ALASKA WORKERS' COMPENSATION BOARD

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

ROBERT A. WOOLF,	)	
	)	
Employee,	)	
Claimant,	)	
	)	FINAL DECISION AND ORDER
v.	)	
	)	AWCB Case No. 201702574
BERING STRAIT SCHOOL DISTRICT,	)	
	)	AWCB Decision No. 20-0031
Employer,	)	
and	)	Filed with AWCB Juneau, Alaska
	)	On May 15, 2020
APEI,	)	
	)	
Insurer,	)	
Defendants.	)	
	)	

Robert A. Woolf's (Employee) April 10, 2017 claim and June 5, 2017 amended claim were heard on April 7, 2020 in Juneau, Alaska, a date selected on February 6, 2020. A January 14, 2020 affidavit of readiness for hearing gave rise to this hearing. Employee appeared and represented himself. Attorney Colby Smith appeared and represented Bering Strait School District (BSSD) and APEI (Employer). Witnesses included Ward Walker who testified for Employee. As preliminary issues, oral orders overruled Employer's objection to Ward Walker's testimony and excluded Rebecca Wurmstein's, FNP-C, August 10, 2017 response. This decision addresses the oral orders and Employee's claim and amended claim on the merits. The record closed at the hearing's conclusion on April 7, 2020.

<u>ISSUES</u>

Employee contended FNP-C Wurmstein's August 10, 2017 letter were not admissible as a business or medical record over his objection because it was hearsay and prepared for litigation. He contended the response was prompted by a letter from counsel because Employer's attorney sent an *ex parte* letter asking for her opinion and pressured her into responding. Employee contended her August 10, 2017 response contradicts her opinion from December 2016. He contends the response should not be considered.

Employer contended FNP-C Wurmstein's August 10, 2017 response was admissible because it was a medical opinion provided by Employee's treating physician. An oral order granted Employee's request to exclude the August 10, 2017 response.

1) Was the oral order excluding FNP-C Wurmstein's August 10, 2017 response correct?

Employer objected to testimony from Mr. Walker. It contended Employee intended Mr. Walker to serve as expert witness but it never received medical records or treatment notes from Mr. Walker. Employer also contended no referral to Mr. Walker had been made and any testimony would be a surprise. It contended Employee is not allowed to hire his own independent medical evaluation expert. Employer requested Mr. Walker's testimony be quashed.

Employee contended Mr. Walker was a direct witness of the work injury because Employee they are friends and they discussed his work injury and Mr. Walker experienced a similarly stressful situation while working for the BSSD. He contended Mr. Walker could be considered an expert because he has a master's in teaching, he worked in the BSSD and he is a licensed mental health clinician. An oral order overruled Employer's objection to Mr. Walker's testimony.

2) Was the oral order overruling Employer's objection to Mr. Walker's testimony correct?

Employee contends work stress is the substantial cause of his disability and need medical treatment. He requests an order awarding temporary total disability (TTD) benefits from December 22, 2016 to the present and continuing medical treatment.

Employer contends the work injury temporarily aggravated his chronic preexisting conditions and he reached medical stability on December 21, 2016. It requests an order denying Employee's claims for TTD benefits from December 22, 2016 to the present and continuing medical treatment.

3) Is Employee entitled to TTD and medical benefits after December 21, 2016?

Employee contends Employer's controversions should be found to be unfair or frivolous.

Employer contends its controversions were based on credible factual evidence so are not unfair or frivolous.

4) Did Employer unfairly or frivolously controvert benefits?

Employee seeks legal interest on past due benefits.

Employer contends Employee is not entitled to interest since no benefits are due.

5) Is Employee entitled to penalty and interest?

FINDINGS OF FACT

The following facts are reiterated from *Woolf v. Bering Strait School District*, AWCB Decision No. 19-0080 (August 2, 2019) (*Woolf I*), and *Woolf v. Bering Strait School District*, AWCB Decision No. 19-0136 (December 24, 2019) (*Woolf II*) are undisputed or are established by a preponderance of the evidence:

1) On January 29, 2014, Employee reported on a history questionnaire he had borderline high blood pressure sometimes when he was stressed. (Adult History Questionnaire, January 29, 2014). He had been taking his blood pressure at home and his values ranged from normal to 140s/80s. Employee's blood pressure was 144/90. He was assessed with hypertension but held off prescription medication to work on lifestyle changes, including weight loss, lower salt in his diet and monitoring his blood pressure. (Nandi Than, M.D., chart note, January 29, 2019).

2) On May 23, 2014, Employee's blood pressure was 158/88. Dr. Than noted his hypertension was improved since the last visit and his systolic value decreased by 20 points. Employee's

losartan/ hydrochlorothiazide 50/12.5 was increased to one full pill daily. (Than chart note, May 23, 2014).

3) On April 29, 2015, Employee's prescription medications included losartan/hydrochlorothiazide 50/12/5 mg once daily. His blood pressure was 176/106 because he ran out of medication. Employee's blood pressure was average normally. (Than chart note, April 29, 2015).

4) On May 23, 2016, Employee's blood pressure was 144/98. He reported an episode of lightheadedness and feeling faint. Employee was assessed with elevated hypertension and advised to monitor his blood pressure. He was working on weight loss and lifestyle changes and treating sleep apnea to help lower his blood pressure. (Than chart note, May 23, 2016).

5) On October 24, 2016, at 11:35 a.m., Employee emailed Principal Roxanne Meneguin and Dawn Hendrickson about a math student in his Geometry class stating he found out the student did not take Algebra I. He recommended placing the student in the Algebra course instead of continuing with Geometry. Ms. Hendrickson replied at 11:35 and said Frank Stanek taught Algebra last year. Ms. Hendrickson emailed Mr. Stanek at 12:31 p.m. and told him that Employee wanted to know if the student took Algebra. At 12:32 p.m. Principal Meneguin replied to Employee informing him he must teach from the math curriculum, "there is no choice on this," all of the high school students had Algebra and Employee must get the "aimsweb" done. At 1:30 p.m. Mr. Stanek replied to Ms. Hendrickson the student was in Algebra according to the schedule and this year the student should be in Geometry. Ms. Hendrickson forwarded Mr. Stanek's response to Employee at 1:41 p.m. At 4:45 p.m. Employee thanked Mr. Stanek for his reply, described the problems the student was having and asked which book was used last year. Mr. Stanek replied at 5:04 p.m. that two students, including the student at issue, should never have been put in Algebra. However, one would always tell him he did not know how to do math problems to get something easy. Two years prior to his being there the students lacked any solid instruction but, "Don't let them play you." At 5:12 p.m. Employee replied to Principal Meneguin's 12:32 p.m. email and cc'd Ms. Hendrickson and said he knows about the "AimWeb" and would continue to do it as directed by Ms. Hendrickson. He said he would do his best he can with the student and was keeping to the textbook. Employee asked for flash cards for addition, subtraction, multiplication and division for a student because the student did not know basic math. At 5:22 p.m. Employee replied to Mr. Stanek and said one student lacked confidence and

he was trying to encourage him. But he did not want to frustrate the student with stuff the student found difficult because of his previous foundation. The other two students were placed in Algebra before they were ready and that was not fair. Employee wondered whether the district guidelines to keep them in grade level work was good for them and said, "[w]e wonder why the suicide rate is so high. . . ." At 5:26 p.m. Employee forwarded Mr. Stanek's response to Principal Meneguin and Ms. Hendrickson stating he would do what he can and said, "Sure, the district wants the kids in grade-level courses, but that does NOT mean that they are ready for them." (Emails, October 24, 2016).

6) On October 29, 2016, Employee emailed Principal Meneguin, and cc'd Ms. Hendrickson, and Karen Beranek he would be extending his middle school math class 15 minutes to 75 minutes total instruction time and reduce his science class to 39 minutes of instruction as she suggested. He discussed rearranging his math classroom so the sixth graders were together as they were working in the green textbook and the seventh and eighth graders were together as they were working in the red textbook. Employee really wished the students were placed in textbooks based upon their ability level. (Email, October 29, 2016). Ms. Beranek replied and asked if Employee wanted her to forward the email to James Martin, the Math Facilitator. (Email, October 29, 2016). Employee responded "no" because Mr. Martin would be coming to the school and he just wanted her to be aware of the cut in science class instruction time. (Email, October 29, 2016). Ms. Beranek asked Employee if he had been up in the attic because there were supplies up there. (Email, October 29, 2016).

7) On October 31, 2016, Employee responded to Ms. Beranek's October 29, 2016 email and said he would go up to the attic. He asked if there was a way to get keys to the equipment and materials in locked cabinets in his classroom and if there were climate change curriculum materials. (Email, October 31, 2016).

8) On November 4, 2016, Ms. Beranek replied to Employee's October 31, 2016 email and referred him to the ACMP Arctic Climate Modeling Program and gave him a link. She also told him, "We are currently in partnership with UAF and the REACH UP grant." (Email, November 4, 2016). Employee replied that program was the one he meant and thanked her for sending the materials. (Email, November 4, 2016). Ms. Beranek suggested Employee get involved with REACH UP. (Email, November 4, 2016). Employee replied he wanted to be involved. (Email, November 4, 2016).

9) On November 6, 2016, Employee emailed Director Gerald Pickner informing him most of his students were not able to do the class work in their math textbooks without a lot of one-on-one instruction which was impossible to provide. He discussed Mr. Stanek's emails and said that his Geometry students did not have a solid background in algebra. Employee said the district's policy of placing students in the grade level class with the required curriculum pacing was not working. Placing the eighth graders in the same math book as the seventh grades helped but his aide did not know some of the math. Employee hoped Director Pickner could get a middle school specialist for the students next year and that he was more capable of meeting their needs. Mr. Martin was in his class a few days earlier and a student brought up black holes which led to a discussion of how Albert Einstein's mathematical theory of general relativity had predicted black holes before they were discovered. After the class, Mr. Martin told Employee he should not have allowed the student to divert from classroom instruction. He was dumbfounded because he had asked Mr. Martin to model a lesson for his Geometry class and he did not show up. Employee told Mr. Martin he wanted him to experience teaching the lesson so he could see himself the textbook was not suitable for students. Mr. Martin became angry and walked out of his classroom and left the village without speaking with Employee. Employee expressed additional concerns regarding statements Principal Meneguin and her husband made about village residents and subsistence rights. (Email, November 6, 2016).

10) On November 6, 2016, Employee emailed Principal Meneguin and asked if he could tutor a student. (Email, November 6, 2016). Principal Meneguin replied and said he could tutor students after school as she told him repeatedly. (Email, November 6, 2016).

