ALASKA WORKERS' COMPENSATION BOARD

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

MANUEL D. RODRIGUEZ-ROACH, Employee, Claimant, v. MANOR MANAGEMENT OF ALASKA, INC, Employer, and LIBERTY MUTUAL, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201508629 AWCB Decision No. 20-0054 Filed with AWCB Anchorage, Alaska on July 9, 2020

A second independent medical examination (SIME) issue in Manuel D. Rodriguez-Roach's (Employee) case was heard on the written record on July 9, 2020, in Anchorage, Alaska, a date selected on July 8, 2020. *Rodriquez-Roach*, AWCB Decision No. 20-0052 (July 1, 2020) (*Rodriguez-Roach I*) gave rise to this hearing. Attorney Robert Rehbock represents Employee; attorney Stacey Stone represents Manor Management of Alaska, Inc. and its insurer (collectively, Employer). The record closed on July 8, 2020, when the time provided for parties to file optional supplemental hearing briefs on the SIME issue raised in *Rodriguez-Roach I* expired.

Rodriguez-Roach I noted a current medical dispute between Employer's medical evaluator (EME) and Employee's attending physician and a gap in the medical evidence. It also noted the panel lacked understanding of medical records and opinions obtained since SIME physician William

Curran, M.D., performed his SIME in this case. *Rodriguez-Roach I* gave the parties an opportunity to brief whether Dr. Curran should be asked to address the newly arisen medical dispute before Employee's case is decided on its merits.

ISSUE

Employee contends he needs additional treatment for his right knee, including but not limited to surgical revision of his right total knee replacement. He did not file a brief addressing the SIME.

While Employer still contends Employee's claim for additional medical benefits should be dismissed, it agrees it would be prudent given *Rodriguez-Roach I*'s questions about the medical evidence to have Dr. Curran review new records and opine on evidence he has not previously seen.

Should there be a supplemental SIME with Dr. Curran?

FINDINGS OF FACT

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

1) On May 21, 2015, Employee injured his right knee at work when he was moving a picnic table while walking on uneven ground and twisted his knee. (First Report of Injury, June 5, 2015).

2) On May 18, 2018, EME Scot Youngblood, M.D., orthopedic surgeon, examined Employee and diagnosed a work-related right knee sprain with medial and lateral meniscus tears, which he opined were medically stable. Other diagnoses including mild right knee arthritis and obesity were preexisting and in his view not caused or aggravated by the work injury. In his opinion, the work injury was not the substantial cause of the need for any additional right knee treatment. (Youngblood report, May 18 2018).

3) On July 18, 2018, attending physician Mark Caylor, M.D., orthopedic surgeon, who had previously performed a post-injury arthroscopy on Employee's knee, performed a right total knee arthroplasty, commonly called a knee replacement. (Caylor report, July 18, 2018).

4) On April 4, 2019, Dr. Caylor said the arthroscopy on Employee's right knee resolved his symptoms, so he replaced Employee's right knee to address chronic right knee pain. Employee did not do well after the knee replacement surgery. Dr. Caylor performed a bone scan to look for prosthesis loosening "because there was micromovement in the prosthesis that's generating all this

inflammation." The bone scan was negative for movement but showed synovitis, an inflammation in the knee and soft tissues; synovitis long after an arthroplasty is uncommon. In his view, Employee may have lifelong disability because if he cannot extend his knee fully, he cannot stand on his feet very long. Dr. Caylor opined Employee was, as of April 4, 2019, probably as "good as he was going to get" but nonetheless referred him to Stephen Tower, M.D., for another opinion. (Deposition of Mark T. Caylor, M.D., April 4, 2019).

5) On April 8, 2019, Dr. Curran performed an SIME on Employee and opined the May 21, 2015 work injury is the substantial cause of Employee's need for medical treatment. He stated Employee is not medically stable and needs additional right knee treatment; he recommends a "sympathetic block lumbar spine." (Curran report, April 8, 2019).

6) On May 10, 2019, orthopedic surgeon Dr. Tower said Employee's primary diagnosis is complex regional pain syndrome (CRPS) related to his multiple knee operations following his work-related injury. (Tower report, May 10, 2019).

7) On July 15, 2019, well after Dr. Curran's evaluation, Deryk Anderson, D.O., evaluated Employee's right knee and found anterior knee pain that could be caused from a slightly oblique-cut patella. Dr. Anderson discussed potential right-knee-replacement revision surgery; Employee was going to consider it. Dr. Anderson was reluctant to do revision surgery because it may not improve Employee's range of motion; he first recommended range of motion exercises to see if this increased Employee's right knee function. (Anderson report, July 15, 2019).

