ALASKA WORKERS' COMPENSATION BOARD

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

RUSSELL CROCKETT, Employee, Claimant, v. STATE OF ALASKA, Self-Insured Employer, Defendant.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201119720 AWCB Decision No. 20-0024 Filed with AWCB Juneau, Alaska On April 14, 2020

State of Alaska's (Employer) June 5, 2019 petition to bifurcate the timeliness of the claims and dismiss the claims was heard on February 25, 2020 in Juneau, Alaska, a date selected on November 6, 2019. A July 17, 2019 affidavit of readiness for hearing (ARH) gave rise to this hearing. Russ Crockett (Employee) appeared telephonically, represented himself and testified. Assistant Attorney General Henry Tashjian appeared and represented Employer. The record closed at the hearing's conclusion on February 25, 2020.

ISSUE

Employer contends the timeliness of Employee's claims should be bifurcated from the merits of his claims. It contends bifurcation will be more efficient because a merits hearing would require additional investigation, preparation and litigation as it would necessitate gathering additional medical records, an employer's medical evaluation and taking Employee's deposition. Employer contends Employee's claim is barred because he failed to file a claim within two years of when he knew he had an injury, the injury was work related and the injury caused disability. It contends Employee was aware of his injury, he was aware of the alleged connection between his injury and

his work, and he was aware his injury caused disability in 2012. Employer contends Employee was not mentally incapacitated as he demonstrated the ability to work and pursue two work grievances and to pursue other benefits, including social security and unemployment, after his work injury. It contends there is no evidence division staff failed to assist him or improperly served Employee notice of his deficient filings. Employer contends Employee's delay in filing has prejudiced its ability to promptly investigate his claimed injuries. It requests the timeliness of Employee's claims be bifurcated from the merits of his claims and Employee's claims be dismissed.

Employee opposes bifurcating the timeliness of his claim from the merits and opposes dismissing his claims. He contends he tried to pursue a claim when he filed a petition in 2012 and requested medical records in February 2015. He contends the 2012 letters rejecting his petition were mailed to the wrong address and division staff failed to assist him with filing a claim. Employee contends his psychiatric and medical conditions affected his pursuit of his claim. He contends he was not previously aware of the connection between his injury and his work because his physicians were not aware and recent medical records conclusively showed him the connection. Employee requests Employer's petition be dismissed.

Should the timeliness of Employee's claims be bifurcated from the merits of his claims, and if so, should Employee's claims be dismissed as time-barred under AS 23.30.105(a)?

FINDINGS OF FACT

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

1) On December 24, 2011, Employee reported he developed a protruding knot on the right side of his stomach and groin area after hauling lines on board the MV Kennicott that day. He provided an address in Anchorage as his mailing address and an address in Trapper Creek residence address. (Employee Report of Occupational Injury or Illness, December 24, 2011).

2) On December 28, 2011, Employee visited the Yakutat Community Health Center for a tooth abscess which he had for three days. His left cheek was swollen and his number 14 tooth was broken in half. Employee was prescribed Augmentin and Vicodin. (Yakutat Community Health Center Encounter Record, December 28, 2011).

3) On December 29, 2011, Employee complained for right inguinal pain after a work injury on December 24, 2011, after lifting heavy rope on a ship. The hernia was reducible but caused chronic pain. Employee also reported mild constipation. He was prescribed an antibiotic for an abscessed tooth and hydrocodone for the hernia. Employee was restricted from work requiring heavy lifting. A right inguinal hernia repair was recommended. (Michael Todd, M.D., emergency room report, December 29, 2011).

4) On January 3, 2012, Employee underwent an open right inguinal hernia repair. (Todd Operative report, January 3, 2012).

5) On January 6, 2012, Employer reported it began total temporary disability (TTD) benefits on December 27, 2011. (Compensation Report, January 6, 2012).

6) On January 9, 2012, Employee stated he "became septic" after the surgery. His face blew up like a balloon and he went to the Yakutat hospital. Employee stated he had an abscessed tooth and his body became infected from the surgery. The antibiotics worked well once received. His doctor told him the hernia caused the infection. (Adjuster Note, January 9, 2012).

7) On January 10, 2012, Employee asked Employer to pay for the abscessed tooth medical treatment. (Adjuster Note, January 10, 2012).

8) On January 13, 2012, Employee filed a petition without specifying the reason for the petition and included the same Anchorage address on the petition as his mailing address. He attached a "Workers' Compensation Employee's Statement" and releases which also included the same Anchorage address as his mailing address. (Petition, January 13, 2012).

9) On January 13, 2012, a workers' compensation technician rejected Employee's January 13, 2012 petition form in a letter mailed to the Anchorage address provided the petition because he failed to provide a reason for filing the petition. It was also missing proof of service on Employer. The letter directed Employee to call the technician if he had any questions. (Letter, January 13, 2012).

10) On February 17, 2012, Employee complained of right lower quadrant pain beginning the day before. His right inguinal hernia repair was healing well. Employee said he had not had a bowel movement in two days and he had no urinary changes but had pain all over his abdomen. An examination of his incisional site showed it in good repair without any breaks in skin, bulges, guarding or rebound pain. Employee was advised his exam was reassuring and he was constipated.

He was directed to follow up with Dr. Todd for his hernia. Biscacodyl was recommended for constipation. (Keith Kehoe, PA, chart note, February 17, 2012).

11) On February 22, 2012, Employee filed a petition which failed to provide proof of service upon Employer. He wrote, "Attended by Dr. Todd. Base benefit offered base on 2009 or 2010 that was $34000 2011 was $43000. Excuse by Harbor Adj [sic] that injured only work 11 months of year not 12 is a twisted loop hole. The idea is great of prev. yea [sic]". Employee included the same Anchorage address on the petition. (Petition, February 22, 2012).

12) On March 1, 2012, a workers' compensation technician rejected Employee's February 22, 2012 petition in a letter mailed to the Anchorage address provided on the petition for failing to provide proof of service upon Employer. The letter directed Employee to call the technician if he had any questions. (Letter, March 1, 2012). The technician attempted to contact Employee by telephone but no voicemail was set up. She mailed Employee a claim form. (ICERS, Note to File Legacy, March 1, 2012).

13) On March 14, 2012, Employee visited the Sunshine Community Health Center (SCHC) and reported continuing, "twisting" pain on his lower right abdomen where the hernia repair occurred with some radiation into his left flank and periumbilical area. The pain improved over the last week. He experienced alternating constipation and diarrhea. Employee stated he needed a note releasing him to return to work on March 19, 2012. Joan Friderici, M.D., noted he was alert and cooperative, slightly disheveled with normal mood, full affect, tangential speech, decreased attention span and concentration and intact insight and judgment. (Joan Friderici, M.D., chart note, March 14, 2012).

14) On March 16, 2012, Dr. Friderici stated Employee was fit for duty. (Friderici Unfit/Fit for Duty Form, March 16, 2012).

15) On March 29, 2012, Employer reported it ended Employee's TTD benefits on March 18, 2012. (Compensation Report, March 29, 2012).

16) On August 8, 2012, Employee was evaluated for a Coast Guard physical and he reported no problems or concerns. His hernia incision was in good repair and he was alert and cooperative with normal mood, full affect, normal attention span and concentration, and intact insight and judgment. (Friderici Chart Note, August 8, 2012).

17) On February 11, 2013, Employee was dismissed from his employment with Employer. (Letter, February 11, 2013).

18) On April 24, 2013, Employee complained of sinus congestion and said Benadryl provided little relief. He also had problems with anxiety and sleep. Employee's work switched him from two weeks to one week and it was too expensive to travel and he was "let go." He was frustrated, sad and anxious. Employee said sometimes he talked slowly but his mind would be going twice as fast. He reported a history of attention deficit hyperactivity disorder and difficulty talking to people and making eye contact. Employee wanted to try medication because he was concerned about a "stress attack" or "psychological shut down like those people on tv." Dr. Friderici noted Employee's attention span and concentration were decreased, he had a stressed mood and agitated affect, and he had slightly pressured tangential speech with ideas of grandiosity and limited insight and intact judgment. Employee had many depression symptoms but Dr. Friderici was concerned he may have undiagnosed bipolar disorder. She recommended a trial of Zyprexa for his mood disorder and Flonase and Xyzal for allergic rhinitis. (Friderici Chart Note, April 24, 2013).

19) On October 1, 2013, Employee reported feeling more anxious after stopping drinking three months prior and smoking two months prior. He felt "like things are coming down on me." Employee had been out of work for months and had been borrowing from his retirement to fund a running vehicle and was thinking about working in Wasilla or on the slope. He had stopped taking Zyprexa. Dr. Friderici diagnosed anxiety disorder, encouraged Employee to seek behavioral health treatment and recommended hydroxyzine and Zyprexa. (Friderici Chart Note, October 1, 2013).