11) On November 7, 2016, Employee emailed Ms. Beranek, asking if there were materials addressing the net primary productivity of the open ocean, coastal zones and upwelling. (Email, 7, 2016). Ms. Beranek replied and said, "Please follow the curriculum for Life Science for Middle School and High School" and provided a link to the curriculum. (Email, November 7, 2016). Employee replied, "I hear you loud and clear. I won't include the local ecology and how it is important for the people of this village and region." He thanked her for sending him the curriculum which had not been provided previously. Employee asked to change the order of the curriculum. (Email, November 7, 2016). Ms. Beranek said he can modify the sequence and extension of the district approved scope and sequence, "just don't co-opt it for your own agenda, please." (Email, November 7, 2016).

12) On November 8, 2016, Employee emailed Director Pickner, and cc'd Principal Meneguin, Ms. Hendrickson and his personal email account, stating he would willingly resign before the end of the school year if Director Pickner could find a replacement because he was not doing well teaching there. He would do what he can reasonably do within the constraints of his health to stay as long as they needed him until the end of the school year. Employee had not been successful teaching math or science. Yesterday he gave his math students a pre-course test which tests their knowledge material from earlier courses to determine what needed to be reviewed. Three out of four sixth graders stayed focused and completed many of the problems. The seventh and eighth graders had behavior problems and none of them focused on the test. They were largely out of control, even with the new aide, and when Principal Meneguin came in they were better behaved but would not complete the test. Principal Meneguin was asked to help with a student but the student would not move seats or work on the test so the student was removed from the room and a parent was called. When the student returned to the room, the student did not do much on the test. Of the little work they did, most of the seventh and eighth graders did not demonstrate much knowledge of math concepts or skills needed to do the problems. Principal Meneguin kept telling him that the students can do the work, implying they are faking a lack of knowledge and skill. Employee was supposed to be using a pacing guide but he believed the students lacked the proper math foundation for him to teach at the required pace after working one-on-one with the students. He did not believe the math program was suitable for the students' needs or maybe he was not competent enough to implement the program. Employee was not able to control their behavior. He shared statements made by Mr. Stanek in emails and said it was a travesty to place his high school students in a Geometry class "far, bar beyond" the students' capability. (Email, November 8, 2016).

13) On November 9, 2016, Mr. Pickner replied to Employee's email, cc's Carolyn Heflin, and directed him to discuss curriculum or student ability matters with Ms. Heflin who was the Director of Curriculum. If Employee was incapable of meeting the needs of his contract, Mr. Pickner told Employee to let him know. (Email, November 9, 2016). Employee replied the problem was the students were placed in math courses for which they are not prepared because Algebra is a prerequisite for Geometry. He felt qualified to teach math and Mr. Pickner's threat to take legal action against him because he misrepresented himself as a math teacher was an insult and caused Employee and his wife to ask he find replacements as soon as possible.

(Email, November 9, 2016). Mr. Pickner replied and said he never intended to threaten Employee; he had taken Employee's emails to state he felt like he could not teach the math coursework. He appreciated Employee's situation with student abilities and suggested talking with Ms. Heflin before deciding to follow "the darker road of leaving your position." (Email, November 9, 2016). Ms. Heflin emailed Employee that she preferred to speak to teachers in person rather than by emails. (Email, November 9, 2016). Employee replied he preferred archived information because Mr. Martin's communications with him were not documented in writing and he was uncomfortable continuing without a written record. (Email, November 9, 2016).

14) On November 9, 2016, Employee emailed Principal Meneguin, and cc'd Director Pickner, and thanked Principal Meneguin for visiting his Geometry class the day before and providing him support in urging a student to try doing the assigned work. He said the student had mostly shut down in part because the student did not have the skills or knowledge to do the required school work. Employee noted the student had other issues and was concerned frustration in math class contributed to the student's worsening sense of self-worth. He said the student seemed to manifest some of the symptoms he observed in other students who had committed suicide in the past. (Emails, November 9, 2016).

15) On November 10, 2016, Ms. Heflin stated she would like to speak with him the next day as "Often issues [are] better addressed through collaborative conversations than through emails." (Email, November 10, 2016).

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

17) On November 10, 2016, Employee emailed Director Pickner, Ms. Heflin and his personal email account and said he had just received the reprimand from Principal Meneguin. He offered to leave his position right away, even tomorrow, but asked for two weeks to box up his personal items and mail them. (Email, November 10, 2016).

18) On November 11, 2016, Employee emailed Director Pickner and cc'd Ms. Heflin and his personal email account and requested an independent investigation of the student wrongfully paced in the Geometry class because the student was special needs and possibly severely emotionally disturbed. Two weeks earlier, he had reported the student to the school counselor

for possible suicide indicators. A day prior, Employee found out the student should have been placed in Pre-Algebra and the student's placement in Geometry caused extreme frustration and behavior, which was the basis for Principal Meneguin's reprimand. Principal Meneguin told him she would try to get the student removed from the school but the student's grandmother was a problem. Employee vacated his offer to resign and requested an official copy of the negotiated agreement, for a union representative to help with his formal written reply to Principal Meneguin's reprimand and for a copy of his personnel record. (Email, November 11, 2016).

19) On November 11, 2016, Employee sent an email entitled, "on sick leave today" to Principal Meneguin, and cc'd Director Pickner and Ms. Heflin. He had a serious episode of dizziness after Principal Meneguin confronted him in his classroom with the reprimand. Employee had not slept much the night before and for the last three weeks after he became aware the students were wrongfully placed in math classes, he struggled to help Principal Meneguin recognize that fact and attempted to pace the math class consistent with their math capabilities and the students acted out because of their frustration. He still felt dizzy that morning and his blood pressure was significantly higher than when he first arrived. Employee provided lesson plans for a substitute teacher. (Email, November 11, 2016).

20) On November 11, 2016, Ms. Hendrickson emailed Employee and cc'd Principal Meneguin and said she entered all of his AimsWeb scores for him because they were due that day and finished giving the assessment to students who still needed to complete them. (Email, November 11, 2016).

21) On November 12, 2016, Employee thanked Ms. Hendrickson. He was at the school and had spent 45 minutes looking for the tests so he could score and enter them. (Email, November 12, 2016).

22) On November 12, 2016, Employee emailed OCS and cc'd the Commissioner of the DEED and his personal email account, and stated he was sending the email as a mandated reporter. He said Principal Meneguin abused a student in his Geometry class when she yelled at the student and kicked the student out of school for not doing required class work even though he had informed her that the student did not have the foundational skills to do the required work. Employee believed the student was severely emotionally disturbed with special needs and had a difficult family life and the abuse could easily cause the student to commit suicide. Ms. Heflin

and Mr. Pickner did not adequately respond to his concerns about the student. (Email, November 12, 2016).

23) On November 12, 2016, Employee emailed the Commissioner of the DEED, and cc'd his personal email account, and requested a separate investigation into the questionable circumstances of the math program for seventh through twelfth grades in Wales because he believed a majority of his students cannot successfully complete the work required in the mandated math courses at the pace required based on their assessment results. He said the principal told him the students were faking so they would not have to work hard but he worked with the students and knew for certain almost all of them did not have the background skills necessary to be successful using the mandated textbooks at the required pace. The math curriculum specialist and director were worse than nonresponsive. The vocational specialist told him other villages were having similar problems with the math program but were afraid to speak up and Director Pickner cautioned the vocational specialist not to speak with Employee. (Email, November 12, 2016).

24) On November 12, 2016, Employee emailed Director Pickner, Ms. Heflin and his personal email account a response to Principal Meneguin's reprimand. He contended Principal Meneguin was retaliating against him because he advocated for and protected a student from her aggressive reprimand for the student's failure to complete assigned work. Employee already informed Principal Meneguin the student had no background in Algebra, which was a prerequisite for the class, and all class work was out of the student's ability level. Employee discussed the incident with legal counsel and was informed he witnessed child abuse against his student by Principal Meneguin and he was required to report it because he was a mandated reporter. He said he filed a report with the Alaska Office of Children's Services (OCS) and copied the Commissioner of the Alaska Department of Education and Early Development (DEED). Employee said he would respond to the formal reprimand but must first request details to support her accusations. His blood pressure was still too high and dealing with all of the legal implications caused him a great deal of anxiety. Employee needed to be careful to not get too stressed out and must return to the clinic on Monday for blood samples they were unable to draw the day before after three attempts. He said the school was a very hostile and unsafe work environment. Employee said he could not resign until the formal reprimand was resolved fairly and he was worried it would get tenser at school because of the OCS report. (Email, November 12, 2016).

25) On November 13, 2016, Employee responded to the reprimand contending it was overly broad without any details regarding the allegations. (*Woolf I*).

26) On November 13, 2016, Employee emailed Principal Meneguin, Director Pickner and Ms. Heflin advising his blood pressure remained high and he would not be in class tomorrow because it was dangerously high and because he needed to go to the clinic for a blood draw and to adjust his medication. When he went to his classroom the day before, he found many papers missing, including student work he was using for assessment, printed lesson plans from previous weeks with handwritten notes, other handwritten notes for planned lessons and personal documents he used to plan lessons. He suggested lesson plans for his classes. Employee explained the top student in his Geometry class scored only 11.5 out of 88 on the first assessment tool in the text book and the rest of his class, except one absent student, tested lower and he hoped that information was used to determine what was best for his students. He emailed Ms. Beranek about materials in the science classes and he received back from her a curriculum for those classes, which he had not been informed existed as he had only been provided a page number in the textbooks the students had completed and told he was to continue from that point. One requirement in the curriculum was to teach from an Earth Science textbook but he could only find one copy and Principal Meneguin said she would look for other copies but he had not heard back. He drafted new lesson plans in handwriting but those documents were missing. Employee was also missing the sixth through eighth grade assessments, so he asked that the students be assessed again. The classroom was only 58 degrees after using a space heater and it was too cold to continue working on the email. (Emails, November 13, 2016).

27) On November 13, 2016, Director Pickner emailed Employee and cc'd Ms. Heflin and Principal Meneguin and said he was sorry to hear about Employee's health issue and he would be returning to Unalakleet and felt a face-to-face meeting among all parties was needed. (Email, November 13, 2016). Employee stated his blood pressure was still high and he was following up with the clinic about his medication. When he went to his classroom the day before, he found many papers missing, including student work he was using for assessment, printed lesson plans from previous weeks with handwritten notes, other handwritten notes for planned lessons and personal documents he used to plan lessons. The thermostat in the room read 52 degrees and he was unable to stay for long due to the temperature. (Email, November 13, 2016).

28) On November 14, 2016, Employee sent an email entitled "continuing medical leave" to Principal Meneguin, Director Pickner, Ms. Heflin and Sandra King, the Bering Strait Education Association (BSEA) president, stating he had high blood pressure that day at the Wales Clinic and it was determined to be a consequence of the stress associated with what was happening at the school. Until his blood pressure was under control, he was advised not to teach and to be careful with the work he did to address the formal reprimand. (Email, November 14, 2016).

29) On November 15, 2015, Employee emailed Principal Meneguin and Director Pickner and said he had not received his blood test results or new prescription for his blood pressure. He was still avoiding stress as directed the day before when his blood pressure measured 164/104. (Email, November 15, 2015). Director Pickner replied to Employee that he was sorry to hear about Employee's ongoing blood pressure issues. He believed a meeting the next day with Employee and Ms. Heflin would go a long way to resolve Employee's concerns and reduce his stress level. (Email, November 15, 2016).

