C, March 19, 2019).

22) Employer's attorney represented the check for \$759.79 was not a "regular," biweekly TTD check. He explained, in the absence of documentation, Employee's compensation rate was originally established at the statutory minimum of \$266 per week. Employee then submitted a couple of W-2s, one from Midstate Construction and one from Employer, but Employer's W-2 was missing information such as a name and a social security number, so Employee's compensation rate was re-calculated using the W-2 from Midstate, which resulted in a compensation rate of 655.11. Employee's attorney then submitted another W-2 from Employer, and Employee's compensation was re-calculated to be \$737 "and some odd cents." The \$759.79 check represented the difference in compensation between \$655.11 and \$737. (Record).

23) Employer's financial reporting does not show a compensation rate increase to \$737. (Observations).

24) Employee testified the \$16.00 check was reimbursement for a meal expense and the \$759.79 check was for TTD. His bank is across the street from the post office where he picks up his mail so he walks across the street and deposits checks when he receives them. (Employee).

25) Employee contends the Uniform Commercial Code (UCC) does not apply because it only applies to the sale of goods and because it applies to financial institutions regarding their obligations to honor a check drawn on it by a customer. (Employee hearing arguments).

26) Employer contends the UCC applies because it was applied to payment after settlement in *Harper v. K & W Trucking Co.*, 725 P.2d 1066 (Alaska 1986). (Employer hearing arguments).

27) On July 15, 2019, Employer objected to Employee’s attorney fee affidavit, contending the hearing issues are not final and Employee’s entitlement to benefits is not certain. Employer also contended Employee’s attorney has been a member of the Alaska bar since 2016, so her hourly rate of \$350 is excessive. It also contended “[t]he same argument applies to the hourly rate being billed by counsel’s paralegal,” so the \$200 hourly rate should be adjusted. (Employer opposition, July 15, 2019).

28) In recent years, the number of attorneys in Fairbanks representing injured workers has significantly dwindled to the point where workers’ compensation practitioners are now scarce. (Experience).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

. . . .

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

AS 23.30.120. 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

A claimant is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991).

AS 23.30.135. Procedure before the board. (a) The board may make its investigation or inquiry or conduct its hearings in the manner by which it may best ascertain the rights of the parties. . . .

AS 23.30.145. Attorney fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . .

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion, actual or in-fact, is required for the board to award fees under AS 23.30.145(a). *Id.* at 152. A controversion in fact can occur when an employer does not "unqualifiedly accept" an employee's claim for compensation. *Underwater Const. v. Shirley*, 884 P.2d 156, 159 (Alaska 1994). Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

Although the supreme court has held that fees under subsections (a) and (b) are distinct, the court has noted that the subsections are not mutually exclusive. Subsection (a) fees may be awarded only when claims are controverted in actuality or fact. Subsection (b) may apply to fee awards in controverted claims, in cases which the employer does not controvert but otherwise resists, and in other circumstances.

Uresco Construction Materials, Inc. v. Porteleki, AWCAC Decision No. 09-0179 (May 11, 2011). When an employee files a claim to recover controverted benefits, subsequent payments, though voluntary, are the equivalent of a board award, and attorney's fees may be awarded under AS 23.30.145(a) where the efforts of counsel were instrumental in inducing the payments. *Childs v. Copper Valley Elect. Ass'n.*, 860 P.2d 1184; 1190 (Alaska 1993). An employee may, at the same

time, also be entitled to recover reasonable attorney's fees under AS 23.30.145(b) where the employer fails to pay compensation due or resists paying compensation. *Id.* at 1191.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), the Court held attorney's fees awarded by the board should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on the merits of a claim, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id.* The nature, length, and complexity of services performed, the resistance of the employer, and the benefits resulting from the services obtained, are considerations when determining reasonable attorney's fees for the successful prosecution of a claim. *Id.* at 973, 975. Since a claimant is entitled to full reasonable attorney fees for services on which the claimant prevails, it is reasonable to award one-half the total attorney fees and costs where the claims on which the claimant did not prevail were worth as much money as those on which he did prevail. *Bouse v. Fireman's Fund Ins., Co.*, 932 P.2d 222; 242 (Alaska 1997). *See also Murphy v. Fairbanks Northstar Borough*, AWCAC Decision No. 18-0043 at 16 (June 21, 2019) (affirming decision awarding one-half claimed attorney fees, where the claimant was unsuccessful in his primary claim for additional PPI, but was awarded \$160.90 penalty on some late paid transportation expenses, because the decision provided a "good explanation" for awarding reduced fees).