20) On October 3, 2013, Employee's blood tests revealed his liver and kidney functions were normal. (Friderici Miscellaneous Report, October 3, 2013).

21) On May 12, 2014, Employee reported anxiety attacks and feeling useless and easily tired. He had been out of work for 18 months but had a job at the lodge. Rene Frasher, PA, diagnosed depression, referred him to behavioral health services and recommended he get back on his prescription medications. (Frasher Chart Note, May 12, 2014).

22) On July 1, 2014, Employee complained of nausea and right upper quadrant and epigastric pain for the prior two weeks with occasional diarrhea. He requested an antibiotic as he was concerned about an eventual kidney and lung infection. Employee was working as a janitor and thought he was susceptible to illness. He denied drinking stream water and said he had "never felt anything like it before." Employee reported anxiety and wandering thoughts. He was not sure if he was taking Zyprexa but was taking hydroxyzine. Dr. Friderici diagnosed a likely viral infection causing diarrhea but she prescribed Cipro because Employee was very fearful he had a bacterial

infection. She ordered a metabolic blood panel and recommended he take Zyprexa and stop taking hydroxyzine. (Friderici Chart Note, July 1, 2014).

23) On July 5, 2014, Employee's liver transaminases were elevated indicating his liver was inflamed. (Friderici Chart Note, July 5, 2014).

24) On July 29, 2014, Employee's diarrhea subsided. He finished the antibiotics and felt it cured the diarrhea. Employee had a "knotted up" feeling in the center abdomen without radiation. His history of difficulty urinating resolved, as he had no dysuria or hematuria. Employee's depression was getting better with work but he was still depressed 70 to 80 percent of the day. Dr. Friderici recommended Remeron. She was concerned Employee had side effects from Zyprexa, particularly liver disease, and recommended lab testing for his liver. (Friderici Chart Note, July 29, 2014).

25) On July 31, 2014, Employee's liver tests returned to normal. Dr. Friderici noted his liver elevated transaminases may have been related to his "acute illness." (Friderici Miscellaneous Note, July 31, 2014).

26) On October 1, 2014, Employee reported digestive issues, including burning in his abdomen and occasional diarrhea and nausea with dry heaving. He said he has a history of these symptoms and they seem to come and go. Employee had an anxious affect and wandering gaze, was easily distracted, and had limited insight and intact judgment. Dr. Friderici diagnosed anxiety disorder and GERD. She prescribed hydroxyzine and omeprazole and recommended he follow up with behavioral health services. (Friderici Chart Note, October 1, 2014).

27) On December 23, 2014, Employee complained of digestive and prostate issues. He denied pain but said he felt dull pressure in the lower left quadrant for the last couple months. He felt "circulation is being cut off" but he did not know how. Employee was stressed from not working and the holiday. He said he had a program he knew would work for the state because it would help the state save billions and he was upset by correspondence he had with the state. Employee described some difficulty starting a urine stream for a long time. Dr. Friderici was concerned Employee was having increased symptoms of bipolar disorder and recommended Zyprexa and Remeron. She ordered labs to check his prostate-specific antigen (PSA) levels. Dr. Friderici diagnosed lower left quadrant abdominal pain with an unclear etiology because it was difficult to get a good history of Employee's abdominal pain due to the mood disorder. (Friderici Chart Note, December 23, 2014).

28) On January 7, 2015, Employee was stressed because he was not working. He felt like the state government used him and he was not getting the response he wanted from the government. He sent them a report and had some e-mail correspondence about a pipeline proposal. Employee reported the lower left quadrant abdomen paid resolved but described discomfort like "twisting" occasionally in his upper left quadrant without radiation. (Friderici Chart Note, January 7, 2015).

29) On January 9, 2015, Dr. Friderici noted Employee's transaminases remained elevated. She recommended a liver ultrasound and minimizing use of non-steroidal anti-inflammatory drugs and acetaminophen. (Friderici Miscellaneous Note, January 9, 2015).

30) On January 29, 2015, Employee requested copies of his medical records from the claims adjuster. He stated he was still having issues with the work injury and wanted to see a doctor. (Adjuster Note, January 29, 2015).

31) On February 29, 2015, Employee asked a workers' compensation technician how to obtain his medical records. The technician said there were no medical records in his case file and directed him to contact the claim administrator or his doctors to obtain the records. (Incident Claims and Expense Reporting System (ICERS), Phone Call, February 29, 2015).

32) On March 2, 2015, Employee requested a copy of his medical records from the claims adjuster because he was trying to get back to work and needed his records. He did not want to reopen his claim. (Adjuster Note, March 2, 2015).

33) On March 28, 2015, Employee denied low mood or depression. He planned to work at the lodge again during the summer. Employee needed to be redirected at time from vivid recollection of events that happened to him in the navy. He denied visual or auditory hallucinations but described a "nervous disorder" on the right side affecting his hearing and sight at times. Employee was alert, cooperative, had an anxious affect, was easily distracted and had limited insight with intact judgment. Dr. Friderici diagnosed mood disorder and recommended discontinuing Zyprexa due to side effects. She also diagnosed anxiety disorder controlled with atarax. (Friderici Chart Note, March 28, 2015).

34) On October 17, 2015, Employee reported some depression related to boredom and not having a job. His job at the lodge ended when it closed for the season. Employee was alert, cooperative, had an anxious affect, was easily distracted and had limited insight with intact judgment. His transaminase were elevated. Dr. Friderici recommended yearly transaminase testing. (Friderici Chart Note, October 17, 2015).

35) On April 20, 2016, Employee said he really wanted to work but has not found any summer work. He tried to get another job at the lodge for the summer but it did not work out because they hired early. Employee tried to get a job at Cubby's but preferred a different position from the one open. He attributed his lower mood to difficulty finding work. Employee was alert, cooperative, had a stressed mood and anxious affect, was easily distracted and had limited insight with intact judgment but was more focused than at previous visits. He was also concerned about spring time allergies and increased nasal congestion and drainage. Dr. Friderici diagnosed a mood disorder and allergies and recommended restarting mirtazapine and using loratadine. (Friderici Chart Note, April 20, 2016).

36) On August 6, 2016, Employee was a difficult historian and reported some increased memory problems. He said he had serious money problems and he may get disability. Dr. Friderici diagnosed anxiety and depression and recommended Employee follow up with behavioral health services, begin taking Effexor and continue taking Remeron. (Friderici Chart Note, August 6, 2016).

37) On December 10, 2016, Employee thought his mood was a little better. He was disappointed he did not get Social Security and Supplemental Security Disability Income (SSDI). Employee wanted to work but felt limited in what he was able to do compared to the past. He stopped taking Effexor but wanted to try again. (Friderici Chart Note, December 10, 2016).

38) On February 2, 2017, Employee's Computerized Tomography (CT) scan found mild symmetric periventricular white matter low density adjacent to the anterior aspects of both lateral ventricles, suggesting chronic ischemic changes, and mild mucosal thickening in the right side frontal sinus, left sphenoid sinus and bilateral ethmoid air cells, likely representing incidental chronic inflammatory changes. (CT Report, February 2, 2017).

39) On May 6, 2017, Employee reported an acidic stomach and stated omeprazole only lasted four hours. He was turned down for SSDI but said, "Just because I can't get a job doesn't mean I can't work." Employee complained of trouble starting urination and post void dribbling. He had dull left lower abdomen pain and bowel movements most days. Dr. Friderici said Employee's abdominal pain had an unclear etiology and referred him for a colonoscopy. (Friderici Chart Note, May 6, 2017).

40) On May 10, 2017, Dr. Friderici noted Employee's liver and kidney tests were normal, his PSA level was 4.0 and his urine was normal. (Friderici Miscellaneous Note, May 10, 2017).

41) On August 5, 2017, Employee said he had not slept in days and did not feel safe to take care of himself. He reported sharp left-sided chest pain. Employee drank a couple beers last night and yesterday. He stated he carried guilt and blame for everything. Employee denied any plan to harm himself but was "subconsciously being suicidal" when he thought about taking extra sleeping pills the night before. Dr. Friderici assessed decompensated mood disorder secondary to alcohol, noncompliance with medications, social stressors or lack of sleep. She recommended he go to the emergency room for further evaluation. (Friderici chart note, August 5, 2017).

42) On August 5, 2017, Employee went to the emergency room for a psychological examination. He reported he had not slept in the last 30 hours and did not feel like eating. Employee felt depressed and thought about hurting himself by cutting his hands. He had left-sided chest pain and shortness of breath which he believed was caused by anxiety. (Emergency room report, August 5, 2017). He stated he was disabled since 2007 but he no longer receives social security benefits because he went back to work. Employee has been unable to work for the last seven years. His sisters helped him manage his finances in order to purchase his home. Employee did not meet the criteria for involuntary hospitalization but he agreed to voluntary admission to the Providence Adult Mental Health Unit. (Eileen Davey, LCSW, Emergency Service Contract, August 5, 2017).