30) On November 16, 2016, Director Pickner emailed Employee's personal email account at 11:34 a.m. and said he hoped to meet with him that day and Ms. Heflin was happy to meet with him as well about his concerns. (Email, November 16, 2016). Director Pickner forwarded the email to Ms. Sleeper and cc'd Superintendent Robert Bolen at 6:24 p.m. and stated Employee had not responded. (Email, November 16, 2016).

31) On November 17, 2016, Employee wrote a handwritten letter to Principal Meneguin stating he would not be able to teach that day because he was told to avoid stressful situations. (Employee letter, November 17, 2016).

32) On November 18, 2016, Superintendent Bolen wrote a letter to Employee explaining he received communications between Director Pickner and Employee containing his request to be relieved of his teaching position as soon as a replacement could be found. Superintendent Bolen offered to transfer Employee to another position teaching eighth- through twelfth-grade science at another school to expedite his wishes and "assist in your returning to good health." The school district also remained willing to release him from his teacher contract, subject to an appropriate mutual release of claims. (*Woolf II*).

33) On November 19, 2016, Employee replied to Director Pickner's November 16, 2016 email using his personal email account and said he did not get the email until just now because he did not have email at his apartment. He was working on a reply to Superintendent's November 19,

2016 letter which caused his blood pressure to get bad again. Employee hoped his blood pressure stabilized soon. (Email, November 19, 2016).

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

35) On November 22, 2016, Employee sent an email entitled "continued medical leave" to Principal Meneguin, Director Pickner and to his personal email account stating his blood pressure medication change was not adequate. He was prescribed another medication and until this or other interventions were successful in treating his situational high blood pressure, it was dangerous for him to teach. (Email, November 22, 2016).

36) On November 23, 2016, Employee emailed Superintendent Bolen, and cc'd his personal email account and Ms. King, a letter in response to Superintendent Bolen's November 18, 2016 letter, a November 9, 2016 letter addressed to his aid with instruction for the middle school math class, a document entitled, "Recommendations to BSSD Regional Board" and three pictures. (Email, November 23, 2016).

37) On November 27, 2016, Employee emailed Principal Meneguin and cc'd Director Pickner and his personal email account and said stress-induced health problems still prevented him from teaching as the new medication was not working and he was going back to the clinic tomorrow. He said the stress he was experiencing was caused by the wrongful disciplinary action Principal Meneguin took on November 10, 2016. (Email, November 27, 2019).

38) On November 27, 2016, Employee emailed Principal Meneguin, Superintendent Bolen, Director Pickner, Ms. King, and cc'd his personal email account, a document entitled, "Level One Formal Grievance from [Employee]" with two supporting documents. (Email, November 27, 2016).

39) On November 27, 2016, Employee emailed Bruce Downes at OCS from his personal email account and cc'd Superintendent Bolen and said a parent of a student at a different school told him Principal Meneguin treated the student abusively and the parent had other problems with Principal Meneguin's role. The parent was willing to speak with OCS and he provided the parent's telephone number. (Email, November 27, 2016).

40) On November 28, 2016 Employee replied to Mr. Vink, Ms. Sleeper, Superintendent Bolen, Director Pickner, Principal Meneguin and Employee's personal email account and said that he had another appointment at the clinic tomorrow so he would request the required written statement. (Email, November 28, 2016).

41) On November 28, 2016, Principal Meneguin informed Employee's wife her services as a substitute teacher for Employer were no longer needed and she would call when she needed her services. (*Woolf II*).

42) On November 28, 2016, Employee emailed Superintendent Bolen and Director Pickner, and cc'd Alaska Wage and Hour, his personal email account and Ms. King, about Principal Meneguin's firing of his wife that morning. His wife had not received most of the salary owed to her as she was paid 45 hours of full-time work but 212 hours were still owed. Employee asked Director Pickner if his wife was fired on his orders. (Email, November 28, 2016).

43) On November 28, 2016, Mr. Vink, the Business Manager, emailed Employee, and cc'd Ms. Sleeper, Superintendent Bolen, Director Pickner, Principal Meneguin and Employee's personal email account, requesting he provide a written statement from his attending physician certifying his need for more than three consecutive days of leave per the negotiated agreement. All of Employee's absences on November 11, 14-18, 21-23 and 28 were unapproved as of this time. (Email, November 28, 2016).

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

45) On November 30, 2016, Employee emailed Principal Meneguin, Superintendent Bolen, Director Pickner and Ms. King, and cc's his personal email account a substitute grievance. (Email, November 30, 2016).

46) On November 30, 2016, Michael Isom, Ed. D., the school counselor, emailed Principal Meneguin that he spoke with Employee on November 29, 2016 for almost 30 minutes. Employee asked if was appropriate for students in ninth through twelfth grade to be placed into Geometry because he believed the students were not prepared because they did not have proper algebra foundation. Dr. Isom explained Employee should bring questions about curriculum to Principal Meneguin and the curriculum director and that demonstrating proficiency levels would help bolster his assertions. Employee said he contacted Ms. Heflin but she was out of state and wanted to meet with him upon her return and he requested Ms. Heflin email so there would be a record. Employee brought up conversations between him and Chase Ervin about the students' lack of math skills. Dr. Isom told Employee the discussion was irrelevant and it was his responsibility to teach within the curriculum and work with students to bring them up to standards. Employee made statements about his OCS report, his wife's employment agreement and termination and Mr. Stanek's emails. Dr. Isom did not address any of those issues. The only thing he addressed was Employee's lack of professionalism and the impact on the students as a direct result of him failing to meet is professional obligation because teachers have an ethical responsibility not to abandon students regardless of what transpired in the workplace. Employee rebutted that he was unable to teach students based on what he believed was correct and Principal Meneguin would force him to do what he was unwilling to the point his blood pressure would become elevated. (Email, November 30, 2016).

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

48) On December 1, 2016, Ms. Heflin emailed Superintendent Bolen and said she spoke with Principal Meneguin. Principal Meneguin said Employee did not tell her he was reporting to OCS as Employee stated in communications on November 30, 2016. Ms. Heflin reviewed Employee's emails and discovered conflicting statements about the OCS filing. In his November 12, 2016 email, Employee said he filed the OCS report after he received the written reprimand on November 11, 2016, and that he contacted counsel the same day as the incident and legal

counsel advised him he witnessed child abuse and that he was a mandated reporter. (Email, December 1, 2016).

49) On December 2, 2016, Superintendent Bolen emailed Mr. Vink, Principal Meneguin, and cc'd Director Pickner and Tera Cunningham, asking if Employee returned to work and if he had submitted a leave request and a certification slip from the clinic. (Email, December 2, 2016).

50) On December 2, 2016, Superintendent Bolen emailed Ms. Sleeper and cc'd Director Pickner, Mr. Vink, Principal Meneguin and Saul Friedman, and stated, Employee had not submitted for sick days or leave without pay, "He only tells us he can't work," and he has "not communicated with Roxy Meneguin since abandoning his job on November 10, 2016." (Email, December 2, 2016).

51) On December 2, 2016, Mr. Stanek emailed Ms. Heflin and attached correspondence between Employee and Mr. Stanek. He wanted to clarify that when he said the students should not have been put in Algebra he meant they were having difficulties with general math skills before entering the class but he taught them Algebra at the level for which they were ready. Mr. Stanek clarified that when he said the students lacked any solid instruction for two years prior to his time teaching, he meant that the students stayed up all night and were not working up to their capabilities, which was addressed repeatedly with parents. Ms. Heflin forwarded the email to Superintendent Bolen and Director Pickner on December 2, 2016. (Emails, December 2, 2016).

52) On December 3, 2016, Employee emailed Jim Seitz, the executive director of the Alaska Professional Teaching Practices Commission (PTPC), and cc'd Ms. King, Hedy Eischeid from the National Education Association Alaska, Paul Sharaba and Justin Woolf-Sullivan, with a Code of Ethics and Teaching Standards Complaint and Request for Investigation against Principal Meneguin and Superintendent Bolen. (Email, December 3, 2016).

53) On December 4, 2016, Ms. King emailed Superintendent Bolen and Ms. Heflin and said, "This is the email I received yesterday. He has not waited to hear back from BSEA about anything, this came as I was still discussing options with Hedy and the rights committee chair." (Email, December 4, 2016).

54) On December 7, 2016, Ms. Heflin emailed Ms. Sleeper and cc'd Superintendent Bolen. Because Employee had not entered any grades for his sixth through twelfth grade math or science students, she required legal assistance. Ms. Heflin was concerned about crafting a comment on students' report cards about not receiving a quarter two grade and credit given to

high school students for the semester, especially for the students with a failing quarter one grade. (Email, December 7, 2016).

55) On December 7, 2016, Employee emailed Superintendent Bolen and cc'd Justin Woolf-Sullivan and Ms. King from his personal email account regarding being cut off from the internet at the school and having limited access to the internet at the Wales tribal government office which was interfering with his communication with the BSEA about his formal grievance. (Email, December 7, 2016).

56) On December 7, 2016, Superintendent Bolen emailed Ms. Heflin two letters to deliver to Employee. (Email, December 7, 2016).

57) On December 8, 2016, Ms. Heflin delivered two letters from Superintendent Bolen stating Employee was on unauthorized leave since November 11, 2016, and a written "Notice of Proposed Dismissal and Pretermination Hearing." Employee was notified of his proposed dismissal from employment and a pretermination hearing scheduled on December 15, 2016 for incompetency, substantial noncompliance with the school laws, regulations or bylaws of the department, bylaws of the district or the written rules of the superintendent and breach of his employment contract. His absence was unapproved because he failed to provide a written statement from an attending physician documenting his need for his use of sick leave. Employee was prohibited from accessing school district facilities, grounds or equipment, including the network, without advanced written approval of the site administrator. Any access would constitute trespass and the district would take appropriate legal action. The restriction did not apply to his district housing. Employee was directed to immediately turn in his keys and any district equipment in his possession, including a lap-top. Employee signed a document acknowledging he received two letters from Superintendent Bolen from Ms. Heflin and turned in his district keys and computer to her on December 8, 2016. Below that he initiated a statement agreeing he would give the school computer to the tribal president. (*Woolf II*).

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

59) On December 9, 2016, Ms. Heflin emailed Superintendent Bolen and Ms. Sleeper asking the education technology department to suspend Employee's access to his teacher email account and other district accounts until a decision was made after the hearing the following week. Employee

retained his computer and Principal Meneguin confirmed the password to access the internet at the school was changed. (Email, December 9, 2016).