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. . . .

(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 the installment. This additional 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.

. . . .

(h) The board may upon its own initiative at any time in a case in which payments are being made with or without an award, where right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended . . . take the further action which it considers will properly protect the rights of all parties.

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.

. . . .

(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.

In *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991), the employer sought reimbursement of attorney's fees paid to the employee's attorney while the case was pending on appeal which resolved in the favor of the employer. The Alaska Supreme Court held the recoupment of overpayments to a claimant from future payments is the exclusive means by which employer may be reimbursed for overpayment under AS 23.30.155(j).

In *Harper v. K & W Trucking Co.*, 725 P.2d 1066 (Alaska 1986), the employee in a worker's compensation case received a draft payable within 14 days of the approved settlement. The employee endorsed the draft and turned it over to his local bank, where the funds were credited to his account after the 14-day period had elapsed. The Court looked at the former AS 45.03.802 and denied the employee's request for penalties under AS 23.30.155(f). It found:

[T]he statute says that the acceptance of an instrument, e.g., the draft, suspends the underlying obligation, e.g., payment pursuant to the settlement agreement, until the instrument is either paid (which discharges the obligation), or dishonored (which reimposes the obligation).

The statute strikes a balance between two possible approaches. Under one approach, the mere acceptance of the instrument would discharge the obligation. Under a second approach, acceptance of the instrument would have no effect and the underlying obligation would remain in force until cash actually changed hands. The statute effects a compromise between these two approaches by suspending the obligation, but only until it is satisfied. Thus, under AS 45.03.802, Harper's receipt

of the draft (before the deadline) suspended the defendants' obligation to him, contingent on final clearance. Since the draft was honored, the obligation was discharged and the defendants are not subject to a penalty. *Harper* at 1067-68.

The former AS 45.03.802, repealed in 1993, provided:

(a) Unless otherwise agreed, if an instrument is taken for an underlying obligation,
....

(2) . . . the obligation is suspended pro tanto until the instrument is due or, if it is payable on demand, until its presentment; if the instrument is dishonored, action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation. . . .

The relevant provision of the former statute are now found at AS 45.03.310.

AS 45.03.103. Definitions. (a) In this chapter,
....

(2) drawee means a person ordered in a draft to make payment

AS 45.03.310. Effect of instrument on obligation for which taken.
....

(b) Unless otherwise agreed and except as provided in (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) in the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified; payment or certification of the check results in discharge of the obligation to the extent of the amount of the check;

....

(3) . . . if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation

AS 45.03.408. Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts the instrument.

8 AAC 45.180. Costs and attorney's fees

. . . .

(f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. . . .

(14) fees for the services of a paralegal or law clerk, but only if the paralegal or law clerk

. . . .

(D) files an affidavit itemizing the services performed and the time spent in performing each service; and

. . . .

Paralegals costs were properly deducted from an attorney fee award where the paralegal failed to file the required affidavit. *Murphy* at 15, 18-19.

ANALYSIS

1) Is Employee entitled to compensation when Employer stopped payment on checks issued before Employer controverted all benefits?

Employee presents an unusual claim. He is not seeking a typical determination on his entitlement to TTD following a controversion, but rather proceeds from two checks voluntarily issued to him prior to controversion on which Employer stopped payment. Both parties agree the facts concerning the checks are not in dispute; thus, they present a legal issue, rather than a factual one, and the presumption does not apply. *Sokolowski*.

Employer's defense in this instance – that Employee might ultimately be found not entitled to compensation, is of no avail. Employee was entitled to compensation payments until Employer controverted those payments, which it did on March 25, 2019. AS 23.30.155(a). The \$16 check, issued on March 1, 2019, was for a meal reimbursement for "LUNCH ON 3/13/19." The \$759.79 check, issued on March 12, 2019, according to Employer's attorney, was the result of a compensation rate adjustment, and was described as "Temporary Total Disability" for the period "01/21/2019-03-13/2019." Thus, since both the lunch and the TTD period predate Employer's

controversion, Employee was entitled to the proceeds from those checks and he will be awarded \$775.79 (\$16.00 + 759.79). *Id.*

2) Did Employer violate the exclusive remedy for the recoupment of overpayments at AS 23.30.155(j)?