43) On August 6, 2017, Employee did not think he could keep himself safe at home because he had intrusive thoughts of hurting himself. He experienced visual disturbances of shadow things running around but thought it was his eyesight. Employee denied auditory hallucination or paranoia. He reported a 2007 head injury while working a military vessel when he moved supplies. Employee tried to get workers' compensation but his paperwork got lost and the timeline ran out. At one point, he was on disability but wanted to go back to work so he lost benefits. Employee was never able to return to work and applied for disability again but reported difficulty managing the paperwork. He believed his memory trouble was getting worse and he had been depressed. Employee described feeling hopelessness, helplessness, guilt and worthlessness. He wanted to be able to work but was unable. "Dr. Garby at Greatland Associates" diagnosed Employee with schizophrenia but "Dr. Garby" changed his mind. Deanna Johnson, M.D., observed Employee struggled to find words and to understand what was said to him. His thought processes were slow but linear and organized overall. Employee's judgment was grossly intact and he had recent and remove memory difficulties. Dr. Johnson assessed major severe depressive disorder without

psychotic features and a likely major neurocognitive disorder. She recommended admittance to the mental health unit. (Johnson Inpatient Psychiatry Report, August 6, 2017).

44) On August 6, 2017, Employee reported alternating diarrhea and constipation and attributed it to his abnormal eating behavior. He said he would not eat for days and then eat regular food. Employee said his urinary stream had no problems when he took Flomax. Douglas Smith, M.D, diagnosed a probable movement disorder and probable cognitive deficits and referred him for a neurological consultation. (Smith Chart Note, August 6, 2017).

45) On August 8, 2017, Employee's PSA level was slightly elevated. (Smith Consult Note, August 8, 2017).

46) On August 9, 2017, Employee's sister said she and his other sister were agents in Employee's Durable Powers of Attorney. She said Employee would be getting $177 per month from social security because he was overpaid in the past when he took a job and failed to report the income. A trust was set up to be a companion to his disability benefits and Employee's sister had been working to reestablish his SSDI. (Julie Holden, Mental Health Specialist, Progress Note, August 9, 2017). Employee lost 20 pounds in the last six to eight months due to decreased oral intake caused by food insecurity. He ate about two meals a day. (Terina Noteboom, RD, Medical Nutrition Therapy Consult Note, August 9, 2017).

47) On August 9, 2017, Employee noted difficulties organizing his life. He felt disconnected and was uncertain how to understandably express his thoughts and feelings to get help. Employee reported left-sided chest pain radiating into the back of his neck and head which he has had intermittently for the last few years. An EKG was normal. Employee's mood was depressed, his affect was restricted, his thought processes were coherent without delusions or perceptual disturbances, his short- and long-term memory was intact and his judgment and insight were adequate. (David Telford, M.D., Progress Notes, August 9, 2017).

48) On August 10, 2017, Employee continued to have cognitive problems. He reported a 2007 head injury and a subsequent injury a year and a half prior when he fell on ice and became unconscious. (Telford Progress Note, August 10, 2017). Employee's head magnetic resonance imaging (MRI) found progression in size and number of focal hyperintense Fluid-Attenuated Inversion Recovery (FLAIR) lesions throughout his cerebral white matter, most pronounced in the frontal lobes but also present in the bilateral parietal lobes with general subcortical and some periventricular distribution. This pattern was often seen with chronic microangiopathy and could

also represent sequela of a prior trauma or infection. There was moderate mucosal thickening throughout the ethmoid sinuses and mild mucosal thickening in the other paranasal sinuses. (MRI Report, August 10, 2017).

49) On August 11, 2017, Employee denied auditory and visual hallucinations but said he sometimes saw shadows. He was mostly anxious and ruminating and his depression was improving. Employee denied nausea, vomiting, diarrhea, constipation, dysuria and abnormal bowel movements. (Johnson Progress Note, August 11, 2017).

50) On August 12, 2017, Employee was concerned about "blockages in vessels" in his kidneys, heart and brain. (Smith Consult Note, August 12, 2017).

51) On August 14, 2017, Employee stated he had a learning disability in childhood and believed he had attention problems. (Telford Progress Note, August 14, 2017).

52) On August 15, 2017, Employee's two sisters had a meeting with Employee, mental health specialist Holden and Dr. Telford. Employee's sister was working with SCHC on Employee's Medicaid application. Dr. Telford opined Employee was ready to travel to New Mexico, where his sister lived. (Holden Progress Note, August 15, 2017).

53) On August 16, 2017, Employee provided a "convoluted story" about never formally being a member of the armed services yet at the same time he was on active duty with the military. He said he was stationed on a ship overseas and at one point the North Koreans tried to board the ship but a United States destroyer saved them. Employee worried his photograph was taken when he disembarked the ship and the Chinese would use it against him. Dr. Telford noted Employee had apparent paranoid delusions with poor judgment and insight. (Telford Progress Note, August 16, 2017).

54) On August 17, 2017, Employee said he was having discussions with the Veterans Administration about getting processed out as he was listed as absent without leave. He was suspected of having schizophrenia but was later told he had "disorientation." Employee felt like he has some false memories. One of his friends has schizophrenia and he thought it may have "rubbed off" on him. Employee felt more confused after taking hydroxyzine. Dr. Telford noted Employee had adequate judgment and insight, paranoid thought contents, confabulatory thought processes and short- and long-term memory impairment. (Telford Progress Note, August 17, 2017).

55) On August 18, 2017, Employee was discharged from the Providence Adult Mental Health Unit. Dr. Telford diagnosed a significant neurocognitive disorder. He was surprised Employee had been able to live on his own for as long as he did. Employee's family agreed to have him live with his sister in New Mexico and arranged his transportation. Dr. Telford noted Employee had long-standing paranoid ideas and fabricated life events and he appeared to lack the capacity to organize his life in a meaningful way. He recommended Employee follow up with behavioral health treatment and neuropsychological testing. (Telford Discharge Report, August 18, 2017).

56) On September 6, 2017, Employee reported continued and chronic low level pressure to his left lower abdomen. He was assessed with benign prostatic hyperplasia with lower urinary tract symptoms and was referred to urology. (Carla Curtis-Klinger, PA-C, Progress Note, September 6, 2017).

57) On September 7, 2017, Employee reported weak urinary stream, pelvic pressure, urinary hesitancy and intermittent stream. He was diagnosed with benign prostatic hyperplasia two years earlier. Two months earlier he began taking tamsulosin and his urinary stream improved and his other symptoms decreased. (Stacey King, CFNP, Progress Note, September 7, 2017).

58) On September 27, 2017, Employee's colonoscopy revealed his colon was normal. (Charles Hertz, M.D., Letter, September 27, 2017).

59) On October 25, 2017, Employee reported left ear pain and was worried about his sinuses. He was diagnosed with acute allergic rhinitis and prescribed fluticasone propionate. (Flavio Salazar, CNP, Progress Notes, October 25, 2017).

60) On December 22, 2017, Employee said he had stomach problems on and off for years and his colonoscopy was normal. He was referred for an endoscopy. (Curtis-Klinger, Progress Note, December 22, 2017).

61) On February 6, 2018, Employee's esophagogastroduodenoscopy (EGD) showed a normal esophagus, stomach and duodenum. (EGD Report, February 6, 2018).

62) On February 22, 2018, Employee reported testicular pain and his PSA was elevated. He was diagnosed with benign prostatic hyperplasia with lower urinary tract symptoms and referred to urology. (Thomas Strain, M.D., Progress Note, February 22, 2018).

63) On March 5, 2018, Employee reported left testicular pain, weak urine stream, increased pelvic pressure, urinary hesitancy and intermittent stream. He was diagnosed with benign prostatic

hypertrophy and constipation. Employee was advised to increase fluids and high fiber foods and to continue to use tamsulosin. (Stacey King, CFNP, Progress Notes, March 5, 2018).

64) On April 2, 2018, Employee's left scrotal ultrasound was unremarkable and no inguinal hernia was identified. (Ultrasound Report, April 2, 2018).

65) On May 22, 2018, Employee's head MRI revealed chronic right frontoethmoidal and bilateral maxillary sinusitis and moderately severe, chronic white matter arteriolosclerosis without evidence of acute focal or territorial ischemic infarction, and subdural fluid collection, enhancing or space-occupying intracranial mass, hydrocephalus or mid-line shift. (MRI report, May 22, 2018).

66) On July 19, 2018, Employee told the claims adjuster he was having serious digestion problems from his injury. The claims administrator informed him there were no bills or chart notes on file and he should request them from his doctors, because without them, she was unable to determine there were related to his work injury. (General Claim Note, July 19, 2018).