60) On December 9, 2016, Employee emailed from his personal email account the December 1, 2016 letter FNPP-C Wurmstein about his leave to Superintendent Bolen, and cc'd Ms. King and the BSEA rights committee. He went to the clinic to get the copy on this date and he had been going there every day or two to get it which he believed was due diligence. Employee stated he was wrongfully deprived access to evidence when he was cut off from his teacher email account and the internet when he was working to complete a formal grievance process and prepare for the dismissal hearing. (Email, December 9, 2016).

61) On December 9, 2016, Superintendent Bolen wrote a letter to Employee stating his refusal to immediately return the district-issued lap-top to Ms. Heflin yesterday when she gave the December 8, 2016 letter to him constituted insubordination and conversion, constituted additional causes for his proposed dismissal and would be added to the "Bill of Particulars" provided on December 8, 2016. Superintendent Bolen directed Employee to immediately return the lap-top to the site administrator. (*Woolf II*).

62) On December 9, 2016, Employee emailed Superintendent Bolen, and cc'd Ms. King from his personal email account. He had just received the December 9, 2016 letter which claimed he was being insubordinate because he did not give the district-issued lap-top to Ms. Heflin when she came to his apartment the day before. He asked Ms. Heflin if he could have time to copy files from the lap-top and erase anything personal. Ms. Heflin said she had to catch a plane so Employee asked if he could return it to Anna Oxereok, the president of the Wales tribal government. Ms. Heflin agreed and wrote something on the form and he initialed it without reading it. Employee brought the computer to Ms. Oxereok within an hour. He had just called Ms. Oxereok and she said she still had the computer but did not feel comfortable going to Principal Meneguin's home or to the school to drop it off; Principal Meneguin could pick up the computer at the clinic. (Email, December 9, 2016).

63) On December 9, 2016, Superintendent Bolen emailed Principal Meneguin, cc'd Ms. Heflin and Ms. Sleeper, and said Employee's lap-top was with Ms. Oxereok at the clinic. He requested it be picked up and to let him know when she had it. (Email, December 9, 2016).

64) On December 10, 2016, the BSEA rights committee emailed Principal Meneguin a grievance letter. Ms. King emailed Superintendent Bolen, Ms. Heflin and Director Pickner a copy of the grievance. (Emails, December 10, 2016).

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

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

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

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

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

69) On January 4, 2017, Ms. Hendrickson emailed Principal Meneguin, Superintendent Bolen and EdTech and advised Employee he needed a couple hours to archive items; she asked what should she should do and if anyone needed to call and tell him exactly what he was to do. (Email, January 4, 2017).

70) On January 4, 2017, Ms. Hendrickson emailed Principal Meneguin, Superintendent Bolen and EdTech stating Employee was done and left at 12:25 p.m. (Email, January 4, 2017).

71) On January 18, 2017, Employee's employment was terminated by the school district for incompetency, substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent, and breach of his contract of employment. (*Woolf I*). Employee was notified the school district decided not to offer him a teaching contract for the next school year in the event he challenged his dismissal and the dismissal was overturned. Employee was also notified his tenancy at district housing was terminated and he must vacate his housing unit on or before January 28, 2017. (*Woolf II*).

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

73) On February 8, 2017, Employer reported Employee notified it on January 31, 2017 that he had "stress and high blood pressure from work." (*Id.*).

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

75) On April 10, 2017, Employee claimed temporary TTD benefits, medical costs, penalty for late paid compensation, interest and a finding of unfair or frivolous controversion. He described the nature of the injury as, "I experienced dangerously high blood pressure initiated by a hostile and chaotic work environment for which I had to take action to protect my students from an abusive principle who had placed my students into courses for which they did not have the pre-

requisite skills." The reason for his claim stated Employer denied medical services and lost wages. (Claim for Workers' Compensation Benefits, April 10, 2017).

76) On April 27, 2017, Employer denied all benefits contending it received no medical documentation work-stress was the cause of any mental injury and that Employee was not entitled to benefits for any mental injury arising out of his termination because it was taken in good faith by Employer. (*Woolf II*).

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

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

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

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

81) On August 10, 2017, FNP-C Wurmstein responded to an *ex parte* letter from Employer's attorney asking her if Employee was capable of returning to work on December 21, 2016. She responded, "He was medically cleared at this time." When asked to opine if Employee was medically stable as of December 21, 2016, FNP-C Wurmstein replied, "He was medically cleared at this time." (*Id.*).

82) On September 14, 2017, Employer filed FNP-C Wurmstein's August 10, 2017 response. (Medical Summary, September 14, 2017).

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

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

85) On December 5, 2017, Mr. Walker emailed Employee the following:

> I've been doing some thinking lately. First, I had a fifth grader in one of my schools who threw an apple at his teacher and then he was suspended for ten days. They wanted me to get involved. It turns out that he was doing a worksheet where he was being asked to multiple two three digit decimal numbers. A quick improvised test showed that he was still counting on his fingers and did not know his times tables. He did not understand the algorithm for multiplication of two digit numbers, did not know what a fraction was or a decimal was. No wonder he was frustrated. I told them he needed instruction at his instructional level. Evidently this means for them giving him the grade level work and then "offering supports"-- there was "no evidence that giving students below grade level work would lead to success." The principal assured me that he would receive differentiated instruction--they are also very much against having someone identified as SPED -- it confirms exactly what you found. . . . (Email, December 5, 2017).

86) On January 30, 2018, Employee filed a petition seeking to add a mental injury to his high blood pressure injury. (Petition, January 30, 2018).

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

employment. She recommended treatment to help Employee "manage his stress in the context of his chronic conditions" but there are no work restrictions as result of his employment. (*Woolf I*).

88) On May 8, 2018, Employer reported it paid Employee TTD from November 30, 2016 through December 21, 2016. (Second Report of Injury, May 8, 2018).

89) On May 30, 2018, Employer denied TTD, temporary partial disability (TPD), PPI benefits, medical costs and reemployment benefits based upon Dr. Handcock's EME report. (*Woolf II*).

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

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

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

93) On February 22, 2019, Employee requested an SIME. (*Id.*).

94) On March 11, 2019, Employee requested an extension of the time to request a hearing. He contended his work injury prevented him from returning to work and he relied on his wife's

income. Employee contended he had to move from Juneau, Alaska to Illinois for his wife's work as a minister and it would have been very difficult from him to pursue his workers' compensation claim while forming new relations as a pastor's spouse. He contended he waited until they had settled in Illinois and after he received professional therapeutic support before he returned to working on his claim. Employee claims working on his claim re-traumatized him. (*Woolf I*).

95) On March 20, 2019, Employer withdrew or waived its denial based on the unusual and extraordinary situation and contended its May 30, 2018 controversion is based solely on the medical evidence. Employee contended Employer failed to produce discovery it was ordered to on May 17, 2018. (*Woolf II*).

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

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

98) On June 24, 2019, Employee testified he takes losartan and amlodipine to regulate his blood pressure. (Employee Deposition, June 24, 2019 at 9). The medications work very well except when situational stress makes it get really high. (*Id.*). Dr. Haddock prescribed losartan quite a few years ago before he worked for Employer and he never needed anything else other than that prescription until the work injury. (*Id.* at 12 and 15). About three to four years ago, Employee

experienced situational high blood pressure when Dr. Than's office forgot to schedule an MRI for his broken knee and he had to go all the way from Point Hope to Anchorage again for the MRI. (*Id*. at 13). He reported high blood pressure but did not report situational high blood pressure when he was hired because he only had a couple of experiences and his blood pressure was well managed with a small dosage of medication. (*Id*. at 79). Dr. Than doubled the dosage of losartan when he arrived in Juneau after the work injury and it has been maintained at that dosage. (*Id*. at 16 and 17). Dr. Than is still Employee's primary care provider. (*Id*. at 17). His Teachers Retirement System (TRS) health coverage began a week after he returned to Juneau from Wales. (*Id*. at 25). Over 20 years ago when Employee was working as a caseworker for Big Brothers and Sisters in Juneau his supervisor began attacking a coworker. (*Id*. at 28-29). He tried to protect the coworker and then his supervisor attacked him. (*Id*. at 29). When Employee made a formal complaint against his supervisor, a letter was sent to the agency alleging he was a child molester. (*Id*. at 29-30). The Juneau police department investigated, cleared him and found the letter to be hate mail. (*Id*. at 30). Afterwards, "Dr. Kesselring" helped Employee so he could go back to teaching in Quinhagak. (*Id*. at 30-31). Dr. Hancock refused to take and read the report from Dr. Kesselring that he brought with him to the EME. (*Id*. at 153). Dr. DiGiulio assessed him for the DVR but did not provide any treatment. (*Id*. at 38-39). Employee took six months away from dealing with his workers' compensation case because he and his wife moved from Alaska and became connected to two new churches and he needed to avoid stress. (*Id*. at 46). After his move, he saw Ms. Wiman for therapeutic support to start up his case again. (*Id*. at 47). Employee traveled to the Philippines on October 13, 2017, and stayed for almost six months. (*Id*. at 70-71). A five-month battle with the Islamic State of Iraq and Syria began on May 23, 2017, a thousand people died and the fighting just ended when he arrived there. (*Id*. at 65 and 67). The New People's Army was much more active in the area Employee was staying in the Philippines, none of the Muslim rebel groups were active close to him. (*Id*.). He did not obtain medical treatment for blood pressure while in the Philippines even though it was a high stress situation. (*Id*. at 76). Other than preparing pleadings for his case, Employee's blood pressure was fine while he was in the Philippines. (*Id*. at 78). He had an argument with his wife while they lived in Illinois and it caused him to have high blood pressure. (*Id*. at 80). Thinking about returning to teaching and knowing what he is going to be facing when asked if he had ever been terminated for cause causes him stress and high blood pressure because he will have to

explain what happened and he probably will not get hired. (*Id*. at 81). He is worried his termination in Wales could hurt his wife's employment because the main church leader recently retired as the high school principal in Oblong. (*Id*. at 82). If he knew that no one would have access to his termination records, the records where he was wrongfully accused of being an incompetent teacher, his reprimand and the theft accusations, he would feel comfortable enough to go back to teach tomorrow but it scares him. (*Id*. at 82-83). Employee withdrew his offer to quit because he realized he was going against his own ethics, his students needed him to stay there because no one else was speaking out against what the school district was doing to them in the curriculum. (*Id*. at 84-85). If he had a letter form the BSSD acknowledging he was a competent teacher while teaching in Wales, he could go back to work. (*Id*. at 86-86). He has been helping and mentoring a high school student with some of her school work. (*Id*. at 88). Employee taught bible study in a Christian church every week for a couple months after he moved to Illinois. (*Id*. at 88 and 111). He could walk right into a classroom and teach if he felt safe and his blood pressure would not be an issue as he has the physical ability to work now. (*Id*. at 89). After his employment was terminated, he could not get any more medical treatment to go back to work. (*Id*. at 95). FNP-C Wurmstein told Employee he had to get his situational high blood pressure under control before he could safely return to work. (*Id*. at 95-96). He temporarily retired from teaching in 2005. (*Id*. at 99-100). After retiring, Employee taught one year at Point Hope and then taught without pay at Southern Philippines Methodist College. (*Id*. at 100). Between Social Security and his TRS pension he makes about $1,100 per month. (*Id*. at 110). Four months ago he was a guest speaker at the New Hebron Christian School and he taught one class period. (*Id*. at 112). When asked what sort of limitations Employee felt he had as a result of his employment with Employer, he said he was scared to go back to teaching, his blood pressure goes up and he has ruminations and lack of sleep when he thinks about what happened while working with Employer. (*Id*. at 113). When Employee was asked what prevented him from obtaining medical treatment through his retirement health plan, he said the treatment would be a long process because he would have to explain his previous history and it would be very hard for him to afford the co-pay. (*Id*. at 113-114). Dr. Than referred him for medical treatment and Wurmstein recommended he get medical treatment before he returns to work. (*Id*. at 115-116). Employee said he cannot go back to teaching with the termination in his record at the last place he was employed. (*Id*. at 170). If he had not been terminated and had

help to deal with the stress associated with his work injury he could work. (*Id*. at 170-171). When Employee works on his workers' compensation case, he wakes up every other night thinking about the kids. (*Id*. at 171). When he is not working on his case, he wakes up three to four times a month thinking about what happened to his students and what their lives are going to be like. (*Id*.). Employee thinks a lot about his general concerns about the school district. (*Id*.).

