ALASKA WORKERS' COMPENSATION BOARD

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

MANIVANH CHANDARA, Employee, Claimant, v. VIDA'S THAI FOOD, LLC, ANDREW STUBBLEFIELD, WICHULADA BUNCHIM, Uninsured Employer, and ALASKA WORKERS' COMPENSATION BENEFITS GUARANTY FUND, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201915340 AWCB Decision No. 20-0050 Filed with AWCB Anchorage, Alaska on June 24, 2020

Manivanh Chandara's (Employee) claim was heard on June 10, 2020, in Anchorage, Alaska, a date selected on February 13, 2020. A November 6, 2019 request gave rise to this hearing. Attorney Lee Goodman appeared and represented Employee who appeared by telephone and testified. Attorney Erik Brown appeared by telephone and represented Andrew Stubblefield, Wichulada Bunchim and Vida's Thai Food, LLC (collectively, Employer). Non-attorneys Velma Thomas and McKenna Wentworth appeared by telephone for the Alaska Workers' Compensation Benefits Guaranty Fund and its adjuster, respectively (collectively, the fund). Witnesses included Brad Kirby and Olivia Tipikin for Employee and Stubblefield and Bunchim for Employer. Oral orders found Stubblefield and Bunchim were joined as parties to Employee's claim, denied Employer's continuance request and granted Employee's request to strike Employer's late-filed witness list and evidence. This decision examines the oral orders and

decides Employee's claim on its merits. The record remained open for Employee's supplemental attorney fee and cost affidavit, and Employer's response, and closed on June 17, 2020.

ISSUES

The fund contended Stubblefield and Bunchim are Employer's limited liability company's (LLC) "sole members and owners." It contended they should be joined as parties to Employee's claim as persons against whom a right to relief may exist.

Employer contended it is a corporation and as such, Stubblefield and Bunchim cannot be joined as responsible parties; it objected to joinder.

Employee contended Stubblefield and Bunchim were already joined as parties because they failed to timely object to the fund's petition. An oral order decided Stubblefield and Bunchim were joined because they failed to object timely to the fund's joinder request and had waived their right to object. The order also held this decision would not address the fund's contention that Stubblefield and Bunchim could be held personally liable for any benefits awarded in this decision, because that issue was not raised as an issue for this hearing.

1) Was the oral order on the fund's joinder petition correct?

Employer contended the hearing should be continued for several reasons: (1) three coworkers signed affidavits disputing Employee's statement that she reported the incident to them; (2) her coworkers said they did not see Employee set a heavy pot down on the floor as she stated; (3) she never reported the injury until September 16, 2019; (4) the panel needs time to read Employee's deposition; and (5) Employer has contemporaneous workplace video evidence calling Employee's injury into question and the panel needs time to review it.

Employee objected to the continuance request. She was ready to proceed to hearing on the agreed-upon date. Employee contended Employer failed to show good cause for a hearing continuance.

The fund initially contended the continuance should be granted; however, after further discussion it withdrew its concurrence after the designated chair sent the fund's representatives a copy of Employee's deposition transcript. An oral order denied Employer's continuance request.

2) Was the oral order denying Employer's hearing continuance correct?

Employee contended Employer's late-filed witness list should be stricken and Employer should not be allowed to call any witnesses other than parties. She further contended Employer's late-filed evidence should similarly not be considered.

Employer conceded the witness list and evidence were late. It contended the evidence was important and was not filed on time because Employer was uncertain if witnesses would sign affidavits and it did not want to use subpoena power to coerce them.

The fund contended though the witness list and evidence were filed late, they should be allowed for impeachment. An oral order sustained Employee's objection to Employer's witness list and evidence and stated they would not be considered as evidence; however, Stubblefield and Bunchim would be allowed to testify because they are parties.

3) Was the oral order disallowing Employer's late-filed witness list and evidence correct?

Employee contends her lumbar injury arose out of and in the course of her employment with Employer; she seeks an order to so finding.

Employer contends Employee's lumbar injury did not arise out of or in the course of her employment; it seeks an order denying her claim on that basis.

The fund contends Employer presented only speculation about what may have happened before the alleged work injury to cause Employee's symptoms; it agreed with her presumption analysis.

4) Did Employee's injury arise out of and in the course of her employment?

Employee contends she has been temporarily totally disabled (TTD) since September 14, 2019. She seeks an order awarding TTD benefits against Employer.

Since it contends Employee's injury did not arise out of or in the course of employment, Employer implicitly contends she is not entitled to TTD benefits.
The fund agrees with Employee's presumption analysis but did not otherwise comment on her TTD benefit claim.

5) Is Employee entitled to TTD benefits?

Employee contends she is entitled to permanent partial impairment (PPI) benefits for her work injury once she becomes medically stable and is rated. She seeks an order awarding PPI benefits against Employer.

Since it contends Employee's injury did not arise out of or in the course of employment, Employer implicitly contends she is not entitled to PPI benefits.

The fund did not express a position on PPI benefits.

6) Is Employee entitled to PPI benefits at this time?

Employee contends she incurred medical expenses for her work injury. She seeks an order awarding medical benefits including transportation costs against Employer.

Since it contends Employee's injury did not arise out of or in the course of employment, Employer implicitly contends she is not entitled to any medical benefits including transportation costs. It did not otherwise object to Employee's submitted medical expenses or mileage.

The fund agrees with Employee's presumption analysis but did not otherwise comment on her claim for medical benefits including transportation costs.

7) Is Employee entitled to medical benefits and transportation costs?

Employee contends she is entitled to a penalty for Employer's failure to either pay or controvert her right to benefits and her claim. She seeks a penalty against Employer under AS 23.30.155(e).

Since it contends Employee's injury did not arise out of or in the course of employment, Employer implicitly contends she is not entitled to a penalty.
The fund contends there should be no penalty assessed under AS 23.30.100, but did not express an opinion on Employee's penalty claim under AS 23.30.155(e).

8) Is Employee entitled to a penalty?

Employee contends she is entitled to interest on all benefits awarded and attorney fees and costs, if she succeeds on her claim.

Since it contends Employee's injury did not arise out of or in the course of employment, Employer implicitly contends she is not entitled to interest, attorney fees or costs.

The fund did not state a position on Employee's claim for interest, attorney fees or costs.

9) Is Employee entitled to interest, attorney fees and costs?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:
1) On September 9, 2019, Employer was not insured for workplace injuries. (Agency file).
2) On September 9, 2019, Employee lifted a pot of soup from a stove at work for Employer and felt a "pinch" in her lower back. In her deposition, Employee had said she lifted the pot from the stove and put it on the floor; at hearing she said she put it on a "cart." Employee clarified that she put the soup pot on "a shelf" underneath the stove to cool it. When asked to reconcile her hearing testimony with her deposition testimony, Employee said she routinely put the soup pot on the shelf, which is what she meant by "the floor." She later said, "I call that the floor." Employee said, "I just complained and I said 'oh I hurt my back, '" but the other workers were in a hurry and busy and did not pay attention to her. Bunchim walked past the kitchen area and

Employee told her, "I hurt my back." Bunchim asked what happened and Employee told her she picked up a soup pot. Bunchim said perhaps it was a "pulled muscle" and advised her to take Tylenol. Employee described the pinching in her low back as a "sharp pain" on the right side. The quick, sharp pain dissipated and Employee took Tylenol, which helped "a little bit," and kept working. Bunchim gave her Tylenol about an hour and one-half later. Employee thinks her coworkers heard her complain because they were close by; she did not complain "that much." She thought she had pulled a muscle but was uncertain. Employee had never felt any symptoms like that before and had not previously had similar back pain. That night, back pain woke her from sleep. She does not take Tylenol for anything else; she has an ulcer, takes special ulcer medication but does not take Tylenol for it. (Employee).

3) The next morning, Employee felt "okay," and went to work; she told her coworkers her back still hurt. Her pain was "not too bad" and she worked a full day on Tuesday; she took Tylenol at work that day as well. Employee's back bothered her a "little bit" on Wednesday; she still felt a "little pinch." She did nothing from Monday through Wednesday except drive to and from work, go home and go to bed. Employee was off work on Thursday; she stayed in bed most of the day; the pain got worse so she took Tylenol. Employee went to work on Friday; her back hurt more than it had during the previous work days so she took Tylenol and kept working. She went home and went straight to bed. On each of these work days, Employee spoke to Bunchim and said her back still hurt from lifting the soup pot on Monday. (Employee).