67) On July 19, 2018, Employee spoke with a workers' compensation officer and said his benefits stopped. The officer stated Employee can call the claims administrator to see if the issue could be resolved informally and explained the claim form and adjudications process. The officer mailed Employee a claim form and the "Workers' Compensation and You" pamphlet. (ICERS, Phone Call, July 19, 2018).

68) On July 19, 2018, Shannon Delarosbil, MA, LMHC, wrote a letter addressed, "To Whom It May Concern" stating:

> [Employee] is current a client. . . . [Employee] has attended 10 Individual Psychotherapy visits beginning on 12/20/2017. These visits were focused on addressing issues of Depression and Anxiety.
>
> During the course of treatment, [Employee] presented with symptoms of depression, social withdrawal, anxiety, fears and paranoia, panic attacks, difficulty with communication, sleep disturbance, low energy/fatigue, low self-confidence, feelings of hopelessness, muscle tension, irritability, and difficulties regulation emotions and frustrations. These symptoms have been present throughout the course of therapy.
>
> Due to the duration, frequency and intensity of [Employee's] symptoms, it is my opinion that his limitations in social and occupational functioning include; [sic] his ability to work in a normal work environment, ability to be reliable, ability to tolerate stress, ability to concentrate on tasks, ability to stay focused and get work done in an appropriate amount of time, ability to remember facts and instructions, ability to remain motivated, and ability to interact well with others. Constant and

> recurring pain along with non-external impairments hampers his ability to function in a normal work environment.
>
> [Employee] also has a history of physical conditions which also contributes to increased above symptoms. . . . (Delarosbil letter, July 19, 2018).

69) On August 8, 2018, Employee was referred to otolaryngology for chronic ethmoidal, frontal and maxillary sinusitis. He was prescribed Mometasone furoate suspension. (Curtis-Klinger, Progress Note, August 8, 2018).

70) On September 10, 2018, Employee reported experiencing nasal congestion for years and it worsened in the spring. (Thomas Thomason, M.D., Progress Note, September 10, 2018).

71) On October 17, 2018, Employee head MRI revealed mild-to-moderate chronic microvascular ischemic changes in both hemispheres and mild chronic sinusitis. (MRI report, October 17, 2018).

72) On October 25, 2018, Employee was diagnosed with cerebral microvascular disease. It was recommended he optimize control of his blood pressure and cholesterol and triglycerides by improving his diet and increasing physical activity. (David Arguello, M.D., October 25, 2018).

73) On November 8, 2018, Employee spoke with a workers' compensation officer who explained the claim and adjudication process and his right to seek representation. He asked if he could be mailed information but his address has changed. The officer informed Employee he needed to file a change of address form. (ICERS, Phone Call, November 8, 2018).

74) On November 14, 2018, a workers' compensation officer mailed Employee a letter per the conversation on November 8, 2018. The officer included the "Workers' Compensation and You" pamphlet, a list of attorneys that have expressed an interest in representing injured workers and an explanation of claimant attorney's fees and costs. (Letter, November 14, 2018).

75) On February 25, 2019, Employee filed a claim seeking TTD benefits, a compensation rate adjustment, medical and transportation costs, interest and attorney's fees and costs. He described the nature of the illness as, "While working received hernia at groin area, became ill after infection set in." Under the reason for filing the claim, Employee stated, "Illness infected my lower [organs] that are still suspect today. [Deliriousness] had still left me disoriented day and night. Need public as well as private care and compensation for care missed." (Claim for Workers' Compensation Benefits, February 25, 2019).

76) On March 8, 2019, Employee reported persecutory auditory hallucinations over the past month. He was having great difficulties taking his medications on his own and remembering instructions

after his appointments. A home health aide was recommended to assist with medications and other home activities of daily living. (Arguello Progress Notes, March 8, 2019).

77) On March 13, 2019, Employer answered Employee's February 25, 2019 claim and contended AS 23.30.105(a) barred his claim because he was aware of an infection in January 2012 but failed to file a claim until July 2018. (Answer, March 13, 2019).

78) On March 14, 2019, Employer denied all benefits related to medical treatment at SCHC for dates of service from January 6, 2012 through August 5, 2017, and treatment related to an infection. It contended Employee's right to disability was barred because a claim had not been filed within two years after he had knowledge of the nature of his disability and its relation to employment. Employer contended the cause of Employee's condition was highly complex medical issue requiring production of medical evidence linking the cause of his condition to his employment to attach the presumption of compensability and he provided no medical evidence demonstrating the work injury was the substantial cause of his condition. (Controversion Notice, March 14, 2019).

79) On March 28, 2019, Employee filed a claim seeking TTD benefits, a compensation rate adjustment, medical and transportation costs, interest, penalty, a finding of unfair or frivolous controversion and attorney's fees and costs. He described the nature of the illness as, "Injured while doing emergency tie up of ship while carrying frozen 4" thick line. Hernia set in, then while underway it became infected. Ship officers sail on. No helo evac. [sic]." Under the reason for filing the claim, Employee stated, "Necessary paper work did not come to me. I was [delirious] from infection and hospitalize[d] for 8 days. I do not know if I could have filed at all. My kidneys and liver and prostate were damaged [by an] infection." (Claim for Workers' Compensation Benefits, March 28, 2019).

80) On March 28, 2019, Employer's attorney followed up with Employee by email about their telephone conversation, "You referenced today receiving mental health treatment. From whom did you receive that treatment and when did you receive it? You mentioned being incapacitated today. What do you mean by that? Were you able to work during this time? If not, why not? When did that incapacitation exist/how long did it last? What kind of medications were you on at this time? How did they affect you?" (Email, March 28, 2019).

81) On April 3, 2019, Employee stated he was prescribed "HCl" a mood suppressor that slowed him down and easily blurred his thinking since the work injury. (Employee Email, April 3, 2019). Employer's attorney asked Employee if "HCl" was hydroxyzine and if he was still able to work

after the work injury. (Employer Email, April 3, 2019). Employee said he was released from duty as unfit due to the hernia. The ship sailed to Yakutat with him "sick on board with infection." He stated,

> The officers were still insisting on not evacing [sic] me by helicopter. That in spite of the fact that the ship had a large helo-pad on board. After a day and half we got to Yakutat. There I finally got some antibioticss [sic]. We then sailed to Whittier where I got off but had to approach strangers to get a ride as the wonderful ship officers couldn't figure a ride for me to Anchorage. In Anchorage I was treated at emergency and immediately check[ed] in for observation and operated on 2 days later. I'd remember the pain and suffering but delirium [sic] had me off in La La land. (Employee Email, April 3, 2019).

Employer's attorney stated he did not mean right immediately after the hernia, he meant when Employee returned to work on the ferries in March. (Employer Email, April 3, 2019). Employee replied he failed at attempts to work, "I went from OS to AB to porter work (mostly janitorial). It was an easier job [but] everything was difficult. I was eventually let go from the job because my health was failing and I couldn't show up being sick the last time and I was let go. I needed to be in treatment that I am finally getting now." (Employee Email, April 3, 2019). Employer's attorney asked if Employee believed the illness which prevented him from working was related to the hernia he incurred on December 24, 2011. (Employer Email, April 3, 2019). Employee emailed back:

> Certainly. damage [sic] The infection that came about was going through my system was going on for two days till I finally got anti-biotics [sic]. I was in the Anchorage hospital for eight days getting blood test and the like while on morphine. I went home. At the clinic they tested me fohr limpids [sic]. They found some (kidney and probably liver) My prostate became enlarged. The prostate was developing I guess from intestine damage. The report for Dr. Scott Kirchner says I was complaining I [sic] a lot of gas[s]iness. Please do not hold me to the medical opinions. . . . (Employee Email, April 3, 2019).

82) On April 4, 2019, Employer's attorney asked if Employee had a tooth problem around the time of the hernia and to explain what the problem was, when it arose, what treatment he received and where did he receive treatment. (Employer Email, April 4, 2019). Employee said the tooth was not much of a problem as it was a dead tooth he had extracted in New Mexico. The physician assistant in Yakutat did not take notes that he was swollen on many parts of my body and the Ketchikan doctor recorded I contracted the hernia three hours before his exam and it was worsening. (Employee Email, April 4, 2019). Employer's attorney responded he was confused.

He asked Employee if he had an infected tooth around the end of 2011 and if he received care around that time for anything related to a tooth. (Employer Email, April 4, 2019). Employee responded, "mouth face and body was discolored especially my lower abdominal area. That mentioning an abscessed was about my hernia. . . ." (Employee Email, April 4, 2019).

83) On April 5, 2019, Employer's attorney asked Employee what paperwork he believed he did not receive that was important to him filing a claim related to the infection. (Email, April 5, 2019). Employee replied:

> Exactly my question to the Lady of Workman's Comp. I an itemized list of all paper work that was supposed to have been sent to me from [Alaska Marine Highway System] AMHS, Workman's Comp, and Penser. I never got anything from Penser until only within this past year. Yet AMHS and Workman's Comp. had begun at least some of the paperwork. I was lay up for six months from the hernia and complications. I was sick and very little effort came from either of them to see why they weren't getting returns of important paperwork. . . . (Employee Email, April 5, 2019).