99) On August 2, 2019, *Woolf I* issued and denied Employee's request for a Second Independent Medical Evaluation and for his request to extend time to request a hearing under AS 23.30.110(c). (*Woolf I*).

100) On October 28, 2019, Chase Ervin signed an affidavit stating he is the school district Educational Technology Facilitator. In August 2019, Superintendent Bolen asked him to download Employee's entire teacher email account on a thumb drive and send it to Attorney Eugenia Sleeper. Mr. Ervin copied Employee's entire email user account including inbox, outbox, user folders, and trash folder onto a thumb drive and sent it Ms. Sleeper. (*Woolf II*).

101) On January 14, 2020, Employee requested a hearing on his claims. (ARH). Employee requested cross-examination of FNP-C Wurmstein about her August 10, 2017 response because it contradicts a letter she wrote in December 2016. He also requested cross-examination of Donald Austin, Superintendent Bolen, Principal Meneguin, Chase Ervin and Peggy Cowan. (Request for Cross-Examination, January 14, 2020).

102) On January 16, 2020, Employer filed a limited opposition to Employee's hearing request and responded to his requests for cross-examination. It contended it did not intend to rely on the evidence for Ms. Cowan or Mr. Ervin because they would not provide evidence addressing whether Employee's work stress was the cause of his need disability or need for medical treatment. (Affidavit of Limited Opposition to ARH, January 16, 2020).

103) On February 6, 2020, the board designee scheduled a hearing on Employee's April 10, 2017 claim and June 5, 2017 amended claim during a prehearing conference. Employee requested a break during the prehearing conference because his blood pressure was high and he was feeling unwell. The designee granted Employee's request. (Prehearing Conference Summary, February 6, 2020).

104) On February 6, 2020, Employee visited the emergency room for anxiety. He was diagnosed with a panic attack and referred to his physician. (Crawford Memorial Hospital Emergency Department, February 6, 2020).

105) On February 20, 2020, Dr. Hancock testified Employee has the ability to return to work. (*Id*. at 15-16). Employee could benefit from treatment due to chronic conditions but work for Employer was not the substantial cause of his condition. (*Id*. at 16). His work for Employer temporarily aggravated his preexisting conditions because the symptoms appear to wax and wane. (*Id*.). Employee reached medical stability by December 21, 2016. (*Id*. at 17). It was difficult to identify the specific date of resolution due to the waxing and waning of his symptoms. (*Id*. at 19-20). Dr. Hancock took notes during her evaluation which she used to created her report and then she destroyed the notes for confidentially. (*Id*. at 22-23). She recalled Employee indicated he was trying to get students a different curriculum that met their needs and tried to get support for a specific ninth grade student but did not recall requests for training for teachers and counseling for students for the sexual abuse that occurred prior to his employment. (*Id*. at 33). Dr. Hancock recalled Employee felt his ninth grade student was struggling after moving to the area, the student was being ostracized by the other kids and the school counselor told Employee the student was emotionally disturbed. (*Id*. at 46-47). She remembered he described a day in which the principal came into the math class and told the student to go home because the student was not doing the classwork she was not able to do. (*Id*. at 47). Employee felt the principal was scared of the central district office and wanted to make sure the students did the required classwork. (*Id*.). He told Dr. Handcock the principal stated he hated the student and the student's guardian. (*Id*.). She recalled Employee emailed the principal indicating he felt the principal was going to cause the student to commit suicide. (*Id*.). Employee felt he advocated for the student and for the principal to leave the student alone and he reported the principal to child protective services for causing danger by increasing the student's suicide risk. (*Id*. at 47-48). He described to Dr. Hancock that he received a vaguely written reprimand from the principal and he asked for details and started a grievance process. (*Id*. at 50). Employee reported the week he received the reprimand as increasingly stressful and he experienced blood pressure elevation. (*Id*.). Dr. Hancock explained stress can induce high blood pressure due to sympathetic response in the body and there are a number of factors contributing to the risk of elevations. (*Id*. at 51). It does not tend to come out of the blue but in someone with a predisposition for essential hypertension. (*Id*.). Lifestyle and genetic predisposition affects how someone's blood pressure would react to stressors. (*Id*. at 52). The hope is that if the blood pressure was well-controlled it would stabilize and if the aggravating factors were gone, the

blood pressure would remain stable. (*Id*. at 52-53). Dr. Hancock documented she received part of the 1999 report from Employee during her examination because that was what she saw. (*Id*. at 63-64). She reviewed the medical records and Employee's deposition and her opinions have not changed from her EME report. (*Id*. at 9 and 73).

106) On March 31, 2020, Employer objected to testimony from Mr. Walker. It contended Mr. Walker's was precluded under AS 23.30.095(a) and 8 AAC 45.082(c) and referenced *Phillips v. Bilikin Investment Group, Inc.*, AWC Decision No. 14-0020 (February 19, 2014). (Petition and Attachment, March 31, 2020).

107) On March 31, 2020, Employer contended it paid Employee a 25 percent penalty for late reporting and an additional 20 percent penalty under AS 23.30.070(f). (Employer Brief, March 31, 2020).

108) On March 31, 2020, Employee opposed Employer's March 31, 2020 petition. He contended Mr. Walker was a direct witness of the BSSD wrongful implementation of the math program as documented in the December 15, 2017 email. Employee contended Mr. Walker has professional credentials to provide testimony about state and federal laws regarding special education services for students. (Employee Email Opposition, March 31, 2020).

109) On April 7, 2020, Mr. Walker testified he has four master's degrees and a bachelor's degree. He has a master's degree in curriculum development, a certificate credentialing him to be a principal, a special education credential and a second master's degree in education with a specialty in agency counseling from the University of Alaska Anchorage (UAA). Mr. Walker is a licensed processional counselor in the State of Alaska. His certification to teach in middle school and elementary school lapsed in January 2020. Mr. Walker worked in Gamble for two years which is where he met Employee. He worked in Stebbins for a year as a sixth grade teacher and experienced students with behavioral management difficulties and worked another year at Head Start and continued to have behavioral management challenges with students. Then Mr. Walker taught in Selawik for a year and a half but came back to Stebbins. Next, he worked in False Pass for four years as a teacher, six years ago. Mr. Walker successfully taught eight to ten students ranging from preschool to tenth grade with two teachers aids by providing instruction based upon the students' instructional level. Mr. Walker became a counselor after his nephew committed suicide in False Pass. Based upon his experience a student is identified as a special education student with a learning disability if a student is tested and found to be two

years behind grade level. Mr. Walker is currently employed by NSHC as a mental health clinician. In his current job, if a student is identified as having a behavioral problem, he is called in to fix the behavioral problem with counseling and medications if necessary. The incident in the December 2017 email happened at the St. Michael school and something similar happened in Stebbins as well. Mr. Walker interviewed the child and completed a functional behavioral analysis by observing the child for an afternoon and identifying the times the behavior occurred to find a correlation for the behavior. He also interviewed the teacher and reviewed the school work the child was using at the time. The student had missed a lot of school and was told to sit in the corner with a workbook in on particular page after the teacher individually explained the work to the student. However, the student slumped at the desk and would not do his school work. After the teacher went around the room and checked on him several times, the student threw the apple at the teacher and hit the wall beside the teacher. Mr. Walker gave the student an informal test and found the student did not know his multiplication tables and did not understand fractions and decimals but the school work required him to multiply three digit numbers with a decimal. The teacher explained to him a new text book series has been instituted and everyone in the classroom was expected to be on the same page and doing the same work. Previously, the BSSD used the "quality school method" where students would move through instructional levels and every student was working on different levels. It was an effort to instruct kids at their instructional level and it was hard to implement. When Mr. Walker asked the teacher why the student was not in special education because he was more than two years behind, the teacher stated the student missed so much school he would probably not be found eligible because his inability to perform at grade level was due to his missing school. Also the school had a policy to do everything they can to have as few special education students as possible because it is really expensive and there is not enough money to provide testing and services. The new teaching method called "response to intervention" identifies students performing below grade level and tries to get them to grade level by providing different levels of interventions. Mr. Walker explained his findings to the principal and the principal agreed to provide the student instruction at his ability level. At the time of the December 2017 email, he and Employee were emailing back and forth at least every six weeks and were talking by telephone. Mr. Walker emailed Employee in December 2017 because he suspected it was the same district policy. He recalled Employee told him the math students did not know the material in the pretest and he was not

allowed to teach students at their instructional levels. Employee explained his blood pressure had gotten really high and he was worried he was going to have a stroke. He was having a hard time maintaining his own health while dealing with the situation. Employee was concerned with the mental health of his students and Mr. Walker was too. While he and Employee worked at Gamble, they shared a student that committed suicide and they did not want that to happen again. Employee was being reasonable, thoughtful and caring while handling the situation. He is a very gifted teacher and he struggled in a situation where he could not teach affectively and he notified the administrator in an attempt to modify it and was not able to come up with anything workable. Mr. Walker talked with Employee extensively at the time and Employee was experiencing a high level of anxiety and stress, he described high blood pressure and seemed to be having an anxiety disorder. He did not interview Employee specifically for anxiety at the time but seemed to be exhibiting a high level of frustration and his trigger was anxiety about the welfare of the child and the possibility of the child committing suicide; he would have felt like an instrument in the possible suicide attempt. The past suicide of the Gamble student was very stressful to Employee. Mr. Walker was not sure whether Employee had PTSD but Employee was displaying symptoms consistent with PTSD. After his nephew committed suicide, he switched his master's education specialization from school counseling to agency counseling allowing him to be a mental health clinician. Mr. Walker completed a year-long internship under a psychologist and tested and became certified. The majority of his clients are substance abuse clients. Mr. Walker also has treats clients with anxiety, depression and Attention Deficit Hyperactivity Disorder and works with clients with severe mental illnesses, like schizophrenia, schizoaffective disorder and depression with psychosis. He works with a team of psychiatrists to obtain medications for clients and provides treatment. Mr. Walker works with the Diagnostic and Statistical Manual of Mental Disorders (DSM) and gives mental health diagnosis after completing a mental health assessment. He assesses patients while working for NSHC by first having the patients fill out an in-take packet about general behavioral and mental health and then he completes an in-depth integrated interview about mental health and substance abuse. Mr. Walker enters the assessment and the diagnoses into their computer system and comes up with a treatment plan and he provides treatment. Part of his assessment includes the patient's background, including psychiatric history which is helpful for diagnosis. A diagnosis can be made without reviewing past medical records based upon current behavior and symptoms meeting DSM criteria. The