4) Saturday, September 14, 2019, was Employee's birthday; her family planned to have an activity but canceled it Friday night because her back hurt too much. On Sunday, September 15, 2019, Employee called Bunchim and said she would not be able to work the next day. Bunchim told her to see a doctor; Employee told Bunchim she did not have money for a physician; Bunchim said she would pay for a doctor's appointment or workers' compensation would. Bunchim gave Employee's husband an insurance number on a form, which they gave to the clinic. The insurance number was invalid and declined at the doctor's office. Consequently, when Employee told Bunchim the clinic would not accept the insurance number, Bunchim said she would pay for the bill. Employee said Bunchim told her to go to the doctor's appointment and say she was "fine," and go back to work. Then, in a month or two when Bunchim obtained insurance, Employee could claim on the insurance. Employee declined to do that; she asked her

husband about Bunchim's suggestion and he said, "No, you can't do that, it's a lie." (Employee).

5) Employee was not able to work after the injury. She eventually needed a magnetic resonance imaging (MRI) and asked Employer if it would pay for that; Stubblefield said he would not pay for it. Medicaid paid for the MRI. (Employee).

6) Employee denied having various aches and pains before the alleged work injury. Employee is married; she worked for Employer 40 hours per week and earned $15 per hour. (Employee).

7) On September 16, 2019, Christine Brubaker, FNP-C, saw Employee for low back pain radiating down her right leg. Employee reported:

> Pain started approx. on 9/9/19 a few hours after lifting a 20-25 pound pot at work at a local restaurant. At first just a small nagging pain but this worsened over the intervening week particularly over the past 3 days and started to radiate down the right leg. Yesterday she could not walk unassisted due to the pain which prompted her to get evaluated medically. She worked up through 9/13/19 with her usual activities at work. No additional recalled injury or heavy lifting at work or at home. She has not [sic] prior history of injury or surgery to her back. No LE weakness or numbness or tingling. No saddle area numbness. No bowel or bladder urgency or incontinence.

FNP-C Brubaker diagnosed right sciatica with no neurologic deficits. She recommended medication, alternating heat and ice and a one-week follow-up. She restricted Employee from work for one week, after which a reassessment would determine if and when she could return to work. Employer paid for this visit. (Brubaker reports, September 16, 2019; Employee).

8) On September 16, 2019, Employee timely reported in writing to Employer a work injury while working for Employer on September 9, 2019. She said while "lifting pot of soup," Employee hurt her lower back and right leg; she saw Brubaker for medical care. Stubblefield responded to Employee's written report by stating "Traveler's" was Employer's insurer and provided a policy number. He wrote on the form that Employer first knew of the injury on September 15, 2019. Stubblefield said Employee "never reported" the injury and said he was "not sure" where the injury occurred because Employee "never reported until Sunday 9-15-19." He hired Employee in approximately 2015 and paid her $15 per hour, for five days work per week. Stubblefield doubted the injury's validity and stated three times Employee "never reported injury at work." (Report of Occupational Injury or Illness, September 16, 2019).

9) On September 24, 2019, FNP-C Brubaker saw Employee again "for a workman's comp follow-up visit for her back." Her condition had not changed; medications were not helping; lying down was the only thing that helped. FNP-C Brubaker diagnosed low back sciatic-type pain; she was concerned about a disc herniation and recommended x-rays and continued her off-work restriction for two more weeks, with a five pound lifting limit. Employer paid for this visit. (Brubaker report, September 24, 2019; Employee).

10) On October 7, 2019, Employee claimed TTD benefits arising from a work injury while lifting a large pot of soup. She suspected a pinched nerve that affected her lower back and right leg. (Claim for Workers' Compensation Benefits, October 2, 2019).

11) On October 9, 2019, the division served Employee's claim on the fund, Employer, Stubblefield and Bunchim. (Claim served tab, October 9, 2019).

12) On October 15, 2019, lumbar x-rays showed mild lower lumbar degenerative spurring and facet arthropathy. Employer paid for the service. (X-ray report, October 15, 2019; Employee).

13) On October 15, 2019, Stubblefield received and signed for the served claim. (Certified mail receipt, October 15, 2019).

14) On October 17, 2019, Melissa Bunker, FNP-C, saw Employee who reported her inability to take prescribed medication due to stomach issues. Pain woke her up at night; standing and sitting made it worse. FNP-C Bunker diagnosed right lumbar radiculopathy and ordered narcotics, an MRI and referral to an orthopedic specialist. She removed Employee from work until the orthopedic surgeon released her. (Bunker reports, October 17, 2019).

15) On October 20, 2019, Employer disputed Employee's injury account and said, in full:

> Manivanh Chandara never reported an injury on the 9th of September, the day that she claims the injury happened. She worked on the 10th and 11th of September without any complaints or physical signs of injury. She was off work on the 12th, and returned to work on the 13th, still with no report or physical signs of pain or injury. Manivanh was off Saturday the 14th and the restaurant is closed on Sundays. It wasn't until Monday, the 16th of September, that Manivanh came into the restaurant and told us that she wanted to make a workers' compensation claim. That was the first time that she told us she had a work related injury.
>
> Manivanh didn't have any noticeable physical signs of leg or back pain, nor did she report any pain or injury to us or any of our other employees during the work week of September 9, 2019 - September 13, 2019.

> I don't believe that this injury occurred at work, as Manivanh was able to continue working the rest of the week without complaint. (Stubblefield letter, October 20, 2019).

16) Employer's October 20, 2019 letter is treated as its answer to Employee's October 2, 2019 claim. (Judgment).

17) On October 24, 2019, Employee's MRI showed degenerative disc disease at L4-5 and L5-S1, facet arthritis and ongoing active edema. She had mild canal stenosis at L4-5 and a right lateral disc protrusion at L4-5 encroaching on the right L4 nerve root. (MRI report, October 24, 2019).

18) On November 4, 2019, Employee claimed TTD, permanent partial impairment (PPI) benefits, medical benefits and related transportation costs, attorney fees, costs and interest. (Claim for Workers' Compensation Benefits, November 4, 2019).

19) On November 11, 2019, Brent Adcox, M.D., orthopedic surgeon, examined Employee for back pain. She was at work and lifted a big pot and felt a pinching in lower right back. The pain radiated down her right leg and she reported numbness in her thigh and tingling down her leg. Employee worked through the symptoms for about five days and awoke with a stiff back. She was taking Tylenol throughout the week she continued to work. Dr. Adcox's report states:

> Manivanh is a 60-year-old woman who is here for evaluation of low back pain and right lower extremity radicular pain in the L5 nerve root distribution. She has had an MRI which demonstrates annular tears at L4-5 and L5-S1 with a far lateral disc herniation on the right side at the L4 nerve root foramen. This does not correlate to her radicular pattern of pain. She does not have any subjective weakness in the lower extremities. She has significant low back pain. She states she was lifting a heavy pot while at work, felt something pop in her lumbar spine and has had significant pain since that time. She has no previous history of low back pain per her history.

Dr. Adcox recommended an epidural steroid injection to address nerve root irritation related to the annular tears, and physical therapy. (Adcox report, November 11, 2019).

20) On November 13, 2019, the fund asked for an order joining Stubblefield and Bunchim, Employer's LLC member-owners, as parties. The petition, served on Employer, Bunchim and Stubblefield stated:

> Pursuant to 8 AAC 45.040(g), the person or party to be joined as a party will be joined unless within 20 days after the service of the petition the person or party

> files an objection with the board and serves the objection on all parties in accordance with 8 AAC 45.060. (Petition, November 13, 2019).

21) Neither Employer, Stubblefield nor Bunchim filed an answer to the fund's November 13, 2019 petition to join Stubblefield and Bunchim as parties to Employee's claim. (Agency file).

22) On November 14, 2019, the fund denied Employee's claim for all benefits on procedural grounds. (Controversion Notice, November 14, 2019).

23) On November 14, 2019, the fund answered Employee's November 4, 2019 claim and denied TTD benefits on procedural grounds. (Employer's [sic] Answer to Employee's Workers' Compensation Claim Dated 11/4/2019, November 14, 2019).

24) On November 25, 2019, Employer disputed Employee's November 4, 2019 claim by reasserting its defenses to the first claim. (Stubblefield letter, November 19, 2019).

25) Employer's November 19, 2019 letter is considered its answer to the November 4, 2019 claim. (Judgment).