Employer's attorney asked Employee if he would feel comfortable sending him a list of the paperwork he believed he should have received. (Employer Email, April 5, 2019). Employee asked Employer's attorney to send him a list of what AMHS, Workman's Comp., the union, Penser and Blue Cross were legally responsible to send him. (Employee Email, April 5, 2019). Employer's attorney said he was unsure of what paperwork to send as Employee filed his original report of injury and the adjuster never disputed the work-related nature of his hernia and paid benefits. When Employee returned to work, the adjuster closed the claim because all benefits had been paid. Employer's attorney asked for a list of what Employee believed he should have received. (Employer Email, April 5, 2019). Employee responded:

> To be proper about it I am asking with the work now being done for evac.it [sic] to be a reopening of the claim. That based on continuing health issues as well some conditions that have developed, stemming from that hernia.and [sic] much from how I was kept on board the Kennicott with a worsening condition that needed treatment asap. Ie [sic] they chose not to evac. me [sic] and I became deathly sick sailing on for about 3days [sic]. . . . (Employee Email, April 5, 2019).

Employer's attorney asked if Employee had a sense of what paperwork he believed was not sent to him. (Employer Email, April 5, 2019). Employee replied, "[T]here should have been the 07-

6106(not received) as well as instructional paper work to accompany it. There should have been sent a copy of the original 07-6100 (not received)Then [sic] a 07-6135 with instructions if or if not needed as it was an option." (Employee Email, April 5, 2019).

84) On April 5, 2019, Employer answered Employee's March 28, 2019 claim. It contended the bar under AS 23.30.105 applied and that Employee was mentally competent. Employer contended there was no evidence the injury prevented him from filing a timely claim. (Answer, April 5, 2019).

85) On April 8, 2019, Employer's attorney asked Employee when he thought he became capable of filing a claim as he had suggested he was physically and mentally unable to raise his claims before February 2019. (Employer Email, April 8, 2019). Employee replied:

> My being capable to go back to deck department work still has not happened. They could have offered me steward work when I came back from the operation but they chose not to (error on their part) [sic] I got ill too easily trying to work on board again, missed two assignments in one year and they fired me. That union was terrible help. It shouldn't take much looking back on as in 2017 I was hospitalized twice the second time 09 2017 I was in Providence Hospital for 12 days then they put on aplane [sic] to here with the condition that I has [sic] good living conditions and some one [sic] to check on my needs. That was orders of the doctors of Providence hospital. They even had the driver to air port [sic] watch me until I was standing in line waiting as boarding call was announced. . . ." (Employee Email, April 8, 2019).

86) On April 10, 2019, Employer's attorney asked Employee how work went after he returned in March 2012. (Employer Email, April 10, 2019). Employee responded, "Porter work." (Employee Email, April 10, 2019). Employer's attorney asked Employee what happened after he stopped working for Employer. (Employer Email, April 10, 2019). Employee said he continued getting medical care at the clinic. He tried working a couple summers at a hotel folding laundry and "trying not to have fits." It was the easiest job and it became too much. Employee "keeps getting more treatments here and getting it slowly back." (Employee Email, April 10, 2019).

87) On April 17, 2019, Employer's attorney asked where Employee worked after 2012 and how working went. (Employer Email, April 17, 2019). Employee stated he worked the summer of 2014 and 2015 at the Talkeetna Lodge. In 2014 he worked as a janitor and in 2015 he worked in laundry, which became exhausting and his thinking became erratic, "I still wasn't ready for work, but only trying to." (Employee Email, April 17, 2019). Employer asked what Employee meant

when he said he still was not ready for work. (Employer Email, April 17, 2019). Employee responded:

> That lodge job was me showing up for work still with problems brought on by that infection and groin problems and prostate problems as it enlarged much with that messed the hernia caused. Piecing it together the infection made things so much worse as the numbskull officers kept me sailing for three days. . . . The lodge decided I couldn't handle the fast pace of hotel janitor work and the next year put me in the laundry. Even there I had to take a lot of breaks. I wasn't getting enough care or having enough food. . . . (Employee Email, April 17, 2019).

Employer's attorney asked if Employee meant the infection also affected his prostate. (Employer Email, April 17, 2019). Employee replied,

> The complications as the hernia was in the lower quadrant not of the stomach has been a mess to my bowel system. [T]hings that were not there as I kept with simple things in doctors check up cropt [sic] up and quickly substantial. My diet has always been balanced, but that twist of the hernia was causing blockage for those days. With the infection my bowels were holding in my stool as well as the infection and my bow[e]ls continues digesting that mess. That's why my whole system became infected and I was grey having gone so pale. . . . As the first doctor noted in Ketchikan I was experience much gasiness [sic] from blockage holding it in. That known as he noted it in his exam. (Employee Email, April 17, 2019).

88) On April 18, 2019, Employer's attorney asked if Employee remembered who treated him for the infection. (Employer Email, April 18, 2019). Employee stated the physician assistant in Yakutat treated the infection. However, the physician assistant forget to note the hernia and only noted the tooth ache. (Employee Email, April 18, 2019). Employer asked why Employee was taking antibiotics for a dental infection at the time of his hernia surgery as noted in Dr. Todd's record and how long he had been taking the antibiotics. (Employer Email, April 18, 2019). Employee said he was confused and did not recall Dr. Todd checking his mouth nor why he would for a hernia and wanted to know which medical record was being discussed. (Employee Email, April 18, 2019). Employer said it was in a December 29, 2011 record from Dr. Butler and Dr. Todd. (Employer Email, April 18, 2019). Employee replied, "The origin of the infection that got to my system your saying came from my abscessed tooth. Am I right?" (Employee Email, April 18, 2019). Employer's attorney stated he was not making any statements about what caused the infection. (Employer Email, April 18, 2019). Employee replied, "As you say there was an

infection. Yakutat I remember gave me the antibiotics That [sic] was 3 days after the injury. . . ." (Employee Email, April 18, 2019).

89) On May 13, 2019, Employee said he started the workers' compensation process for chronic headache since the work injury and right abdominal hernia requiring surgery. He also stated his kidney and prostate problems began while he worked for Employer. Dr. Arguello was not clear on what he could do to help Employee with his workers' compensation application and he directed Employee to obtain instructions for him. (Arguello Progress Report, May 13, 2019).

90) On May 15, 2019, Employer's attorney asked Employee what symptoms he experienced after the hernia, how long they lasted, whether there were any periods when the symptoms subsided and if so, for how long, if the symptoms were painful, what parts of the body were involved and if the symptoms came and went. (Employer Email, May 15, 2019). Employee replied:

> Yes the night later after I got hurt I got some what delerious [sic] and was seen shadows dashing by in vision. I was a little naucsious [sic] and gassy. I would settle down, drink water, and hopefully pass gas after about an hour. Painful yeah but I didn't want to take the pain meds. I had until 4 hours like prescribed. That mess and my being blocked internally has developed into an uncommonly large prostate problem that I never had before. (Employee Email, May 15, 2019).

Employer's attorney asked how the symptoms progressed or changed in the weeks and months following the injury. (Employer Email, May 15, 2019). Employee said:

> If I ignored it (pain) long enough it seemed and still seems at time to go away. It's been that way following the injury. When I'd see a doctor I'd forget what I was there for. This caused me not to know where a problem was and the ignorance ended me up in the hospital some times for days. Not any longer I'm seeing Specialist and finally on medicines that are exact in nature and it's working out. (Employee Email, May 15, 2019).

Employer's attorney said, "I'm a little confused by what you mean. If you ignored the pain you would no longer notice it? For how long would it go away?" (Employer Email, May 15, 2019). Employee responded, "Meditation that I'm not great at. Aspirin, acido-minophen [sic]. No opiates, I'm dumb enough. I'd like to go to a private health club for a month and get a proper routine and have all the right foods there." (Employee email, May 15, 2019). Employer's attorney asked how long Employee would remain pain free. (Employer Email, May 15, 2019).

91) On May 16, 2019, Employee stated it has been years and the pain has not left him, it has been with him since the night after the work injury. (Employee Email, May 16, 2019).

92) On May 27, 2019, Employee told Employer's attorney he read over his notes and saw errors that needed to be noted, "One is the infection that I wrote was in my bowels. That was actually the bad tooth infection. The others were the slight liver (that cleared up) and my kidney. Those problems have been addressed and were most likely due to a medication that a doctor years before treated me for lack of sleep and stress. I was over prescribed." (Employee Email, May 27, 2019).