Notwithstanding the Deposited Item Return notice purporting that “funds have been withdrawn from [Employee’s] account,” Employer correctly contends the bank that issued the check had not yet accepted the check and made the funds available to Employee so there were no advance payments or overpayments to which AS 23.30.155(j) would apply. AS 45.03.408. Additionally, as just concluded above, Employee was entitled to the proceeds from the checks since they were for benefits that accrued prior to Employer’s controversion, so on this basis, too, there were no advance payments or overpayments that would have necessitated recoupment. Thus, Employer did not violate AS 23.30.155(j) by stopping payment on the checks.

3) Is Employee entitled to penalty and interest?

Once again, Employer’s defense – that it relied on a valid controversion, is of no avail for the same reasons set forth above. Specifically, Employee was entitled to timely compensation payments until Employer controverted on March 25, 2019, regardless of that controversion’s validity. AS 23.30.155(a). Employer writing checks to Employee only suspended its obligation to pay compensation, AS 15.03.310(b)(1), and when those checks were dishonored on April 1, 2019 and April 3, 2019, the obligation was re-imposed, *Harper*; AS 45.03.310(b)(3). Since Employer’s obligations remain unpaid, Employee is entitled to penalty and interest on the checks’ amounts. AS 23.30.155(e), (p).

4) Is Employee entitled to attorney fees and costs?

In making attorney’s fee awards, the law requires consideration of the nature, length and complexity of the professional services performed on the employee’s behalf, and the benefits resulting from those services. *Bignell*. An award of attorney fees and costs must reflect the contingent nature of workers’ compensation proceedings, and fully but reasonably compensate

attorneys, commensurate with their experience, for services performed on issues for which the employee prevails. *Id.*

While the circumstances of this case are quite unique - no other workers' compensation case is known where litigation ensued after an employer stopped payment on a compensation check issued prior to controversy; neither the facts nor the law were complex. Litigation was minimal with Employee filing his ARH a mere week after filing his claim. Nevertheless, Employer denied liability for the amount of the checks in its April 15, 2019 answer and controversy and stopping payment on the checks was "resistance" to paying compensation. Therefore, an award of reasonable attorney fees is warranted. *Shirley; Childs.*

The descriptions of work performed on Employee's attorney fee affidavit are above-average in their specificity and all work performed was relevant to his April 8, 2019 claim. Although Employer contends the hourly billing rate for Employee's attorney is excessive since she was only admitted to the bar in 2016, Employee's attorney successfully prosecuted his claim in this instance notwithstanding her relative inexperience, so her hourly rate will not be reduced on this basis. Moreover, her hourly rate is within the range customarily charged for claimant's work in Fairbanks, and the scarcity of attorneys in Fairbanks representing injured workers provides yet another basis on which to decline reducing her hourly rate. Thus, Employee will be awarded all his claimed legal fees, as well as his photocopy costs. However, since Employee did not include the required affidavit from the paralegal who worked on the case, 8 AAC 45.180(f)(14)(D), these costs will be denied, *Murphy*. Given this conclusion, Employer's objection to Employee's paralegal billing rate is moot.

CONCLUSIONS OF LAW

- 1) Employee is entitled to compensation when Employer stopped payment on checks issued before Employer controverted all benefits.
- 2) Employer did not violate the exclusive remedy for recoupment of overpayments.
- 3) Employee is entitled to penalty and interest.
- 4) Employee is entitled to attorney fees and copy costs, less paralegal costs.

ORDERS

- 1) Employee's April 8, 2019 claim is granted.
- 2) Employer shall pay Employee \$775.79 in compensation owed.
- 3) Employer shall pay Employee \$193.95 penalty.
- 4) Employer shall pay interest on the \$759.79 compensation from April 1, 2019, until paid; and on the \$16 meal reimbursement from April 3, 2019, until paid.
- 5) Employer shall pay Employee \$5,722.30 in attorney fees and costs.

Dated in Fairbanks, Alaska on December 12, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Julie Duquette, Member

/s/
Jacob Howdeshell, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of VERNON PATTON, employee / claimant v. CROWLEY HOLDINGS, INC., employer; OLD REPUBLIC INSURANCE COMPANY, insurer / defendants; Case No. 201901294; 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 12, 2019.

/s/
Ronald C. Heselton, Office Assistant II