26) On December 9, 2019, Maureen Filipek, M.D., performed a CT-guided transforaminal epidural steroid injection at the right L4 rootlet and the right L4-5 foramina to address Employee's annular tears. (Filipek report, December 9, 2019).

27) On January 15, 2020, Employee orally amended her November 4, 2019 claim to include a penalty. (Prehearing Conference Summary, January 15, 2020).

28) On January 16, 2020, Employee filed and served pharmacy receipts documenting medications she purchased totaling $89.20. (Medical Summary, January 16, 2020).

29) By January 20, 2020, Employee was doing worse and her back was more painful:

> Manivanh is a 60-year-old woman who has a work-related injury causing right leg radicular pattern of pain. She has 2 annular tears in her lumbar spine. Unfortunately, the epidural injections have not given her the significant relief that she has been looking for. Her injury occurred at work while twisting, causing immediate pain down the leg. Further examination today in light of the failed epidural steroid injections suggest that she has piriformis syndrome. Piriformis syndrome can make a radicular pattern of pain very easily, due to muscular spasm of the piriformis musculature and subsequent pressure on the sciatic nerve.

Dr. Adcox opined there was no surgical remedy at present but Employee would require physical therapy for at least six weeks. (Adcox report, January 20, 2020).

30) On February 13, 2020, the parties met by telephone to discuss the case and to set a hearing:

> Parties found a mutually agreeable date and the designee scheduled an oral hearing for **06/10/2020**. . . .
>
> The issue to be heard at this hearing is the EE's 11/04/2019 Workers' Compensation Claim; specifically the following benefits: *TTD, PPI, Medical costs, Transportation costs, Attorney's fees/costs, Interest, Penalty*. The parties **stipulated** to serve and file legal memoranda, including **hearing briefs** and **witness lists** on or before **06/03/2020** and **evidence** on or before **05/21/2020** in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120.
>
> **Order:**
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> Parties will proceed in accordance with this prehearing conference summary.

Stubblefield and Brown attended the conference and had actual notice of the hearing date and filing deadlines. (Prehearing Conference Summary, February 13, 2020; emphasis in original).

31) On February 27, 2020, Employee began physical therapy at South Peninsula Hospital. (Treatment Plan, February 27, 2020).

32) On April 15, 2020, the board's designee reiterated that a hearing was scheduled for June 10, 2020, on Employee's claims. (Prehearing Conference Summary, April 15, 2020).

33) On April 20, 2020, Dr. Adcox said Employee was unable to return to work until she completed physical therapy, which could not occur until further notice due to Covid-19 restrictions. (Adcox report, April 20, 2020).

34) On May 4, 2020, Employee sought Dr. Adcox's causation opinion. He opined the September 9, 2019 work injury substantially caused the need for her medical treatment but did not permanently aggravate a preexisting condition, because there was no preexisting condition. (Adcox response, May 4, 2020).

35) On May 20, 2020, Employee filed and served: the division's October 16, 2019 letter to Employer; South Peninsula Hospital patient encounter records documenting $4,419.17 in medical expenses incurred on December 9, 2019; $593 incurred on April 1, 2020; $1,563 incurred between February 27, 2020 and April 23, 2020; $4,419.17 incurred for an unspecified minor surgery; and $3,376 for services rendered on October 24, 2019 and November 14, 2019. (Notice of Filing Evidence for Hearing and Certificate of Service, May 20, 2020).

36) On May 22, 2020, Employee testified in pertinent part: Around noon on September 9, 2019, she lifted a soup pot weighing approximately 20 pounds from the stove, turned and got a

"pinch" on her back; she put the pot down on "the floor." There were other workers present when this occurred and she said aloud "I'm hurt my back." Employee told Bunchim about an hour or two after the event "I lift the pot," and Bunchim replied, "Maybe just pulled muscle" and said, "Get the Tylenol." Employee took two Tylenol and thought she pulled a muscle so she continued working; she worked her normal days that week (Tuesday, Wednesday, and Friday) and her back "just hurt a little bit." Her last day was Friday and on Saturday she could not get out of bed and her back was worse. Employee called Bunchim on Sunday [September 15, 2019] and said her back was worse and she probably could not work on Monday; Bunchim told her to go to a doctor because she had workers' compensation. Employee initially said that on the following Monday [September 16, 2019], at Bunchim's direction, she stopped by the restaurant to obtain a workers' compensation form before she went to the doctor. She then said she did not go to the restaurant [on September 16, 2019] to tell Bunchim she had hurt her back because Bunchim already knew. Brown had difficulty understanding Employee's testimony so Goodman spoke with Employee and her husband off record; following this discussion, it was Goodman's impression Employee did not go to the restaurant at all on September 16, 2019, but her husband did; Employee subsequently said she did not go to the restaurant on September 16, 2019. Employee went in about a week later to give Bunchim the doctor's off-work note. She has not injured her back before. Employee got a treadmill before the work injury but did not use it daily; she was no longer using the treadmill. (Videoconference Deposition of Manivanh Chandara, May 22, 2020).

37) Employee's deposition transcript is difficult to understand; the parties and court reporter also had difficulty understanding her testimony. Kirby, Employee's husband, occasionally answered questions for Employee. (Judgment; observations).

38) On June 5, 2020, Goodman filed and served his itemized attorney fee and cost affidavit. He set forth the total hours worked and legal services he and his paralegal provided on Employee's claim; he bills at $385 per hour for his time and $185 per hour for his paralegal's time. Goodman itemized 55.20 attorney hours and $21,252 in attorney fees; he itemized 11.8 paralegal hours and $2,338.80 in costs, including his paralegal. (Affidavit of Attorney's Fees and Costs, June 5, 2020).

39) At hearing, Kirby testified Employee first mentioned her work-related injury to him on Monday, the day it happened; she thought it was a pulled muscle. Employee "ate a lot of

Tylenol" that week and was slow to get up and move around the house. By Saturday, September 14, 2019, Employee needed assistance getting out of bed to use the bathroom. On Monday, September 16, 2019, Kirby took Employee to the clinic. He left the clinic and went to Employer to get an insurance form. Employee told him Bunchim was concerned Employer did not have workers' compensation coverage, and Bunchim told Employee to tell the doctors she was okay, get a work release and wait until the insurance was "straightened out" after which Employee could go back and claim the injury. (Kirby).

40) Kirby said it was impossible for Employee to have injured herself on the treadmill because he would have known about it. She did not use the treadmill often, and when she did, she did "a slow walk on it." Employee had very little time to use the treadmill because she worked so many hours. Employee takes Omeprazole, not Tylenol, for her ulcer. (Kirby).

41) Tipikin is married to Employee's son and has known her for 13 years. She is a certified nursing assistant and does client home care. When her husband told her on Monday, September 9 or Tuesday, September 10, 2019, that "Mom" got hurt at work, Tipikin took hot pads and other things to Employee to help relieve her symptoms. When Tipikin first saw Employee after the work injury, she was on the couch and looked very uncomfortable. The family had planned a barbecue on Employee's birthday on Saturday, September 14, 2019, but canceled it. Tipikin was unaware Employee had ever previously been injured. Employee told her she had lifted a large soup pot at work and hurt her back; she continued to work but her symptoms got worse. (Tipikin).

42) Stubblefield first met Employee at The Mermaid Café, which his wife Bunchim operated as Vida's Thai Food in 2013; his wife hired Employee as a cook. According to Stubblefield, Employee was not always on time and had a habit of calling in sick at the last minute; she partied too much or simply did not want to come to work, which made the café short-handed. In his opinion, he was not a dependable worker. Stubblefield's current restaurant [where the injury occurred] has a small kitchen where all workers are close together. He was present on the injury date, September 9, 2019. Stubblefield said Employee did not speak to him or Bunchim and never reported an accident or injury that day. According to Stubblefield, had she reported an accident or injury, he and his wife would have known about it because the working area is so small and they would have taken "immediate action" to make sure she had medical attention. He added, no coworkers reported knowing about any injury to Employee. (Stubblefield).