93) On June 4, 2019, Employer's attorney responded and said he was confused because it was not clear what issues were caused by an infection related to Employee's hernia. He asked what issues were caused by the hernia and when did Employee realize the hernia caused those problems. (Employer Email, June 4, 2019). Employee said, "I don't know as the infection could have originated in the water on the ship (that is a common problem on ships) then it got to the tooth (long gone). The hernia as shown by the first hospital report was causing bloating (gassiness) cause was blockage of bowels. Painful with much cramping. . Sitting in the hospital at Ketchi[k]an is when I first noticed it." (Employee Email, June 4, 2019). Employee stated, "I hope you satisfied with your talk of infection. I'll appreciate you not bring it up again. . ." (Employee Email, June 4, 2019).

94) On June 5, 2019, Employer's attorney told Employee he filed a petition to bifurcate the issue of the timeliness of his claim from the merits of his claim because he intended to obtain an order dismissing his claims for being filed too late. (Employer Email, June 5, 2019). Employee replied workers' compensation erred in getting a current address for him and sent letters to an old address that were time sensitive. (Employee Email, June 5, 2019).

95) On June 5, 2019, Employee reported right-sided inguinal pain since 2012. He felt bloated and had cramping pain and gas. Employee said he had loose stools in the last week. He requested a sonogram of his hernia repair. PA-C Curtis Klinger recommended a CT scan because it would see the mesh and surrounding structures better. (Curtis-Klinger, Progress Notes, June 5, 2019).

96) On June 6, 2019, Employee orally objected to Employer's June 5, 2019 petition and argued "bias and prejudice." He contended he tried to pursue his case but he never received the petition rejection letters from the technician because they were mailed to an incorrect address. Employee stated his urinary and gastrointestinal system was blocked up because of the work-related hernia and it caused complications. Another prehearing conference was scheduled for July 24, 2019 to

further discuss Employer's June 5, 2019 petition. Employee was provided with a copy of AS 23.30.105. (Prehearing Conference Summary, June 6, 2019).

97) On June 10, 2019, Employer's attorney informed Employee the medical records discovered do not support his position. (Employer Email, June 10, 2019). Employee replied, "As I know none of the conditions of my insides were present before the hernia. . . ." (Employee Email, June 10, 2019).

98) On June 10, 2019, Shannon Delarosbil, M.A., LMHC, wrote a letter address, "To Whom It May Concern" stating Employee presented with symptoms of low mood, social withdrawal, anxiety, fears, flashbacks, panic attacks, sleep disturbance, low energy, fatigue, confusion, disoriented thought pattern and memory issues. His diagnoses included anxiety, history of a recent stressful life event and episode of recurrent major depressive disorder. (Letter, June 10, 2019).

99) On June 22, 2019, Employee sent an email to the workers' compensation division entitled "Petition for Compensation. . . ." He stated the TTD weekly rate was incorrect because it was based on a seasonal biweekly rate and it should be doubled. Employee also contended his compensation rate should be higher because he worked mandatory overtime and he worked other jobs off season. He contended most employees that sustained hernias were paid up to six months for time off work and he was only out four weeks and six days before he was rushed back to work. Employee stated, "The case of the infection (most repeated by the [Employer] in letters to me) should be noted as a back up of stool in my that were in my bow[e]ls soiling my digestive system and that was all." He contended the March 1, 2012 letter was sent to an Anchorage address he had two years prior so the letters were not forwarded and were lost. Employee contended he attempted to but failed to get medical records in 2015, which he needed to read to file for benefits. He contended the workers' compensation division should have sent him letters about his attempt to obtain benefits and he doubted he received all of the letters pertaining to the timeliness of filings. Employee's psychological condition "has been much of the result of this matter that has plagued me for years." The medical records clearly showed the complications stemmed from the hernia and most definitely from the delay by the ship officers in getting him medical treatment. (Employee Petition, June 22, 2019).

100) On July 6, 2019, Employee orally objected to Employer's June 5, 2019 petition to bifurcate at a prehearing conference. He contended the division rejected a petition he filed in 2012 and he did not receive the letter because it was mailed to an incorrect address. Employee contended he

was unable to further and timely purse his claim due to illness and his psychiatric and medical conditions should be taken into consideration when deciding whether his claim was untimely. Employee stated his urinary and gastrointestinal system was blocked up because of the hernia and it caused him complications. The designee explained his claim stated his hernia became infected and he could amend his claim if he was adding another injured body part or changing the nature of his work injury. The designee provided Employee with a copy of AS 23.30.105. (Prehearing Conference Summary, July 6, 2019).

101) On July 9, 2019, Employee stated he was having bowel symptoms similar to the right inguinal hernia, including intermittent problems with constipation, passing gas and bloating. He felt it was related to the past repaired hernia. An abdomen and pelvis ultrasound was recommended. (Laura Robinson, CNP, Chart Note, July 9, 2019).

102) On July 12, 2019, Employee asked a workers' compensation officer if his petition was received by email. The officer informed Employee it did not show it was served on Employer. Employee stated he sent Employer a copy. The officer directed Employee to forward the email he sent to Employer to the workers' compensation division because he needed to file a copy. (ICERS, Phone Call, July 12, 2019). Employee forwarded the June 22, 2019 email and Employer's reply which noted the email was only sent to Employer and did not appear to be filed. (Employee Email, July 12, 2019). The officer forwarded the email to Employer and cc'd Employee and stated it had been received and filed. (Officer Email, July 12, 2019).

103) On July 15, 2019, Employee went to the emergency room complaining of abdominal pain beginning two days before. He reported constipation and abdominal bloating without a fever, nausea, vomiting or diarrhea. Employee said he had a previous episode about six years prior and had an inguinal hernia. He was diagnosed with non-acute right lower quadrant pain with unknown etiology. (Emergency Room Report, July 15, 2019). Employee's abdomen and pelvis CT scan found appendicolith with mildly distended appendix base suggesting early or proximal appendicitis, fatty liver, moderate nonspecific prostate gland enlargement and a left inguinal hernia containing fat only. (CT Report, July 15, 2019).

104) On July 17, 2019, Employee reported a prior severe head injury, cognitive impairment, poor memory, concentration and focus. He said living alone was a challenge for him. Employee was referred for a neuropsychological evaluation. (Michael Baten, M.D, Chart Note, July 17, 2019).

105) On July 17, 2019, Employer answered Employee's June 22, 2019 petition and contended Employee asserted the hernia caused a bowel blockage rather than an infection which was raised in his prior claims. It denied benefits for a bowel blockage, incorporated its previously filed defenses in its answer and contended whether the hernia caused a bowel blockage is a medically complex issue and Employee has failed to provide medical evidence to support his claim. (Answer, July 17, 2019).

106) On July 17, 2019, Employer requested a hearing on its June 5, 2019 petition. (ARH, July 17, 2019).

107) On July 24, 2019, Employee's right inguinal ultrasound found no hernia and a small area of scarring from previous surgical hernia repair. (Ultrasound report, July 14, 2019).

108) On July 25, 2019, Employee opposed the ARH and Employer's June 5, 2019 petition. He argued Employer had not submitted any detail of the areas of the case it sought to bifurcate. Employee contended Employer ignored his request to stop bringing up the work infection he "wrote mistakenly months ago" and complained about at the last prehearing conference. He contended inclusion of infection was corrected months ago and it was ridiculous and insulting to keep bringing it up. Employee contended Employer must forfeit its case for the "gross prejudice with the handling of documentation." (Employee Opposition, July 25, 2019).

109) On August 20, 2019, Employee reported right lower quadrant pain which he had been experiencing for weeks. He was referred for a surgical consultation for "appendix disease." (Robinson, Progress Note, August 20, 2019).

110) On August 21, 2019, the designee explained Employer sought a separate hearing on the issue of the timeliness of Employee's claim and went over AS 23.30.105. Employee opposed setting a hearing date on Employer's June 5, 2019 petition because discovery was not yet available. He was going in for exploratory surgery in September "to figure out what is going on." Employee also opposed barring his claim under AS 23.30.105, contending he could not have known about the nature of his injury sooner because his doctors did not know the nature of his injury. The designee scheduled a hearing on December 3, 2019 to decide whether Employer's petition to bifurcate should be granted, and if so, whether he claims should be barred under AS 23.30.105. (Prehearing Conference Summary, August 21, 2019).

111) On September 4, 2019, Employee reported intermittent right lower quadrant pain but stated his bowels were moving normally. An appendectomy was recommended after a colonoscopy. (Kris Rajanna, M.D., Chart Note, September 4, 2019).

112) On September 25, 2019, Employee's colonoscopy showed a four centimeter mass in his appendiceal orifice and normal mucosa in his whole colon. (Daniel Bujanda, M.D., Colonoscopy Report, September 25, 2019). A biopsy of the mass showed only inflammation. (Bujanda Letter, September 25, 2019).