basis of Mr. Walker's knowledge comes from discussions with Employee by email and by telephone. He did not review Employee's medical record. Employee talked to him about the 1999 incident but he does not have a clear recollection of it. They told each other their life stories over the years. Employee is not Mr. Walker's client; he never completed an intake packet and never completed a formal mental health interview. Employee met the criteria for unspecified trauma related disorder from significant distress related to trauma causing anxiety but Mr. Walker does not have enough information to formally diagnose whether or not Employee had PTSD. He is qualified to provide a diagnosis and recommend treatment and give causation opinions based upon his education and his State of Alaska licensure as a processional counselor. Mr. Walker believes Employee experienced anxiety and depression and was in real distress which affected his ability to function personally and professionally. He attributes the anxiety, depression and distress to his work for Employer and the way the situation was handled by the principal. Mr. Walker recommends Employee seek relief and support with a professional counselor. Employee and he professionally and emotionally support each other and his testimony is based upon his education and his discussions with Employee. (Mr. Walker).

110) Employee contended Employer's attorney harassed FNP-C Wurmstein to provide the August 10, 2017 response to its letter. He contended Employer should be required to provide FNP-C Wurmstein for cross-examination because it requested the opinion, the opinion was not trustworthy and it contradicted her previous letters. (Employee's hearing argument).

111) Employer objected to Employee's contention that its attorney harassed FNP-C Wurmstein to provide the August 10, 2017 response. It contended FNP-C Wurmstein was Employee's treating physician and he could have deposed her or presented her as a witness for hearing. (Employer's hearing argument).

112) Employee withdrew his request for cross-examination of Mr. Austin, Superintendent Bolen and Principal Meneguin. (Record).

113) Employer did not object to exclusion of Mr. Ervin's or Ms. Cowan's statements. (Record).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or

peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120 (a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.
>
> (b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.
>
> (c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical . . . treatment . . . medicine . . . for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. It shall be additionally provided that, if continued treatment or care or both beyond the two year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's

> choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.
> . . . .

In *Phillips*, the employer contended the injured worker made an excessive change of physician when the injured worker's attorney hired and paid for an evaluation by a physician. *Phillips* found the injured worker failed to demonstrate the physician was a valid change, referral or substitution physician, the only role the physician could play at hearing is as an unauthorized expert medical witness and excluded the physician's report. (*Id*. at 10).

> **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 . . . .
>
> (c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

To determine whether the presumption of compensability applies, work-related mental injuries are divided into three different categories: mental stimulus that causes a physical injury, or "mental physical" cases; physical injury that causes a mental disorder, or "physical-mental" cases; and mental stimulus that causes a mental disorder, or "mental-mental" cases. *Kelly v. State of Alaska, Dept. of Corrections*, 218 P.3d 291, 298 (Alaska 2009). Where a work-related physical injury results in a mental disorder, such as depression, the presumption is applied. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, footnote 36 (Alaska 2007) (citing *Williams v. Abood*, 53 P.3d 134 (Alaska 2002)). However, where work-related stress results in a mental injury, such as posttraumatic stress disorder, a claimant is required to prove each element of the test for mental injury by a preponderance of the evidence, without the benefit of the presumption of compensability. *Kelly* at 297 (discussing the former AS 23.30.395(17)).

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

At the second step, once the preliminary link is established, the employer has the burden to overcome the presumption with substantial evidence. *Kramer* at 473-74, quoting *Smallwood* at 316. To rebut the presumption, an employer must present substantial evidence that either (1) something other than work was the substantial cause of the disability or need for medical treatment or (2) work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 611-12 (Alaska 1999). At the second step of the analysis, the employer's evidence is viewed in isolation, without regard to the claimant's evidence. Issues of credibility and evidentiary weight are deferred until after a determination whether the employer has produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994); *Wolfer* at 869-870.

If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). If the employer successfully rebuts the presumption, it drops out, and the employee must prove all elements of her case by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379 (Alaska 1991). At this last step of the analysis, evidence is weighed and credibility considered. To prevail, the claimant must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71 (Alaska 1964).

> **AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). When doctors disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision. No. 087 (August 25, 2008).

> **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. . . .
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> **AS 23.30.155. Payment of compensation.**
> . . . .
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> (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. . . . .
>
> (o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

> (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. . . .

The Alaska Supreme Court has consistently instructed interest for the time-value of money must be awarded, as a matter of course. *Land and Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1192 (Alaska 1984).

A controversion notice must be filed "in good faith" to protect an employer from a penalty under AS 23.30.155(e) or to avoid referral to the Division of Insurance under AS 23.30.155(o). *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992). "In circumstances where there is reliance by the insurer on a responsible medical opinion or conflicting medical testimony, invocation of penalty provisions is improper." See also 3 A. Larson, *Larson's Workmen's Compensation Law* § 83.41(b)(2) (1990) ("Generally a failure to pay because of a good faith belief that no payment is due will not warrant a penalty."). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." Harp at 358.

> **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.
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> **AS 23.30.395. Definitions.** In this chapter,
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> . . . .
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> (16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;
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> . . . .
>
> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be

> presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;
> . . . .

Lowe's v. Anderson, AWCAC Decision No. 130 (March 17, 2010), explained to obtain TTD benefits, assuming the presumption has been rebutted, an injured worker must establish: (1) she is disabled as defined by the Alaska Workers' Compensation Act (Act); (2) her disability is total; (3) her disability is temporary; and (4) she has not reached the date of medical stability as defined in the Act. (*Id*. at 13-14).

"The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment." *Vetter v. Alaska Workmen's Compensation Board*, 524 P.2d 264, 266 (Alaska 1974). An award of compensation must be supported by a finding the claimant suffered a decrease in earning capacity due to a work-connected injury or illness. *Id*.

The Alaska Supreme Court in *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567 (Alaska 2012) said, "'Once an employee is disabled, the law presumes that the employee's disability continues until the employer produces substantial evidence to the contrary.' We therefore examine whether the employer rebutted the presumption." (*Id*. at 573).

An employer may rebut the continuing presumption of compensability and disability, and gain a "counter-presumption," by producing substantial evidence that the date of medical stability has been reached. *Lowe's* at 8. Once an employer produces substantial evidence to overcome the presumption in favor of TTD, the employee must prove all elements of the TTD claim by a preponderance of the evidence. However, if the employer raised the medical stability counter presumption, "the claimant must first produce clear and convincing evidence" that he has not reached medical stability. *Id*. at 9. One way an Employee rebuts the counter-presumption with clear and convincing evidence is by asking his treating physician to offer an opinion on "whether or not further objectively measurable improvement is expected." *Municipality of Anchorage v. Leigh*, 823 P.2d 1241, 1246 (Alaska 1992). The 45 day provision in AS 23.30.395(28) merely signals "when that proof is necessary." *Id*.

In *Vetter*, the Alaska Supreme Court stated:

> The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment. An award for compensation must be supported by a finding that the claimant suffered a compensable disability, or more precisely, a decrease in earning capacity due to a work-connected injury or illness. (*Id*. at 266.)

Vetter further held where a claimant, through voluntary conduct unconnected with his or her injury, leaves the labor market, there is no compensable disability. Expanding on its ruling in *Vetter*, however, the Court, in *Cortay v. Silver Bay Logging*, 787 P.2d 103, 106 (Alaska 1990) noted the definition of "disability" in AS 23.30.395 says nothing about an employee's reasons for leaving work. The issue is whether the claimant is able to work despite his injury, not why he is no longer working.

Interpreting both *Vetter* and *Cortay*, the Alaska Workers' Compensation Appeals Commission, in *Strong v. Chugach Electric Assoc. Inc.*, AWCAC Decision No. 128 (February 12, 2010), held where an employee's unemployment is because of his work injury, and his earning capacity is impaired, he is entitled to compensation. Strong set the legal standard as "unemployed but willing to work and making reasonable efforts to return to work" when deciding if an unemployed injured worker's loss of earnings is due to a compensable disability or an otherwise non-compensable voluntary withdrawal from the work force. (*Id*. at 20).

> **8 AAC 45.052. Medical summary.**
> . . . .
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> (c) Except as provided in (f) of this section, a party filing an affidavit of readiness for hearing must attach an updated medical summary, on form 07-6103, if any new medical reports have been obtained since the last medical summary was filed.
>
> > (1) If the party filing an affidavit of readiness for hearing wants the opportunity to cross-examine the author of a medical report listed on the medical summaries that have been filed, the party must file with the board, and serve upon all parties, a request for cross-examination, together with the

affidavit of readiness for hearing and an updated medical summary and copies of the medical reports listed on the medical summary, if required under this section.

. . . .

(5) A request for cross-examination must specifically identify the document by date and author, generally describe the type of document, state the name of the person to be cross-examined, state a specific reason why cross-examination is requested, be timely filed under (2) of this subsection, and be served upon all parties.

(A) If a request for cross-examination is not in accordance with this section, the party waives the right to request cross-examination regarding a medical report listed on the updated medical summary.

8 AAC 45.082. Medical treatment.

. . . .

(c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. If, after a hearing, the board finds an employee made an unlawful change of physician, the board may refuse to order payment by the employer.

. . . .

8 **AAC 45.120. Evidence.** . . . .

. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege apply to the same extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is

> filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.
>
> **8 AAC 45.900. Definitions.** (a) In this chapter . . . .
>
> (11) "Smallwood objection" means an objection to the introduction into evidence of written medical reports in place of direct testimony by a physician. . . .

In *Commercial Union Insurance Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976), an employer had objected to the admission of reports by the employee's doctor unless employer was given the opportunity to cross-examine the physicians. The doctor was not made available for cross examination, and Board declined to consider the reports. The superior court remanded the case to the Board holding the employer had waived its right to cross-examine the doctor by not deposing him in the several months between the objection and the Board hearing. The Supreme Court reversed the superior court, holding that when a party introduces a written medical report in evidence before the Board, that party must provide his opponent with an opportunity to cross examine the author of the report. *Id*. at 1266. Further, since the right of cross-examination should not carry a price tag, the party introducing the report must bear the cost of providing the opportunity for cross-examination. *Id*.