43) Stubblefield said that on September 16, 2019, Employee and her husband came to the restaurant and Employee said she wanted to make a claim; he and Bunchim asked her what happened. They were "caught off guard" because he said this was the first time they knew Employee was going to make a claim. According to Stubblefield, in response to their query about "what happened," Employee "didn't really report the accident to us. . . . She didn't tell us what happened," and Employee and her husband were "in kind of in a rush to get to their appointment." Stubblefield did not have an injury report on hand so he went across the street to his insurance broker's office to obtain one. He gave the injury report to Employee's husband to take to the local clinic. By Stubblefield's account, Kirby returned to the restaurant with the form for him to sign. He testified this was the first time Employer realized how and when Employee claims to have been injured. Stubblefield contested the injury because Employee never reported it on the day it occurred. According to Stubblefield, had she reported it, "we would've never let her keep working had we known that she lifted a pot of soup." He is certain Employee never got injured lifting a pot of soup, and stated "that never happened." Stubblefield agreed Employee lifted a soup pot every day at work. When asked if Employee called prior to September 16, 2019, to say she could not work, Stubblefield clarified the question, which was repeated, and answered, "No." (Stubblefield).

44) Stubblefield recommended Employee see a doctor. "We told her we wanted her to go . . . see a real doctor . . . because we care about her." Bunchim and Employee always speak in Thai, so Stubblefield does not understand what they are talking about. He disputed Employee's account that she obtained Tylenol from Bunchim. Stubblefield said two coworkers in the kitchen when the accident occurred told him Employee never reported an accident to them. The coworkers also told him they did not notice her setting a pot of soup on the floor on that day. However, Stubblefield said, "Sometimes they put it on a little, on the floor there to let it cool, or they put it on a rack, but not a rack but a little cart with wheels." There is a little cooling shelf underneath the counter, which he concedes may be where Employee put the pot of soup that day. (Stubblefield).

45) Employer paid about $250 for Employee's doctor bills for her work injury. He denied Employee's account of Bunchim telling her to tell her doctor she was okay and wait a couple of weeks to report the injury until Employer got insurance coverage; "No, she never said that." In Stubblefield's view, Employee did not have any outward physical signs of injury when she

appeared at the restaurant to get her paycheck on September 18, 2019; she was "happy-go-lucky" and able to carry "heavy items" without apparent difficulty and needed no assistance getting into her vehicle. However, he admitted he was not present on September 18, 2019, when Employee came in to get her paycheck; he saw her on surveillance video, which was inadmissible evidence. He also saw a Facebook video of Employee jogging on a treadmill on August 16, 2019; Stubblefield never spoke to her about using the treadmill. (Stubblefield).

46) Stubblefield said he first became aware he had a problem with his workers' compensation insurance on September 16, 2019, when he went across the street to the broker and talked to Carol, his agent, to get an injury report. On that date, Carol advised him there was an outstanding bill and a problem with his insurance. (Stubblefield).

47) Stubblefield agreed Employee works at least eight hours per day and was always paid for 40 hours per week; her pay was $600 per week. In his view, Employee had the same bad work habits working for Employer that she had while working at The Mermaid Café. She would not come into work when she was supposed to and would frequently call in sick. Nonetheless, they still hired her when they opened the current restaurant because in his view she cannot obtain employment elsewhere due to her language restrictions, and they always try to "help her out." (Stubblefield).

48) Bunchim previously operated The Mermaid Café and while working there, she first met Employee who in her opinion was not a good employee and "most of the time she just called in sick and not dependable; when she don't want to show up she just call in the morning and not show up" but when she did show up, Employee was a hard worker. (Bunchim).

49) Bunchim said on the injury date, Employee never told her she hurt her back lifting a pot; she subsequently asked coworkers, who she said, also denied Employee told them. Bunchim said she first knew Employee was claiming a work injury on September 16, 2019; she sent Stubblefield across the street to get an injury report. When Kirby brought the form back to the restaurant that was the first time she heard about lifting the soup pot, according to Bunchim. She denied she told Employee to tell her doctor she was okay and then wait a couple of weeks until Employer obtained workers' compensation coverage for the injury. (Bunchim).

50) On Sunday, September 15, 2019, Employee called Bunchim and said she could not come to work on Monday; Bunchim told her to go see a doctor; Employee told Bunchim she was going to see a doctor on Tuesday; Bunchim told Employee "because she was hurt" and "could not

come to work" on Monday she better see a doctor on Monday. Bunchim said she was surprised on Monday morning September 16, 2019, when Employee showed up to fill out an injury report. Bunchim said that sometime before September 9, 2019, Employee told her she was using a treadmill but stopped using it because she "hurt her leg." Bunchim next saw Employee on September 18, 2019, when she came in to get her paycheck. To Bunchim's observations, Employee was not limping and did not appear to be in pain; she was able to walk into the restaurant and carry broccoli out to her vehicle. She denied giving Employee Tylenol on September 9, 2019; however, she admitted giving her Tylenol before that date because Employee has an "ulcer problem" and, according to Bunchim, would ask for Tylenol to treat her ulcer symptoms. (Bunchim).

51) Bunchim could not recall how many occasions she gave Employee Tylenol, but she was certain she did not give her Tylenol on September 9, 2019, because Employee never complained about pain that day. Goodman asked Bunchim if she thought Employee was actually injured. There was a long pause, and Bunchim said "hold on." After another pause, Bunchim said she does not believe Employee is injured at all, much less at the restaurant. However, Bunchim then stated she believes Employee injured herself on her own treadmill. When Goodman pointed out the inconsistency in her testimony, Bunchim said she did not understand the question. Goodman "started over" with his questions and Bunchim then testified she believes Employee is injured, and she injured herself on her treadmill; though she could not state a precise injury date. Bunchim based this opinion on Employee telling her sometime before September 9, 2019, that she hurt her leg and no longer used the treadmill. She does not remember Employee taking any time off the entire month before September 2019. When Employee called Bunchim on Sunday, September 15, 2019, she said she "hurt her back" and could not come to work on Monday but never mentioned the restaurant, according to Bunchim. Employee was not limping before September 9, 2019, in Bunchim's opinion. When responding to the fund's questions about Employee's honesty, Bunchim repeatedly asked for clarification. Bunchim again said she does not believe Employee's back hurts; she then stated she believes Employee says she has back pain; Bunchim then said "I don't know" if Employee actually has back pain. Bunchim does not believe Employee is a "100% honest person." Bunchim said she does not believe Employee when she says her back hurts and then concluded she found the line of questioning "confusing." She clarified that on Sunday when Employee called her to say she had hurt her back, Bunchim

believed her and suggested she see a doctor. However, the next day when she came in and reported it was a work injury that caused her symptoms, Bunchim no longer believed her. (Bunchim).

52) Bunchim said Stubblefield completed the Employer's part of the injury report on September 16, 2019; Bunchim provided some of the information. Bunchim was not aware the injury report says the Employer "first knew" of the injury on September 15, 2019. When Employee called on Sunday, September 15, 2019, to say she would not be coming to work, she told Bunchim she had "hurt her back or leg." However, according to Bunchim, Employee never told her how or where she hurt her back or leg, and Bunchim never asked her. (Bunchim).

53) There have been other work injuries at Employer's restaurant; a worker fell and hurt her knee and they sent her to the hospital immediately. That worker did not file an injury report because it was "no big deal" and Bunchim paid for the medical bills. Bunchim denied a worker named "Aomon" had a work injury while working for Employer, or said he had a work injury. Nonetheless, Bunchim paid for him to go to the chiropractor because she always likes to help -- "like family." She denied any worker had a burn injury at work for Employer. Another worker said she hurt her shoulder lifting a big pot at work for Employer; Bunchim said she could not remember the details about when this worker reported this 2018 work injury. (Bunchim).

54) In rebuttal, Employee testified a coworker had a bad burn on her foot; she, like Employee, also continued to work. This worker could not put her foot in a shoe and had to wear a sandal at work for a week; the worker told Employer about this injury but they did not give that worker an accident report to complete. "Aomon" said he hurt his shoulder at work cutting meat and doing dishes because the counters are too high for him; this worker also told Bunchim about his work injury and Employer did not complete a report for him either; he paid for most of his treatment from his own pocket. Another coworker injured her shoulder while cooking; she saw a physician for an injection. This worker also had an eye injury while cooking for Employer; this was not reported and the worker paid for her medical care from her own pocket. She knows these workers paid for their own medical care because the injured workers told her. (Employee).

55) In rebuttal, Stubblefield said the three injuries Employee referenced did not result in Employer filing injury reports because Stubblefield understood "Aomon" did not get hurt at work and the other two injured workers did not want to file reports. He was aware that a worker spilled grease on her foot; that worker did not want to file an injury report. (Stubblefield).