113) On October 31, 2019, Employee complained of intermittent nausea and was prescribed Zofran until his appendectomy. (Robinson Progress Note, October 31, 2019).

114) On November 6, 2019, Employee stated he was having exploratory surgery on December 6, 2019, for his bowels because his physician believed scar tissue from the hernia surgery affected his bowels. He contended the surgery will determine whether the hernia caused additional medical complications and will prove he has a latent injury. Employee contended it would be a waste of time to have a hearing before the surgery is completed because the medical evidence will not be available. The designee continued the hearing under 8 AAC 45.070(a) and rescheduled it on February 25, 2020. (Prehearing Conference Summary, November 6, 2019).

115) On November 9, 2019, Employee went to the emergency room for nausea, constipation and abdominal pain. His symptoms began four months ago and became worse. (Joan Carrellas, M.D., Emergency Room Report, November 9, 2019). An abdominal CT scan showed severe fatty liver infiltration. Employee's small bowel, appendix and colon were normal. (CT Report, November 9, 2019).

116) On December 2, 2019, Employee underwent a surgical laparoscopy appendectomy and was discharged the following day. (Rajanna Discharge Summary Report, December 2, 2019).

117) On December 29, 2019, Employee's head MRI found bilateral periventricular deep and juxtacortical white matter FLAIR hyperintense foci most characteristic for chronic small vessel ischemic disease, also known as microangiopathy, minimal maxillary, ethmoid and frontal sinus disease, and mild sphenoid sinus disease. (MRI Report, December 28, 2019).

118) On January 29, 2020, the parties agreed they were ready to proceed with the February 25, 2020 hearing. (Prehearing Conference Summary, January 29, 2020).

119) On February 14, 2020, Employee filed a petition requesting to compel discovery, reconsideration or modification and "validate claim, fully award me." Under the reason for the

petition, he stated, "Recent MRI (Santa [F]e Imaging) with [doctor] notes describe micro-vascular area of what remains of infected blood vessel that was evidence after 30 days of antibiotics cleared it up. Also there's an infection traced back to the nasal passages that at the time of hernia the infection was a badly infected tooth. [Doctor] notes show mental disturbances and re-occurring sicknesses since 2011." (Petition, February 14, 2020).

120) Employee received unemployment benefits for the following weeks ending: February 25, 2012 through March 17, 2012; August 11, 2012 through October 27, 2012; November 10, 2012 through December 29, 2012; January 19, 2013 through December 28, 2013; January 11, 2014 through March 29, 2014; May 17, 2014 through May 31, 2014; September 20, 2014 through October 4, 2014; November 8, 2014 through February 21, 2015; November 7, 2015; and November 21, 2015 through March 12, 2016. (Alaska Department of Labor, Week Claimed Entitlement Print Out, April 23, 2019).

121) Employee testified he sustained a hernia when he hauled frozen four inch lines on board the Kennicott on December 24, 2011. He also had an abscessed tooth on December 24, 2011 and his tooth broke because it had an untreated cavity. Employee was going to get his tooth treated but he was stuck at his cabin in Trapper Creek and he missed appointments. He told the purser and the deck officer he had a tooth infection and it was making him ill and they blew him off. Employee asked for antibiotics from the purser and she told him none were available. The deck officers refused to evacuate him from the ship. One of the deck officers told Employee that he did not need to be evacuated from the ship because the officer worked for a number of weeks with a "stomach hernia" before getting medical treatment. The ship traveled for four days before he could get off to get medical treatment for his hernia and abscessed tooth. Employee got off the boat in Yakutat on December 28, 2011, and notes from the nurse describe a broken and infected tooth and facial swelling but failed to document his hernia. He became delirious the first night after sustaining the hernia and he was delirious the rest of the trip. The abscessed tooth was the biggest issue and it affected him greatly. Officers aboard the ship ignored Employee's abscessed tooth and their lack of action risked his life. In the four days, his immune system weakened because the hernia closed off his bowels. His infection was very advanced by the time he got to Yakutat because the hernia caused a bowel blockage and "compromised his system." The infection was throughout Employee's body and the hernia shut down his digestive system. He could not pass gas for two days after sustaining the hernia; it would leak out. Employee could taste his own feces

because he was so backed up. He knew his digestive system issues were caused by the work injury the night after the he sustained the hernia because he was able to eat only soup and bread and was taking Tums - so it was "pretty obvious" he had digestive issues. Employee's colonoscopy showed the hernia was "deep inside" and it blocked up his gastrointestinal system. He had to have his appendix removed because sedimentation from his gastrointestinal system backed up into it. Employee could not tell the doctors what was going on with his medical issues at times since the work injury because his cognitive and mental issues impaired his ability to communicate what was going on. He has not yet asked for medical opinions stating his hernia caused his digestive system to back up. However, Employee's colonoscopy traced it back to the area of the hernia, which latched on to areas of his colon and pushed against other areas of his body. He took tamsulosin for the hernia. Employee never had a prostate problem before the hernia and it was aggravated and became an issue since the hernia. It should be added to "what is going on with him." Employee currently lives alone and a home health aide helps him with his medications and house work for three hours a day. He is disabled; he cannot work and has not been able to gainfully work since the work injury. Employee tried to work after the work injury but was not successful. He was not able to perform the most menial work in an acceptable manner because his ability to work was "next to nothing" and he was downgraded from an OS or AB work to night porter. Employee had to sit down every half an hour or so. He tried to get social security but was unable to and he does not know what happened. Employee had a head injury in 2007 and it was probably in the area of his brain that got infected. He remembered receiving social security and losing it. Marti at SCHC helped him get Medicaid in 2016 or 2017; she had the paperwork filled out for him. Employee recalled filing grievances at work but it did not go well and he was confused about what happened. He spoke with human resources and filled out a one or two page application for his job at the lodge. Employee worked as a janitor at the lodge for the first summer. The next summer he worked in the laundry room because the manager told him he was not fast enough for the janitor position. When Employee called for work the following year, he was told the positions were filled and he thought they may not have wanted him back. He looked for a job at the local grocery store, Cubby's, but was not offered a job. Employee does not know why he was not hired at Cubby's but he thought someone talked with him and observed he had cognitive problems. The April 20, 2016 chart note was wrong and Dr. Friderici probably misheard him since he was not speaking right all the time and he contradicted himself sometimes. Employee worked only a few summers

after being dismissed from employment with Employer because he was unable to do the simplest work. Then, he was admitted to the Providence Adult Mental Health Unit. They would not release Employee without having transportation arranged to the airport because he was not doing well on his own and he was going to live with his sister in New Mexico. A staff person stayed with him until he got on the plane. Employee recalled having a post office box in Anchorage before he bought his property in Trapper Creek in 2010; he had a post office box in Trapper Creek about a mile and a half away from his cabin. He received five weeks of pay after his hernia operation and thought he was getting paid sick leave from the union. Employee initially did not recall trying to file a petition in 2012 for a higher compensation rate. After being prompted, he recalled filling out paperwork requesting a higher compensation rate. Employee did not remember receiving letters about his petitions. In 2012, he did not live in Anchorage and only picked up some old mail when he was in the hospital in Anchorage for eleven days after the hernia. The hospital had Employee's correct address in Trapper Creek in 2012 and issues with his address were not his fault. When asked what conditions he claimed benefits for, he said he had "not looked up everything about what he should get based on what he could get." Employee needs to be compensated for time loss. His retirement was "wiped out" and his was not given severance pay when he was terminated. Employee was not sure if he filed a claim for benefit for the tooth, brain, bowels or prostate issues and does not know the full scope of "what is available." (Employee).

122) Employee contended his gastrointestinal and brain issues were not obvious until recently. The brain MRI from two and a half years ago was not conclusive and did not identify his biggest medical issue. The most recent brain MRI conclusively showed microangiopathy from a brain infection, which affected his behavior and cognitive functioning. He contended the delay in medical treatment for his abscessed tooth caused the tooth infection to spread to his nasal passages and then to his brain which caused brain damage. Employee contended his abscessed tooth was a separate injury but related to the hernia. He contended his brain damage was the biggest issue and he did not know about it until the most recent head MRI. Employee's recent head MRI showed "something new that could not have been discovered before." He contends it took years to get enough information to get a conclusive description of the consequences of the hernia. Employee contended the hernia was a further aggravation of "what was really bothering him the most" which was his brain infection. He contended the hernia aggravated his prostate which continues to be a problem and caused his bowel blockage and appendicitis. Employee contended his functionality

is "horrible" and documentation in the record proves he has cognitive and psychological issues. He contended he is entitled to time loss benefits and should be compensated for all he lost due to the work injury, including retirement benefits and severance pay. Employee contended his hernia and his tooth infection both caused him to be disabled because he tired quickly and his digestive system was a mess. He contended Dr. Todd's registered nurse was the first person who told him a tooth infection could have caused his brain damage during a telephone call but it was not shown in the medical record. Employee does not have medical evidence to prove the hernia caused his digestive system to back up because he has not pursued it yet and whether his hernia was related to his abscessed tooth cannot be established. He contended he is currently disabled and has been disabled since the work injury because he was not able to gainfully work due to the hernia and its consequences and the brain infection. (Employee hearing arguments).