In *Frazier v. H.C. Price*, 794 P.2d 103 (Alaska 1990) Frazier gave notice he intended to introduce into evidence a medical report prepared at H.C. Price's request and expense. The employer asserted a right to cross-examine the reports' authors and the Board held Frazier should bear the costs of the cross-examination. The Board's holding was reversed. The Supreme Court held written medical reports prepared at the employer's request and expense and which the employee intends to introduce are not hearsay, and thus the employee is not obligated to bear the costs of employer's cross-examination of the reports' authors. The employer, by requesting that the employee submit to examination by clinical physicians of its choice, vouches for credibility and competence of those physicians. *Id*. at 105.

In *Dobos v. Ingersoll*, 9 P.3d 1020 (Alaska 2000), a personal injury case, the Alaska Supreme Court held "medical records, including doctors' chart notes, opinions, and diagnoses, fall squarely within the business records exception to the hearsay rule," unless there is some reason to doubt the records' authenticity. *Id*. at 1027. Ingersoll asked Dobos to admit that Ingersoll's medical records were genuine under the Alaska Civil Rules. Dobos refused, arguing the evidence was hearsay. He wanted Ingersoll to put the witnesses on the stand at her expense so he could question them. During trial, Ingersoll called her doctors to testify and lay a foundation for the records. On appeal, the Alaska Supreme Court noted medical records are exceptions to the hearsay rule under Evidence Rule 803(6) and remanded back for sanctions against Dobos for failing to admit the genuineness of Ingersoll's medical records. The court reasoned, "Requiring testimony that medical records were made and kept in the regular course of business is a waste of time unless there is some reason to believe that the records are not genuine or trustworthy." *Id*. at 1028. Further, the Court said Dobos could have called Ingersoll's doctors to the stand himself after he denied Ingersoll's request to admit their records. *Id*.

In *Noffke v. Perez*, 178 P.3d 1141 (Alaska 2008), another personal injury case, the Alaska Supreme Court said evidence of the plaintiff's medical treatment and diagnosis, even in the form of a doctor's letter to the Social Security Disability Determination Unit, could be admissible under *Dobos* provided litigants established "it was the regular practice" of the doctor to prepare and send such reports. *Id*. at 1146. *Parker v. Power Constructors*, AWCB Decision No. 91-0150 (May, 17, 1991), addressed "trustworthiness" under Alaska Rule of Evidence 803(6), noted:

> Statements by professionals, such as doctors, expressing their opinion on a relevant matter, should be excluded only in rare circumstances, particularly if the expert is independent of any party, and especially if the reports have been made available to the other side through discovery so that rebuttal evidence can be prepared. (*Id*. at 7, citing 4 Weinstein's Evidence Rule 803 at 803-211 (1990)).

In *Parker*, an insurer petitioned the board to admit three documents, contending they fell within exceptions to the hearsay rule. The employee contended the documents should not be admitted over his cross-examination request. The three documents pertaining to the employee included: (1) a discharge summary from a nursing home; (2) a physical examination report prepared during

the employee's residence at the nursing home; and (3) a letter written to the employee's attorney from the employee's attending physician giving an opinion on compensability. After discussing the history of the Smallwood objection, the board reviewed relevant Alaska Supreme Court cases and relied heavily upon Frazier. *Parker* noted Alaska Supreme Court precedent, including *Frazier*, represented an "extension rather than a limitation of our regulation permitting admission of certain documents over Smallwood objections." *Parker* determined the three documents in question had long been in the employee's possession and were trustworthy enough to permit admission under exceptions to the hearsay rule. *Parker* also noted while *Frazier* did not agree to "re-examine Smallwood," it also did not overrule or refuse to apply the board's regulations permitting certain documents to be admitted over Smallwood objections. (*Id*. at 11).

"Letters written by a physician to a party or party representative to express an expert medical opinion on an issue before the Board are not admissible as business records unless the requisite foundation is established." *Bass v. Veterinary Specialists of Alaska*, AWCB Decision No. 080093 (May 16, 2008).

In *Harrold-Jones v. Drury*, 422 P.3d 568 (Alaska 2018), the plaintiff sued a physician for medical malpractice in Superior Court. The defendants requested a release authorizing *ex parte* contact with the plaintiff's new doctor. She refused to sign the release and sought a protective order prohibiting the defendants from having ex parte contact with her physician. The superior court denied her motion relying on existing case law. The Alaska Supreme Court decided:

> But we also conclude that we should overrule our case law because its foundations have been eroded by a cultural shift in views on medical privacy and new federal procedural requirements undermining the use of ex parte contact as an informal discovery measure. We therefore hold that -- absent voluntary agreement -- a defendant may not make ex parte contact with the plaintiff's treating physicians without a court order, which generally should not be issued absent extraordinary circumstances. We believe that formal discovery methods are more likely to comply with the federal law and promote justice and that such court orders rarely, if ever, will be necessary. (*Id*. at 569).

In *Holt v. The Home Depot, Inc.*, AWCB Decision No. 18-0102 (October 12, 2018), the Board reviewed the Supreme Court's rationale in *Harrold-Jones* for precluding *ex parte* contacts with

treating doctors and held employers were not entitled to ex parte contact with an employee's attending physician without the employee's consent. Holt does not state whether any benefits had been controverted.

In *Home Depot, Inc. v. Holt*, AWCAC Decision No. 261 (May 28, 2019), the Commission reversed *Holt* in part. The Commission explained that most workers' compensation cases do not involve litigation, and because the Act requires employers to timely pay medical benefits, the insurer or adjuster need quick unfettered access to the treating doctor. However, the Commission explained that when a controversion of benefits has been filed, the case becomes litigious. After that point, if an employer wishes ex parte contact with a treating doctor, it should be with notice to the employee. As a result, it reversed *Holt* to the extent it precluded ex parte contact prior to a controversion.

> **Alaska Rules of Evidence. . . . .**
>
> **Rule 801. Definitions.** The following definitions apply under this article:
> (a) Statement. A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
>
> (b) Declarant. A declarant is a person who makes a statement.
>
> (c) Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. . . . .
>
> **Rule 803. Hearsay Exceptions -- Availability of Declarant Immaterial.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness: . . . .
>
> (4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment. . . . .
>
> (6) **Business Records.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that

> business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

ANALYSIS

1) Was the oral order excluding FNP-C Wurmstein's August 10, 2017 response correct?

On January 14, 2020, Employee timely filed a *Smallwood* objection and demanded a right to cross-examine FNP-C Wurmstein on her August 10, 2017 response. 8 AAC 45.052(c)(1), (5); 8 AAC 45.900(11); *Smallwood*. Employer filed no witness list offering FNP-C Wurmstein for cross-examination. Any relevant evidence is admissible if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. 8 AAC 45.120(e). FNP-C Wurmstein's August 10, 2017 response answered questions sent *ex parte* by Employer about Employee's ability to return to work and medical stability date. Hearsay is defined as a statement, other than one made by the declarant while testifying at hearing, offered in evidence to prove the truth of the matter asserted. Evidence Rule 801(c). Employer seeks to use the response to prove Employee became medically stable on December 21, 2016, and was able to work. The record includes statements not made while testifying at hearing and are offered to prove the truth of the matters asserted. The statements are hearsay. *Id*.

FNP-C Wurmstein's August 10, 2017 response answered questions in an *ex parte* letter sent by Employer after its April 27, 2017 controversion notice and Employer filed it and relied on it. The case was clearly litigious at this time. *Holt*. The August 10, 2017 response states Employee was "medically cleared" on December 21, 2016. While, Employee had time to obtain rebuttal medical evidence because Employer filed the response on September 14, 2017, Employee questioned the trustworthiness of the response. *Noffke*; *Parker*. He contended the response contradicted FNP-C Wurmstein's December 1 and 27, 2016 letters and Employer's attorney pressure to answer the letter influenced her response. FNP-C Wurmstein's December 1, 2016

letter restricted Employee from working due to a medical issue and the December 27, 2016 stated she can certify whether a patient is off work or may return to work but did not state whether or not he could return to work at that time. FNP-C Wurmstein clearly regularly provided Employee letters regarding his ability to return to work in December 2016 when she was treating Employee. However, Employee had not visited FNP-C Wurmstein since December 2016. Instead, he sought treatment from Dr. Than in February and June 2017. It is unknown why FNP-C Wurmstein did not address whether he could return to work in the December 27, 2016 letter and over seven months later stated he was "medically cleared" on December 21, 2016. Employer did not establish that it was FNP-C Wurmstein's regular practice to respond to a request to give an opinion about Employee's ability to return to work when she was no longer providing him treatment and when Employee was not provided notice of the request. *Dobos*; *Bass*. It is clear the August 10, 2017 response was prepared solely for litigation purposes at Employer's request to obtain FNP-C Wurmstein's expert opinion. FNP-C Wurmstein's report was not a medical report. Evidence Rule 803(4), (6). The oral order excluding FNP-C Wurmstein's August 10, 2017 response was correct.

2) Was the oral order overruling Employer's objection to Mr. Walker's testimony correct?

The board is not bound by "common law or statutory rules of evidence or by technical or formal rules of procedure." AS 23.30.135(a). The fundamental rule is that "any relevant evidence is admissible." 8 AAC 45.120(e). The December 5, 2017 record proves Employee discussed his work stress with Mr. Walker. Evidence regarding Employee's work stress is relevant in determining the merits of Employee's claim and amended claim. 8 AAC 45.120(e). Mr. Walker's testimony regarding Employee's work stress is relevant. *Rogers & Babler*.

Employer contends Employee intended Mr. Walker to testify as an expert about the merits of the case. Unlike *Phillips*, Employer has not contended Employee made an excessive change of physician in order to obtain a favorable medical opinion. It is clear Employee spoke about his work stress with Mr. Walker because they are longstanding friends. There is no evidence Employee spoke with Mr. Walker about the work stress events in order to obtain an expert

opinion for the purpose of litigation. The oral order overruling Employer's objection to Mr. Walker's testimony was correct.

3) Is Employee entitled to TTD and medical benefits after December 21, 2016?

Employee contends work stress is the cause of his disability and need for medical treatment from December 22, 2016 to the present for psychological and high blood pressure treatment and he claimed mental-mental and mental-physical injuries. Employer contends work stress temporarily aggravated Employee's preexisting chronic conditions but he became medically stable on December 21, 2016 and he is not entitled to TTD and medical benefits after December 21, 2016.

a) Mental-mental injury

Employee claims a mental injury, an increase in symptoms similar to PTSD and diagnosis of other specified depressive disorder, other specified anxiety disorder and other specified trauma and stressor-related disorder, caused by work stress. This is a mental-mental injury. Employer contends Employee failed to provide medical documentation indicating work-stress was the cause of any mental injury. To prevail on a mental-mental injury, Employee must prove each element of the mental-mental injury test by a preponderance of the evidence without the benefit of the presumption of compensability. AS 23.30.120(c); *Kelly*; *Thoeni*. Because Employer withdrew its defense that the work environment was not extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, Employee must prove the work stress was the predominate cause of the mental injury. AS 23.30.010(b).