56) Bunchim had good understanding and comprehension when answering questions supporting her position. However, she frequently paused, struggled, could not remember and claimed to not understand straightforward questions when the questions challenged her position. Bunchim's answers were sometimes inconsistent; when inconsistencies were brought to her attention, Bunchim stated she was confused or did not understand the question. (Record, judgment).

57) Stubblefield testified he does not understand Thai, which is the language Bunchim and Employee used when they were talking to each other. Nevertheless, he offered testimony directly challenging what Employee said she told Bunchim, and what Bunchim told her. (Record).

58) English is not Employee's first language; her telephonic testimony was at times difficult to understand. (Experience; judgment; record).

59) Low back injuries caused by lifting objects while twisting, is one of the division's most commonly seen work-related injuries. Some injuries seem minor at first and then symptoms progress over time. An "antalgic gait" describes an abnormal walking pattern caused by pain and often displays as a limp. (Experience; judgment; observations).

60) On the injury date, Employee was married. Under the division's online "Benefit Calculator," for a married person with two dependents (Employee and her husband) assuming a $491 gross weekly wage ($24,525 stated in Employee's brief / 50 = $490.50 rounded up to $491), Employee's TTD benefit weekly rate is $353.92. (Online Benefit Calculator).

61) On June 11, 2020, Goodman filed his supplemental attorney fee and cost affidavit; he itemized an additional 21.3 attorney hours totaling $8,200.50. Goodman seeks $31,791.30 in total attorney fees and costs. His attorney and paralegal time spent on this case are reasonable compared to other cases of similar low complexity; his hourly rates are lower than those typically charged by attorneys representing injured workers before the board. (Amendment to Affidavit of Fees and Costs, June 11, 2020; experience; judgment; observations).

62) Employee's hearing brief was much better than average and particularly helpful. It was well-organized, clear, and expressly stated the benefits Employee was seeking; the attached exhibits were especially helpful in focusing on relevant evidence. (Experience; judgment; observations).

PRINCIPLES OF LAW

The board may base its decision on not only 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 (Alaska 1987). In *Egemo v. Egemo Construction Co.*, 998 P.3d 943, 944 (Alaska 2000), the court held:

> In our view, when a claim for benefits is premature, it should be held in abeyance until it is timely, or it should be dismissed with notice that it may be refiled when it becomes timely (footnote omitted).

Kessick v. Alyeska Pipeline Service Co., 617 P.2d 755, 758 (Alaska 1980), said a "lack of objective signs of injury in and of itself" does not preclude "the existence of such an injury." *Kessick* said, "There are many types of injuries which are not readily discovered by objective tests."

> **AS 23.30.010. Coverage.** (a) . . . compensation or benefits are payable under this chapter for disability . . . or . . . need for medical treatment of an employee if the disability . . . or . . . 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 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 . . . 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 . . . 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 the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment.

Morrison v. Alaska Interstate Construction, Inc., 440 P.3d 224 (Alaska 2019), said the board must consider different causes of the "benefits sought" and the extent to which each cause contributed to the need for the specific benefit at issue. The board must then identify one cause as "the substantial cause." *Morrison* said:

> Alaska Statute 23.30.010(a) requires the Board to "evaluate the relative contribution of different causes of . . . the need for medical treatment." That subsection then provides, "Compensation or benefits under this chapter are payable for . . . medical treatment if, in relation to other causes, the employment is the substantial cause of the . . . need for medical treatment" (citation omitted). When read together, these sentences do not reflect an instruction to consider the type of *injury* when evaluating compensability; instead, they require the Board to look at the *cause* of the injury or symptoms to determine whether "the employment" was a cause important enough to bear legal responsibility for the medical treatment needed for the injury. (*Id*. at 233-34; emphasis in original).

The statute does not require the substantial cause to be a "51% or greater cause, or even the primary cause, of the disability or need for medical treatment." The board need only find, which of all causes, "in its judgment is the most important or material cause related to that benefit." (*Id*.). The board's decision need only be supported by "substantial evidence," which is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Id*. at 239.)

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires. . . .
>
> **AS 23.30.100. Notice of injury or death**. (a) Notice of an injury . . . in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury . . . to the board and to the employer.
>
> (b) The notice must be in writing, contain the name and address of the employee, a statement of the time, place, nature, and cause of the injury or death . . . and be signed by the employee or by a person on behalf of the employee. . . .
>
> **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. . . .

The presumption applies to any claim for compensation. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). In the first step, the claimant need only adduce "minimal" relevant evidence establishing a "preliminary link" between the injury and employment. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.,* 742 P.2d 239, 244 (Alaska 1987). Credibility is not weighed here.

Resler v. Universal Services Inc., 778 P.2d 1146 (Alaska 1989). If the employee's evidence raises the presumption, it attaches to the claim and the production burden shifts to the employer.

In the second step, the employer has the burden to overcome the presumption with substantial evidence to the contrary. *Tolbert v. Alascom, Inc.*, 973 P.2d 603 (Alaska 1999). Credibility is not examined at the second step either. *Resler*. Further addressing substantial evidence to rebut the presumption, *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904, 920 (Alaska 2016), said an employer can rebut the presumption by showing the worker's injury did not arise out of his employment. To do so, it needs to show the work injury could not have caused the condition requiring treatment or causing disability (the negative-evidence test) or that another, non-work-related event or condition caused it (the affirmative-evidence test). However, "The mere possibility of another injury is not 'substantial' evidence sufficient to overcome the presumption." Similarly, an "unknown" cause is not substantial evidence to rebut the presumption.

In the third step, if the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Huit* held in determining whether the disability or need for treatment arose out of and in the course of employment, the factfinders in the third step must evaluate the relative contribution of different causes of the disability or need for treatment. The employee must "induce a belief" in the fact-finders' minds that the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). Here, evidence is weighed, inferences drawn and credibility determined. *Steffey v. Municipality of Anchorage*, 1 P.3d 685 (Alaska 2000). If an employer fails to rebut the raised presumption with substantial evidence to the contrary, the injured worker is entitled to benefits as a matter of law. *Carter v. B&B Construction, Inc*., 199 P.3d 1150 (Alaska 2008). In *Rockney v. Boslough Construction Co.*, 115 P.3d 1240 (Alaska 2005), the court stated, in a vocational reemployment plan case, that the statutory presumption of compensability does not apply if there is no factual dispute about an issue.

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

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

> **AS 23.30.145. Attorney fees**. . . .
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered. . . .

Attorney fees in these cases should be fully compensatory and reasonable so injured workers can retain competent counsel. *Cortay v. Silver Bay Logging,* 787 P.2d 103 (Alaska 1990).

> **AS 23.30.155. Payment of compensation**. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, in a format prescribed by the director, stating
>
> (1) that the right of the employee to compensation is controverted;
> (2) the name of the employee;
> (3) the name of the employer;
> (4) the date of the alleged injury or death; and
> (5) the type of compensation and all grounds on which the right to compensation is controverted.
>
> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.
> . . . .
>
> (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.
> . . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. . . .

In *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358-59 (Alaska 1992), the court stated:

> 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 (citation omitted). ([T]he only satisfactory excuse for delay in payment of disability benefits, whether prior to or subsequent to an award, is genuine doubt from a medical or legal standpoint as to liability for benefits.)
> . . . .
>
> Because neither reason given for the controversion was supported by sufficient evidence to warrant a Board decision that Harp is not entitled to benefits, the controversion was made in bad faith and was therefore invalid. A penalty is therefore required by former AS 23.30.155(e).

The penalty provision under AS 23.30.155(e) also applies to medical benefits. *Childs v. Copper Valley Electric Association*, 860 P.2d 1184 (Alaska 1993).

> **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.
>
> **AS 23.30.190. Compensation for permanent partial impairment; rating guides**. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . .
>
> **AS 23.30.395. Definitions**. In this chapter,
> . . . .
>
> (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. . . .
> . . . .

(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. . . .

8 AAC 45.040. Parties. . . .

. . . .

(d) Any person against whom a right to relief may exist should be joined as a party.

. . . .

(f) Proceedings to join a person are begun by

(1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties. . . .

(g) A petition or a notice to join must state the person will be joined as a party unless, within 20 days after service of the petition or notice, the person or a party files an objection with the board and serves the objection on all parties. . . .