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;
. . . .

AS 23.30.005. Alaska Workers' Compensation Board.
. . . .

(h) . . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

AS 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus 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. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. 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. . . .

> **AS 23.30.105. Time for filing of claims.** (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that, if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.
> . . . .
>
> (c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or, in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age.

The purpose of AS 23.30.105(a) is to "'protect the employer against claims too old to be successfully investigated and defended.'" *Morrison-Knudson Co. v. Vereen,* 414 P.2d 536, 538 (Alaska 1966) (citing 2 Larson, Workmen's Compensation 78.20 at 254 (1961)). However, an employee must have "actual or chargeable knowledge of his disability and its relation to his employment" to start the running of the two year period under AS 23.30.105(a). *Collins v. Arctic Builders, Inc.,* 31 P.3d 1286, 1290 (Alaska 2001). "The mere awareness of the disability's full physical effects is not sufficient" to trigger the running of the statute. *Id.* The statute is only triggered when "one knows of the disability's full effect on one's earning capacity." *Id.* Similarly, in *Egemo v. Egemo Construction Co*., 998 P. 2d 434 (Alaska 2000), the Court held the statute of limitations at AS 23.30.105(a) starts running only when the injured worker (1) knows of the disability, (2) knows of its relationship to the employment, and (3) must actually be disabled from work. *Id.* at 441. A claim is not "ripe," requiring filing under AS 23.30.105(a) until the work injury causes wage loss. *Id.* at 438-439. Medical claims are revived when there is new treatment and disability claims related to the new treatment are also revived. *Id*. at 439. AS 23.30.105(a)

allows for more than one disablement for a given injury. *Id*. Both injury knowledge and disablement must be conjoined before an employee is required to file a claim. Therefore, because the injured worker in *Egemo* was not disabled by his work injury until he had surgery for it, his pre-surgery claim, though not filed within two years of the injury date, was timely. *Id*. at 439-40.

An injury is latent so long as the claimant does not know, and in the exercise of reasonable diligence, taking into account his education, intelligence and experience, would not have come to know the nature of his disability and its relation to his employment. *W.R. Grasle Company v. Alaska Workmen's Comp. Board*, 517 P.2d 999, 1002 (Alaska 1974).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect to which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and are, if corroborated by other evidence, sufficient to establish the injury.

Bifurcation is appropriate where a party has raised a potentially dispositive issue and the relevant law and facts were substantially independent of the other issues to be considered separately. *Nelson v. Klukwan, Inc*., AWCB Decision No. 09-0071 (April 13, 2019).

> **AS 23.30.155. Payment of Compensation**. . . .
> . . .
>
> (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, upon receipt of notice from a person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been increased, reduced, terminated, changed, or suspended, make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.
> . . . .

> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

The Alaska Supreme Court held the board owes a duty to every claimant to fully advise him of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right under law. *Richard v. Fireman's Fund Insurance Co.,* 384 P.2d 445, 449 (Alaska 1963). *Bohlman v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska 2009), applying *Richard*, held the board has a duty to inform a *pro se* claimant how to preserve his claim under AS 23.30.110(c) with specificity when warranted by the facts, but did not delineate the full extent of the duty.

The test for mental competency to toll a statute of limitations is whether a person could know or understand his legal rights sufficiently well to manage his personal affairs. *Adkins v. Nabors Alaska Drilling*, 609 P.2d 15, 23 (Alaska 1980).

ANALYSIS

Should the timeliness of Employee's claims be bifurcated from the merits of his claims, and if so, should Employee's claims be dismissed as time-barred under AS 23.30.105(a)?

Employer paid TTD and medical benefits in 2011 and 2012 when Employee sustained a hernia and underwent surgical repair. Employee filed claims seeking compensation and medical benefits on February 25 and March 28, 2019, which Employer controverted in the entirety. He is seeking compensation back to the work injury because he was never able to earn the wages he made at the time of the work injury afterwards. AS 23.30.185. Employee is seeking medical treatment from the work injury and continuing for various medical issues and symptoms, including a hernia and "lower organs," such as kidney, liver, prostate and gastrointestinal symptoms and appendicitis. AS 23.30.095(a). Employer contended its defense that both claims should be dismissed as time-barred under AS 23.30.105(a) and its petition should be heard and decided separately from the merits of Employee's claims and the claims should be dismissed as untimely.

AS 23.30.135 provides authority to bifurcate a hearing. Bifurcation is only appropriate when it is likely to further the goals of a summary and simple process, it is quick, efficient and fair at a reasonable cost, and it will properly protect the rights of all parties. AS 23.30.001(1); AS 23.30.005(h); AS 23.30.155(h). In the past an issue has been bifurcated when it is a potentially dispositive issue and the relevant law and facts were substantially independent of the other issues to be considered separately. *Nelson*.

Employer contends the entirely of Employee's claim can be dismissed as time-barred under AS 23.30.105(a). However, AS 23.30.105(a) bars only the "right to compensation for disability" unless a claim for disability is filed within two years after Employee had knowledge of the nature of his disability, its relation to his employment injury and after he became disabled. Therefore, the statute's plain language, only his claims for disability compensation may be barred and his claims for medical benefits cannot be dismissed as barred under AS 23.30.105(a). Consequently, bifurcating and dismissing Employee's compensation under AS 23.30.105(a) would not be dispositive of his entire claim.

Employee obtained medical treatment often since 2012 for various symptoms or conditions he contended were related to the work injury and he contended a brain MRI revealed something new that could not have been discovered before and recent gastrointestinal medical treatment showed the appendicitis was caused by the work injury. Under AS 23.20.105(a), Employee must have actual or chargeable knowledge of his disability and its relationship to employment to begin running the two year period. *Collins*. His medical claims may be revived with new treatment and his disability claims related to the new treatment could also revived. *Egemo*. If he is contending one of his injuries was latent, his education, intelligence and experience must be taken into consideration for a latent injury. *W.R. Grasle*. It seems he also argued his mental and psychological issues affected his ability to understand his rights under the Act and pursue them. *Adkins*. Thus, the evidence considered to determine when Employee knew his disability was work related would also be considered when deciding the merits of his medical claims and the relevant facts are not substantially independent of the other issues to be considered separately. *Nelson*. The timeliness of Employee's claims should not be bifurcated from the merits of his claims.

Employee's arguments and testimony at hearing were difficult to understand. He could not recall which work injuries he filed claims for or which benefits he requested on the claims and said he was not sure what he could claim. He also had difficulty remembering and articulating arguments he made during past prehearing conferences about the petitions he attempted to file and the division's rejection letters. Employee attempted to discuss his workers' compensation claim with his physician on May 13, 2019, but his physician was unable to understand what he needed to do and directed him to obtain directions. There is no record of Employee seeking such direction from the division. His mental health counselor noted he had limitations in his ability to concentrate on tasks, stay focused and remember facts and instructions. Employee is advised pursuant to *Richard* and *Bohlman* to obtain a medical opinion from his treating physician regarding issues relating to his claims, including causation, compensability, treatment, degree of impairment, and medical stability prior to a hearing on his claims.

Employee's testimony implied the three day delay in receiving medical treatment while aboard the Kennicott caused his tooth infection to spread to his nasal passages and eventually to his brain which caused brain damage. He contended the brain damage affected his cognitive abilities and delayed his knowledge of the work injuries relation to his employment. Employee seems to be contending he sustained nasal and brain damage due to a delay in medical treatment caused by his work. However, Employee did not clearly include his nasal and brain infection and brain damage on his current claims. Pursuant to *Richard* and *Bohlman*, Employee may file a claim seeking benefits for nasal and brain infection and brain damage if he is contending his work caused those injuries. He may contact the Workers' Compensation Division office for assistance filing a claim.

Because this decision declined to bifurcate the timeliness of Employee's claims from the merits of his claims, this decision will not address whether his claims should be dismissed as time-barred under AS 23.30.105(a).

CONCLUSIONS OF LAW

1) The timeliness of Employee's claims will not be bifurcated from the merits of his claims.

ORDER

1) Employer's June 5, 2019 petition to bifurcate the timeliness of Employee's claims from the merits is denied.

Dated in Juneau, Alaska on April 14, 2020.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Charles Collins, Member

PETITION FOR REVIEW

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of RUSSELL CROCKETT, employee / claimant v. STATE OF ALASKA, self-insured employer/defendants; Case No. 201119720; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by Certified U.S. Mail, postage prepaid, on April 14, 2020.

/s/
Dani Byers, WC Officer II