Dr. Hancock opined work stressors temporarily aggravated his chronic conditions, preexisting PTSD in partial remission, psychological factors affecting hypertension and recurrent major depressive disorder in remission. Therefore, Employee showed the work stress was the predominate cause of a mental-mental injury, the temporary aggravation of his preexisting conditions. *Rogers & Babler*.

Employee must also prove the work stress was the predominate cause of his need for medical treatment and disability after December 21, 2016 and the presumption of compensability does not apply. AS 23.010(b); AS 23.30.120(c). Dr. Hancock opined Employee became medically stable December 21, 2016, and his need for medical treatment was due to his preexisting chronic conditions. FNP-C Wurmstein did not address whether Employee's need for medical treatment after December 21, 2016 was due to the work stress or his preexisting conditions, nor did she address whether his work stress was the cause of his disability after December 21, 2016. Dr. DiGiulio diagnosed other specified depressive disorder, other specified anxiety disorder and other specified trauma and stressor-related disorder but did not opine whether work stress was the cause of Employee's disability or need for medical treatment after December 21, 2016. Ms. Wiman assessed him with other specified anxiety and recommended counseling but did not address whether he was disabled after December 21, 2016 or whether the recommended counseling was caused by the work stress or his preexisting conditions. Mr. Walker testified at hearing that Employee's work stress caused anxiety and depression and recommended counseling but did not address Employee's ability to return to work after December 21, 2016. While Mr. Walker is a licensed counselor, he did not review Employee's medical records and did not formally assess Employee. He appears to be more of an advocate for Employee as a longstanding friend rather than an impartial witness. Dr. Hancock's opinion is given more weight than Mr. Walker's because she reviewed the entire medical record and formally assessed Employee. AS 23.30.122; *Smith*; *Moore*. Employee did prove the work stress was the predominate cause of his need for medical treatment and disability after December 21, 2016. His claims for TTD and medical benefits after December 21, 2016 for a mental-mental injury will be denied. AS 23.30.010(b); AS 23.30.095(a); AS 23.30.185.

b) Mental-physical injury

Employee claims a physical injury, high blood pressure, caused by work stress. This is a mental-physical injury. Employer paid TTD and medical benefits through December 21, 2016. It contends Employee is not entitled to TTD and medical benefits after December 21, 2016 because he reached medical stability, his need for treatment to help him "manage his stress in the context of his chronic conditions" after December 21, 2016 and there are no work restrictions as result of his employment. Employee contends the work stress is the substantial cause of his disability and

need for medical treatment after December 21, 2016 to the present. The presumption of compensability applies to these disputes. AS 23.30.010(a); AS 23.30.120(a).

i) Medical Benefits

Employee attached the presumption of compensability with his testimony the work stress caused his hypertension to worsen and Dr. Than's February 2, 2017 statement that Employee's hypertension was "recently exacerbated by work related stress" and recommendation to increase his hypertension medication and Ms. Wiman's January 21, 2019 recommendation for counseling. *McGahuey*; *Burgess*; *Rogers & Babler*.

Without assessing credibility or weight, Employer rebutted the presumption with Dr. Hancock's opinion. *Kramer*; *Tolbert*. She concluded the work stress caused a temporary aggravation of Employee's preexisting chronic conditions, including preexisting PTSD in partial remission, psychological factors affecting hypertension and major depressive disorder recurrent in remission, he reached medical stability on December 21, 2016, and his need for treatment after December 21, 2016 was due to his chronic preexisting conditions. *Id*.

Because Employer rebutted the presumption, Employee must prove all elements of his mental-physical medical benefits claim by a preponderance of the evidence. *Koons*. Employee must prove the work stress is the substantial cause of his need for medical treatment after December 21, 2016. At this stage, evidence is weighed, inferences are drawn from evidence and credibility is determined. *Saxton*. While Dr. Than stated Employee's hypertension was "recently exacerbated by work related stress" on February 2, 2017, she failed to address whether the exacerbation was permanent or temporary, or if temporary, when she expected it to resolve. Dr. Than and Ms. Wiman recommended treatment but did not opined whether or not the work stress was the cause of his need for treatment. Mr. Walker testified at hearing that Employee's work stress caused anxiety and depression and he recommended counseling. As previously determined above, Mr. Walker's opinion is given less weight than Dr. Hancock's. Dr. Hancock reviewed Employee's medical history and attributed his need for medical treatment after December 21, 2016, to his chronic preexisting conditions, including preexisting PTSD in partial remission, psychological factors affecting hypertension and major depressive disorder recurrent

in remission. The medical record proves Employee had preexisting hypertension affected by stressors. On January 29, 2014, he noted his borderline blood pressure increased sometimes when stressed. Employee testified at deposition he had experienced situational depression prior to the work injury when there were scheduling issues for a knee MRI. The medical record proves other non-work related stressors affected Employee's hypertension after the work injury. Employee testified that after the work injury he experienced situational high blood pressure in response to an argument with his wife and to the stress of pursuing his claim. Ms. Wiman's April 11 and 15, 2019 notes corroborate Employee's situational high blood pressure in response to the stress of pursuing his claim. Dr. Hancock is the only physician which evaluated the relative contribution of the different causes of his need for treatment and her opinion is given the most weight. AS 23.30.122; *Smith*; *Moore*. Therefore, Employee failed to prove by a preponderance of the evidence his work stress is the substantial cause of his need for medical treatment after December 21, 2016. *Saxton*. Because Employee failed to prove his work stress was the substantial cause of his need for medical treatment for his mental-physical injury, his claims medical benefits will be denied. AS 23.30.010(b); AS 23.30.095(a).

ii) TTD Benefits

There is no medical record restricting Employee from his normal work activities due to the work stress after December 21, 2016. Employee failed to attach the presumption of compensability. *McGahuey*; *Burgess Construction Co.*; *Wolfer*; *Resler*.

Assuming Employee attached the presumption, Employer rebutted it with Dr. Hancock's opinion Employee reached medical stability on December 21, 2016, and . *Kramer*; *Huit*; *Tolbert*; *Norcon*.

Because Employer rebutted the presumption, Employee must establish: (1) he is disabled as defined by the Act; (2) his disability is total; (3) his disability is temporary; and (4) he has not reached the date of medical stability as defined in the Act. *Lowe's*. Disability means the incapacity to earn the wages which the employee was receiving at the time of the injury in the same or any other employment due to the work injury. AS 23.30.395(16). Mr. Walker did not address Employee's ability to return to work after December 21, 2016 and neither did Dr. Than

or Ms. Wiman. There is no medical opinion restricting Employee from his normal work activities after December 21, 2016. Therefore, there is no evidence Employee's decrease in earning capacity is due to his work stress. *Vetter*. Employee expressed concerns he will face difficulties being hired as a teacher due to his employment records. He testified he could return to work if he had a letter form the BSSD acknowledging he was a competent teacher while he taught in Wales and if no one had access to his employment records pertaining to the work stress. Employee taught one class period and Sunday school since the work stress. The DVR found he had the ability to return to employment. Employee failed to demonstrate he is unemployed due to his mental-physical injury. *Cortray*. Employee failed to prove by a preponderance of the evidence he was disabled after December 21, 2016. *Saxton*.

Because Employer rebutted the presumption of compensability of TTD benefits by raising the counter-presumption of medical stability, Employee must present clear and convincing evidence he was not medically stable from December 21, 2016 to the present. AS 23.30.395(28); *Lowe's*. None of Employee's physicians gave an opinion regarding medical stability or stated whether further objectively measureable improvement was expected from additional medical treatment. *Leigh*. Therefore, Employee has not rebutted the presumption of medical stability. Because Employee failed to prove his work stress is the cause of his disability for his mental-physical injury, his claim for TTD and medical benefits will be denied. AS 23.30.010(a); AS 23.30.120(a); AS 23.30.185.

4) Did Employer unfairly or frivolously controvert benefits?

Employee seeks a finding that Employer unfairly or frivolously denied his right to benefits or his claim. AS 23.30.155(o). An unfair or frivolous controversion may be found if Employer controverted benefits without sufficient evidence. *Harp*. A controversion is considered to be in "good faith" where there is sufficient evidence to support a finding a claimant is not entitled to the benefits. *Id*. This is an issue to which the presumption of compensability applies. AS 23.30.120(a). To attach the presumption, Employee was required to produce "some," or "minimal," relevant evidence. However, Employer filed four controversion notices and Employee did not specify which controversion notice unfairly or frivolously denied his right to

benefits or his claim. Employee failed to raise the presumption Employer unfairly or frivolously controverted benefits.

In the alternative, had Employee raised the presumption, Employer's March 27, 2017, April 27, 2017 and September 28, 2017 controversions were based on upon the lack of sufficient medical evidence indicating work stress caused Employee's mental injury or his high blood pressure. This decision found the weight of credible evidence supports the conclusion Employee failed to provide evidence the work stress was the predominate cause of his mental-mental injury and failed to provide sufficient evidence his high blood pressure was the result of his employment. Employer's May 31, 2018 controversion was based on Dr. Hadcock's opinion. Her opinion is a responsible medical opinions providing sufficient weight to support the controversion. Had Employee not introduced evidence in opposition to the controversion, Dr. Hadcock's opinion could have been relied upon to find Employee was not entitled to benefits after December 21, 2016. Employer's controversions were not unfair or frivolous. AS 23.30.155(o); *Harp*; *Rogers & Babler*.

5) Is Employee entitled to penalty and interest?

When compensation due without a Board order is not paid within 14 days of the date it becomes due, an employer is required to pay an additional 25 percent in addition to the compensation due. AS 23.30.155(e). The law provides for a mandatory award of interest to compensate a person entitled to compensation for the time value of money. AS 23.30.155(p); *Rawls*. For the reasons set forth above, since Employee is not entitled to compensation after December 21, 2016, AS 23.30.010(a), he is not entitled to interest or penalties on compensation, so his claim will be denied. AS 23.30.155(e), (p).

CONCLUSIONS OF LAW

1) The oral order excluding FNP-C Wurmstein's August 10, 2017 response was correct.
2) Employee is not entitled to TTD and medical benefits after December 21, 2016.
3) Employer did not unfairly or frivolously controvert benefits.
4) Employee is not entitled to penalty or interest.

ORDER

1) Employee's April 10, 2017 claim is denied.
2) Employee's June 5, 2017 amended claim is denied.

Dated in Juneau, Alaska on May 15, 2020.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Charles Collins, Member

/s/
Bradley Austin, 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 ROBERT A. WOOLF, employee / claimant v. BERING STRAIT SCHOOL DISTRICT, employer; APEI, insurer / defendants; Case No. 201702574; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on May 15, 2020.

/s/

Dani Byers, WC Officer II