(h) If the person to be joined or a party

(1) objects to the joinder, an objection must be filed with the board and served on the parties and the person to be joined within 20 days after service of the petition or notice to join; or

(2) fails to timely object in accordance with this subsection, the right to object to the joinder is waived, and the person is joined without further board action.

8 AAC 45.050. Pleadings. . . .

. . . .

(f) **Stipulations.**

. . . .

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. . . .

8 AAC 45.065. Prehearings. . . .
. . . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

8 AAC 45.074. Continuances and cancellations. . . .
. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

8 AAC 45.112. Witness list. A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider

(1) the testimony of a party. . . .

> **8 AAC 45.120. Evidence**. . . .
> . . . .
>
> (f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, 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. . . .
>
> **8 AAC 45.195. Waiver of procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

ANALYSIS

1) Was the oral order on the fund's joinder petition correct?

On November 13, 2019, the fund filed a petition for an order joining Stubblefield and Bunchim as parties to this case; the fund served the petition on them and Employer. The petition stated Stubblefield and Bunchim would be joined as parties to the claim unless they filed and served an objection within 20 days. Neither Stubblefield, Bunchim nor Employer filed an objection to joinder. Therefore, Stubblefield and Bunchim were joined as parties procedurally because they waived their right to object. 8 AAC 45.040(f)(1), (g), (h)(1)-(2). However, the fund's petition implies the fund may want to hold Stubblefield and Bunchim personally liable in the event this decision finds Employee's claim compensable and awards benefits for which the fund may ultimately be responsible if Employer does not pay. 8 AAC 45.040(d). This is a separate issue from the joinder question; it was not listed as an issue on the controlling prehearing conference summary for hearing and cannot be considered at this time. 8 AAC 45.065(c). Therefore, the oral order finding Stubblefield and Bunchim were joined as a matter of procedural law, while at the same time declining to address any personal liability issue, was correct.

2) Was the oral order denying Employer's hearing continuance correct?

Continuances are not favored or granted unless there is good cause to continue a hearing. 8 AAC 45.074(b). Employer sought a continuance based on factual arguments; none rose to the level of "good cause" as defined in the applicable regulation. 8 AAC 45.074(b)(1)(A)-(N). Thus, the oral order denying the hearing continuance request was correct.

3) Was the oral order disallowing Employer's late-filed witness list and evidence correct?

On February 13, 2020, the parties, and Brown acting as Employer's "Potential Attorney," attended a prehearing conference. The designee set a hearing for June 10, 2020, and the parties stipulated to file witness lists on or before June 3, 2020, and evidence on or before May 21, 2020, in accordance with 8 AAC 45.112 and 8 AAC 45.120. Employer, represented by an attorney, filed its witness list five days late on June 8, 2020, violating both the stipulation and the regulation; Employer filed its witness list only two days before the hearing. Further, Employer's witness list did not conform to the regulation because it failed to include a "brief description of the subject matter and substance of the witnesses's expected testimony." 8 AAC 45.112. Employer contended the witness list was late because it was unsure if the listed witnesses would testify, so Brown was reluctant to put them on the list and did not want to force their attendance through subpoenas.

While in some circumstances procedural requirements may be waived or modified if a party would suffer manifest injustice through a strict regulatory application, a waiver may not be used merely to excuse a party from failing to comply with the law. 8 AAC 45.195. Employer stipulated to file its witness list on or before June 3, 2020, which coincides with the filing deadline set forth in the law. 8 AAC 45.050(f)(2); 8 AAC 45.112. Employer conceded three listed witnesses were still in its employ. Thus, it had unfettered access to all listed witnesses since Employee's alleged September 9, 2019 work injury. Employer offered no convincing reason why it could not have timely filed a conforming witness list, notwithstanding the possibility that particular witnesses might need a subpoena to enforce attendance. Similarly, Employer had the ability to obtain and file witness affidavits and video evidence at any time since September 9, 2019; thus, 8 AAC 45.195 does not apply in this circumstance. Employer offered no "good cause" to relieve it from its February 13, 2020 stipulation and did not otherwise

comply with the deadlines provided for filing and serving witness lists and evidence. 8 AAC 45.050(f)(3); 8 AAC 45.112; 8 AAC 45.120(f). Therefore, the oral order declining to allow Employer to call any witnesses other than parties Stubblefield and Bunchim was correct.

4) Did Employee's injury arise out of and in the course of her employment?

Employee contends she injured her low back while working for Employer on September 9, 2019, when she lifted a pot of soup weighing approximately 20 pounds and twisted. Employer contends Employee suffered no injury at work, possibly no injury at all, or may have injured herself at home on her treadmill because on September 9, 2019, she did not immediately report any injury to management or coworkers, did not promptly ask Employer for any medical assistance, exhibited no outward signs of an injury, continued working on the injury date and thereafter, and said she injured her leg while using her treadmill at home.

The parties' contentions on whether Employee actually had an injury at all create factual disputes to which the compensability presumption must be applied. AS 23.30.120(a)(1); *Meek*. It is presumed, absent substantial evidence to the contrary, that the claim comes within the Act's provisions. Without regard to weighing the evidence, or her credibility, Employee raises the presumption through her testimony. AS 23.30.010(a); *Resler*; *Cheeks*. Employee said she lifted a relatively heavy pot of soup at work on September 9, 2019, twisted and immediately felt a "pinch" in her right lower back; this was her injury. The raised presumption shifts the burden to Employer who must rebut the presumption with substantial evidence to the contrary. *Tolbert*. Again without regard to weighing the evidence, or Stubblefield's or Bunchim's credibility, Employer fails to rebut the presumption. *Resler*; *Harp*. Employer relies on Stubblefield's and Bunchim's testimony that Employee did not immediately report any injury to them or to her coworkers, did not ask them for immediate medical assistance, appeared "fine," continued working on the injury date and for several days thereafter and may not be injured or may have injured herself while using her treadmill at home. Employer's allegations do not rebut the raised presumption for the following reasons:

Employee had no legal duty to report her injury on the day it occurred; she had 30 days to report it and reported it to Employer at the latest on September 16, 2019, only seven days after the

event. She had no legal duty to report it to coworkers; she had to report it to her supervisor, and she did. AS 23.30.100(a), (b). Employee had no legal duty to seek immediate medical assistance; medical treatment is driven by the "nature of the injury and the process of recovery." AS 23.30.095(a). She may have appeared "fine" to others and continued working on the injury date and for several days thereafter and still have a compensable injury; there are many injuries that are not readily disclosed by even objective tests, much less subjective observations. *Kessick*. Stubblefield's and Bunchim's opinions about Employee's physical appearance and her coworkers' hearsay, post-injury observations are subjective and are not substantial evidence to rebut the presumption because they do not prove or disprove anything relevant. For example, had Employer shown Employee was not at work on September 9, 2019, this would have rebutted the raised presumption because it would have been impossible for the injury to have occurred on the job as Employee stated. But subjective opinions that Employee looked "fine" and could carry ordinary items, and the fact she was able to continue working without "apparent difficulty" do not lead to a conclusion that the work injury did not occur. Not all injuries cause dramatic physical presentations; some seem minor at first and workers continue working until symptoms progress. *Rogers & Babler*. Stubblefield's and Bunchim's testimony that Employee may have injured her lower back using her treadmill, without more, is mere speculation; an "unknown" or speculative cause is not substantial evidence adequate to rebut the presumption. *Huit*. Employer offered no medical evidence to rebut the presumption. Employer's evidence does not rebut the presumption; consequently, Employee prevails on this issue solely on the raised but unrebutted presumption. *Carter*.

Alternately, if Employer's evidence was adequate to rebut the presumption, it would shift the burden back to Employee, who would have to prove her injury arose out of and in the course of her employment with Employer by a preponderance of the evidence. *Saxton*. On this preliminary issue she would have to prove the injurious event more likely than not actually happened in the kitchen at work for Employer as she stated. Given all the above, in the third step of this alternative analysis more weight and credibility would be accorded Employee's testimony about her work injury than to Stubblefield's and Bunchim's testimony and her coworkers' hearsay, subjective observations. Her deposition and hearing testimony, and her medical records on key points were generally consistent. AS 23.30.l22; *Smith*. By contrast, Bunchim said

Employee called her Sunday to say she would not be coming to work the next day because she hurt her back; according to Bunchim, Employee did not say how and she did not ask. Bunchim and Employee were friends; it is inconceivable Bunchim did not ask Employee how she injured her back. Bunchim's testimony at hearing was factually certain when her answers supported Employer's position; she became confused and could not understand routine questions when the answers may not have helped her case. Bunchim's testimony is not credible and is given little weight. AS 23.30.l22; *Smith*. Stubblefield does not understand Thai, yet he offered direct testimony about conversations Bunchim and Employee had while speaking Thai to each other. It is also concerning that he would list an insurance company and policy number on Employee's injury report when he knew or should have known he had no insurance. He too is not credible. AS 23.30.l22; *Smith*.

Discrepancies over whether Employee put the soup pot down on the floor or on a shelf, which she considers the floor, and whether she accompanied Kirby to the restaurant on September 16, 2019, are immaterial details. Stubblefield equated the "shelf" with the floor and conceded this may be where Employee set the soup pot down on the injury date. If Employee is mistaken about being at the restaurant on September 16, 2019, and she was actually there, it would make no difference in the outcome of this case. AS 23.30.l22; *Smith*.

Employer's evidence on whether the injury happened at all would be given little weight because all it could prove was that Employee fulfilled her legal obligations but did not react to her injury the way Stubblefield and Bunchim subjectively thought she should. It does not prove the injurious event did not happen as Employee stated; accordingly, it is not substantial evidence to support that conclusion. Employer offered no medical evidence to support its position. Employee's injury would not necessarily manifest itself to others through dramatic physical presentations -- no blood, no broken bones. Even under this alternative analysis, Employee suffered an injury on September 9, 2019, as she stated, while working for Employer and her injury arose out of and in the course of her employment. *Steffey*. The next question is whether she is entitled to benefits.

5) Is Employee entitled to TTD benefits?

Employee claims TTD benefits for her work injury beginning September 16, 2019, and continuing until she becomes medically stable or is no longer disabled. AS 23.30.185. Stubblefield's October 20, 2019 letter is accepted as Employer's answer to both claims. The letter does not deny Employee is disabled; "disability" means incapacity because of injury to earn the wages Employee was receiving at the time of her work injury. AS 23.30.395(16). Employer did not dispute Employee's claim that she has been disabled since September 16, 2019, when FNP Brubaker saw her for acute low back pain radiating down her right leg and took a history consistent with a work injury. FNP Brubaker examined Employee and found an antalgic gait, which means she had a limp. *Rogers & Babler*. Employer's overall denial that a work injury occurred was resolved against it. There does not appear to be any factual dispute between the parties about Employee's disability; therefore, the statutory presumption analysis need not be applied to this issue. *Rockney*.

To qualify for TTD benefits, Employee must be disabled, not medically stable and her work must be the substantial cause of her disability. AS 23.30.395(16), (28); AS 23.30.185; AS 23.30.010(a). FNP Brubaker removed Employee from work on September 16, 2019, based on her history of a work-related injury and her resultant symptoms from sciatica on the right side. On September 24, 2019, FNP Brubaker confirmed Employee was seen for a "Workman's Comp." follow-up visit for her back; her disability was extended for two additional weeks. An October 24, 2019 MRI disclosed abnormalities in Employee's lumbar spine. On October 29, 2019, FNP Bunker restricted Employee from work until released by an orthopedic surgeon. On April 20, 2020, Dr. Adcox stated Employee was unable to return to work until she completed physical therapy, which was delayed by the pandemic; this is clear and convincing evidence that Employee is not medically stable. There is no contrary medical evidence stating she is not disabled; there is no evidence she is medically stable. She needs therapy before she could be considered stable. AS 23.30.395(28); *Huit*. On May 4, 2020, Dr. Adcox opined the work injury substantially caused the need for Employee's low back treatment, and by inference her disability; there is no contrary medical evidence. The next question is whether work is the substantial cause of her disability.

Medical records offer no other possible cause for Employee's disability. Employer contends without any supporting medical evidence that Employee's disability could have arisen from a possible injury she may have had while using her treadmill at home. *Huit*. It bases this theory on Bunchim's testimony that Employee told her "sometime" before September 9, 2019, that she stopped using her treadmill because she hurt her leg. Bunchim's testimony is given less weight because the timeframe of this discussion is uncertain, Bunchim subjectively never saw any abnormal physical behavior consistent with a leg or back injury before September 9, 2019, and Bunchim did not say Employee told her she hurt her back while using her treadmill but mentioned only her leg. AS 23.30.122; *Smith*. By contrast, Employee denied any prior injury. Tipikin was not aware Employee had any injuries before September 9, 2019. Kirby testified it was not possible Employee injured herself on her treadmill because if she had, he would have known. Tipikin's and Kirby's testimony is more credible and given greater weight. AS 23.30.122; *Smith*. At hearing, Employer argued without providing any medical evidence that Employee's back may have begun hurting when it did simply due to her age. Argument is not evidence and this theory is entitled to no weight. AS 23.30.122; *Smith*.

Employee is entitled to TTD benefits if her work injury was the substantial cause of her disability. AS 23.30.010(a). This decision must evaluate the relative contribution of all causes of Employee's disability. Only three are offered: Employee's work injury, which is supported by her credible testimony and opinions from medical providers; a speculative event that may have happened at home on Employee's treadmill; and a medically unsupported theory that Employee's disability is age-related. Under the above analysis, considering and weighing all proffered causes for Employee's disability, the credible evidence shows her work injury with Employer was the most important or material cause if not the only cause. *Morrison*.

It is not clear from the record how Employee determined her 2018 gross earnings were $24,525 as stated in her brief; however, Employer did not dispute this figure. Employee estimated her TTD rate would be $347.21 per week. Under the division's "Benefit Calculator," for a married person with two dependents (herself and Kirby), and assuming a $491 gross weekly wage ($24,525 / 50 = $490.50 rounded up to $491), Employee's TTD benefit weekly rate is $353.92. Stubblefield testified he paid Employee $15 per hour for 40 hours per week; that would equal a

$600 gross weekly wage. However, since the record is unclear why Employee's 2018 earnings do not comport with what she was earning at the time of her injury, and because a compensation rate adjustment claim was not raised as an issue for this hearing, this decision will award Employee's TTD benefits at $353.92 per week based on the undisputed 2018 earnings and the Benefit Calculator. 8 AAC 45.065(c). Any party retains its right to assert a compensation rate adjustment.

Employee's request for a TTD award will be granted. She is entitled to TTD benefits at $353.92 per week beginning September 16, 2019, and continuing until she reaches medical stability, returns to work or is otherwise no longer entitled to TTD benefits. AS 23.30.185. As of the June 10, 2020 hearing, Employer will be directed to pay Employee $13,551.60 in past TTD benefits (38.29 weeks (from September 16, 2019 through June 10, 2020) X $353.92 per week = $13,551.60), and ongoing TTD benefits from June 11, 2020, at $353.92 per week in accordance with this decision.

6) Is Employee entitled to PPI benefits at this time?

Employee claims PPI benefits. AS 23.30.190(a). But, the undisputed medical evidence shows she is not yet medically stable; PPI ratings are generally not performed until the injured body part or function is medically stable. *Rogers & Babler*. Therefore, Employee's PPI benefit claim is not ripe and will be held in abeyance. *Egemo*. She is not entitled to a PPI benefit award at this time but can revisit this issue later if Employer fails to pay a future PPI rating.

7) Is Employee entitled to medical benefits and transportation costs?

Employee seeks medical benefits and related transportation costs; she itemized these in her brief and in her January 16 and May 20, 2020 submissions. AS 23.30.095. Employer did not deny Employee's right to medical benefits or object to any particular medical benefit request; it simply contended the work injury never occurred; this decision resolved that defense against Employer. Thus, the presumption analysis does not apply to this issue. *Rockney*. Employee is entitled to medical benefits and related transportation expenses if her work with Employer was the substantial cause of the need for medical treatment. AS 23.30.010(a). Employer raised the same general denial to all of Employee's claims. For brevity, the analysis from the TTD benefits

section, above, is incorporated here by reference. Under the same analysis, considering and weighing the proffered causes for Employee's need for medical treatment for her low back, the credible evidence shows her work injury with Employer was the most important or material cause. *Morrison*. Employee is entitled to medical and related transportation benefits from Employer.

Employer will be directed to pay to medical providers directly, any outstanding, work-related medical bills in accordance with the Alaska fee schedule. AS 23.30.155(a). Employer will also be directed to pay medical providers directly for any work-injury-related medical bills that have been paid by a third-party, such as Medicaid, according to the Alaska fee schedule. Once paid under the Act, providers have a contractual and statutory duty to reimburse third-parties including Medicaid. *Rogers & Babler*. Employer will be directed to pay Employee $451.95 in medical mileage, and any out-of-pocket medical costs she has expended as of June 10, 2020. It will also be directed to pay all reasonable and necessary medical care Employee needs for her work injury into the future, subject to Employer's and the fund's right to controvert in accordance with the Act.

8) Is Employee entitled to a penalty?

Employee seeks a 25 percent penalty on all benefits Employer owes her. AS 23.30.155(e). She contends Employer neither paid her benefits nor controverted them timely; it is undisputed Employer paid Employee no disability benefits but paid three medical bills. AS 23.30.155(b), (e). Stubblefield's letters, treated as Employer's "answers," make only a general denial that Employee was injured on the job as she stated. This decision decided that issue against Employer. The answer does not deny Employee is entitled to TTD or medical benefits and related transportation costs; Stubblefield's letter is not a controversion notice. AS 23.30.155(d)(1)-(5). It is undisputed that Employer never controverted Employee's claim.

The Act is self-executing. An employer must either pay benefits "periodically, promptly, and directly to the person entitled" to them "without an award," or controvert liability to pay benefits. To controvert benefits, Employer had to file a timely notice in a format prescribed by the director. AS 23.30.155(a). Absent the required a controversion notice, the first TTD benefit

installment became due on the 14th day after Employer had knowledge of Employee's injury. Subsequent benefits are paid in installments every 14 days. AS 23.30.155(b). A controversion notice, so long as it was filed in good faith, would have protected Employer from a §155(e) penalty even if Employer ultimately lost at a merits hearing, which it did. A "good-faith" controversion notice requires a valid legal or factual basis to deny payment. *Harp*. Employer had neither basis to deny benefits and filed no controversion notice at all. As discussed above in the fourth section of this analysis, Employer could not even rebut the raised presumption of compensability with its proffered evidence. If Employer's evidence had been the only facts presented at hearing, this decision would not have found Employee was entitled to no benefits. Thus, "A penalty is therefore required by . . . AS 23.30.155(e)." *Harp*.

The 25 percent §155(e) penalty is applicable to Employee's TTD benefits and medical expenses. *Childs*. This "additional amount" must be paid "directly to the recipient to whom the unpaid installment was to be paid." AS 23.30.155(e). Therefore, under these undisputed facts, Employee's request for a penalty will be granted. Employer will be ordered to pay Employee a $3,387.90 penalty on the TTD benefits awarded in this decision ($13,550.60 X 25 percent = $3,387.90), a $112.99 penalty on her transportation expenses ($451.95 X 25 percent = $112.99) and a 25 percent penalty on Employee's documented out-of-pocket medical expenses as stated in her brief and her January 16, 2020 and May 20, 2020 submissions. Employer will be ordered to pay directly to providers a 25 percent penalty on all outstanding medical bills owed to Employee's medical providers for her work injury, including those paid by third-parties like Medicaid; the penalty will be calculated on the medical bills after adjustment under the Alaska fee schedule.

9) Is Employee entitled to interest, attorney fees and costs?

Employee prevailed on all ripe issues in her claim. This decision will award her TTD benefits, medical benefits and mileage. Except for three medical bills, Employer paid none of these benefits when they were due under the Act without an award. AS 23.30.155(b). She is entitled to statutory interest on all benefits this decision awards her, except for the three bills Employer paid. Similarly, Employee's medical providers are also entitled to interest on benefits awarded in this decision that were not paid when due, in accordance with the Act. AS 23.30.155(p).

Employee retained an attorney to prosecute her claim; he did so successfully. While Employer did not controvert Employee's claim on a prescribed form, it resisted paying her claimed benefits. Since Employee prevailed on all ripe issues in her claim, she is entitled to an attorney fee award under AS 23.30.145(b), and costs. Goodman provided valuable services for his client, who does not speak English as a first language; this made the nature of the case somewhat unusual and his representation more difficult. His representation to a successful conclusion took less time than usual. The case was relatively simple and Goodman's efforts resulted in significant benefit to Employee who will receive past benefits awarded in this decision, ongoing medical care in accordance with the Act and possibly PPI benefits if and when she is rated after reaching medical stability. Goodman's hearing brief was particularly helpful; it was concise, well organized, set forth the precise relief Employee sought and attached relevant evidence as exhibits.

Employer had until June 17, 2020, to object to Employee's supplemental attorney fee and cost affidavit; it filed no objection to either. Goodman's initial and supplemental attorney fee affidavits provided appropriate information and itemized his services in this case. His $385 hourly rate is reasonable and less than most attorneys representing injured workers in these cases in Alaska. *Rogers & Babler*. Goodman's time also is reasonable. Employee's costs are itemized and Employer had no objection to them, including the request for paralegal fees at $185 per hour, a rate which is commensurate with rates billed for other paralegals as litigation costs. In the future, Goodman should include a separate affidavit from his paralegal itemizing their efforts on a case. Accordingly, Employee's request for attorney fees and costs will be granted. Employee will be awarded $31,791.30 in fully compensatory and reasonable attorney fees and costs ($31,635.50 in fees + $155.80 in costs = $31,791.30). AS 23.30.155(b); *Cortay*.

CONCLUSIONS OF LAW

1) The oral order on the fund's joinder petition was correct.
2) The oral order denying Employer's hearing continuance was correct.
3) The oral order disallowing Employer's late-filed witness list and evidence was correct.
4) Employee's injury arose out of and in the course of her employment.

5) Employee is entitled to TTD benefits.
6) Employee is not entitled to PPI benefits at this time.
7) Employee is entitled to medical benefits and transportation costs.
8) Employee is entitled to a penalty.
9) Employee is entitled to interest, attorney fees and costs.

ORDER

1) Employee's October 2, 2019 claim is granted in part and denied in part, as follows:
2) Employer is ordered to pay Employee $13,551.60 in past TTD benefits and ongoing TTD benefits at $353.92 per week so long as she remains disabled, is not medically stable and is otherwise entitled to TTD benefits, all in accordance with the Act and this decision.
3) Employee's request for PPI benefits is denied at this time because she is not medically stable or ready for a PPI rating. Her PPI benefit claim will be held in abeyance until she receives a PPI rating and Employer does not agree to pay it voluntarily and timely.
4) Employer is ordered to pay to Employee's medical providers directly, for any outstanding, work-related medical bills in accordance with the Act and the Alaska fee schedule.
5) Employer is ordered to pay medical providers directly for any work-injury-related medical bills that have been paid by a third-party, such as Medicaid, according to the Alaska fee schedule.
6) Employer is ordered to pay Employee $451.95 in medical mileage, and any documented out-of-pocket medical costs she has expended as of June 10, 2020.
7) Employer is ordered to pay all reasonable and necessary medical care Employee needs for her work injury into the future, subject to Employer's and the fund's right to controvert in accordance with the Act.
8) Employer is ordered to pay Employee a $3,387.90 penalty on TTD benefits awarded in this decision, a $112.99 penalty on her transportation expenses and a 25 percent penalty on Employee's documented out-of-pocket medical expenses she paid as reflected as attachments to her hearing brief and in her January 16, 2020 and May 20, 2020 evidentiary submission.
9) Employer is ordered to pay directly to medical providers a 25 percent penalty on all outstanding medical benefits it owes to Employee's medical providers for her work injury,

including those already paid by third-parties like Medicaid; the penalty will be calculated on the medical bills after adjustment under the Alaska fee schedule.

10) Employer is ordered to pay Employee statutory interest on all benefits awarded to her in this decision; it is ordered to pay Employee's medical providers statutory interest on all medical services this decision requires Employer to pay, after adjustment under the Alaska fee schedule.

11) Employer is ordered to pay Employee's attorney $31,635.50 in attorney fees and $155.80 in costs, totaling $31,791.30.

Dated in Anchorage, Alaska on June 24, 2020.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Robert C. Weel, Member

/s/
Nancy Shaw, Member

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

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

APPEAL PROCEDURES

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

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Manivanh Chandara, employee / claimant v. Andrew Stubblefield and Wichulada Bunchim d/b/a Vida Thai Food, LLC; and Alaska Workers' Compensation Benefits Guaranty Fund, insurer / defendants; Case No. 201915340; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on June 24, 2020.

/s/
Nenita Farmer, Office Assistant