8) On July 16, 2019, Heath McAnally, M.D., opined Employee's "pretty significant sleep apnea" interferes with his ability to heal and predisposes him to "severe chronic unrelenting pain." He recommended treating Employee's sleep apnea to address his chronic pain problem. If more conservative measures did not improve Employee's situation, he would consider a lumbar sympathetic block. While Dr. McAnally could not make a direct link between Employee's work injury and his sleep apnea, in his opinion the sleep apnea needs to be treated regardless of its cause to mitigate Employee's pain from his work injury. (Deposition of Heath McAnally, July 16, 2019).

9) On August 6, 2019, Dr. Tower examined Employee's painful right knee and associated CRPS. He recommended Employee avoid additional right knee surgery because surgery tends to exacerbate CRPS. (Tower report, August 6, 2019).

10) On September 17, 2019, the parties settled Employee's claim but left future medical benefits "open," meaning not waived or settled. (Settlement Agreement, September 17, 2019).

11) On October 24, 2019, Dr. McAnally gave Employee a right lumbar sympathetic block to address his right leg CRPS. (McAnally report, October 24, 2019).

12) On October 28, 2019, Employee called Dr. McAnally's office to report "no improvement" following his right lumbar sympathetic block injection. (McAnally report, October 29, 2019).

13) On November 11, 2019, Dr. Youngblood prepared an addendum EME report. He reviewed additional records extending through September 4, 2019. Dr. Youngblood reiterated opinions from his earlier EME report and opined Employee needed no further medical treatment to address the May 21, 2015 work injury; he disagreed with Employee's attending physicians' diagnoses, particularly CRPS and right radiculopathies, and specifically recommended against genicular nerve blocks. (Youngblood report, November 11, 2019).

14) On November 14, 2019, Employee reported to Dr. McAnally's assistant, Evan Evanson, PA-C, "severe pain" in his right lower extremity. He had recently undergone a lumbar sympathetic block with only brief relief thereafter. Employee had been to see Dr. Anderson who recommended surgical intervention for Employee's laterally deviated patella; he was interested in pursuing this but his fiancée was about to have a baby so he wanted to delay surgery. PA-C Evanson suggested a lumbar sympathetic plexus block might be appropriate given Employee's CRPS diagnosis. (Evanson report, November 14, 2019).

15) On January 15, 2020, Dr. McAnally found minimal evidence supporting CRPS but found audible and palpable crepitus in Employee's right knee with active motion. He suggested focusing "on a potential orthopedic solution" instead of on CRPS. Dr. McAnally referred Employee to Brian Haughom, M.D., orthopedic surgeon. (McAnally report, January 15, 2020).

16) On January 22, 2020, Dr. Haughom referred Employee for a right knee computerized tomography (CT). The history referenced, "Pain due to internal orthopedic prosth dev." Christopher Reed, M.D., radiologist, reported his interpretation of the CT results as follows:

> TECHNIQUE: CT examination of the knee was performed without intravenous contrast to determine component rotation by the method of Berger and Rubash.
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> FINDINGS: A total knee arthroplasty is present with patellar resurfacing. The femoral component is 1 degrees [sic] internally rotated with respect to the epicondylar axis. This measurement falls within the normal limits for femoral component rotation. Normal is 18 +/- 2.6 degrees of internal rotation.
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> Thus, the tibial component demonstrates 20 degrees internal rotation. . . .

. . . .

> IMPRESSION: Total knee arthroplasty. The femoral component demonstrates 1 degrees [sic] internal rotation with respect to the epicondylar axis and the tibial component shows 20 degrees internal rotation with respect to the axis of the patellar tendon. (Reed report, January 22, 2020).

17) On February 4, 2020, Dr. Haughom reviewed the CT scan with Employee and said it showed "the tibial component internally rotated 20 degrees." He could "likely improve" Employee's knee "with a revision of his right total knee arthroplasty." Employee wanted to proceed with the surgery "pending workers' compensation approval." (Haughom report, February 4, 2020).

18) On May 1, 2020, Lisa Ballehr, D.O., radiologist, at Dr. Youngblood's referral reviewed Employee's January 22, 2020 right knee CT images. Her findings included:

> Osseous: Tricomponent total knee arthroplasties in place. Prosthetic components are well-seated and normally aligned. No periprosthetic bone erosion, loosening and no findings of periprosthetic fracture. Joint spacers in place.
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> General: Small joint effusion. No soft tissue mass or significant fluid collection about the knee. The visualized muscles are normal in density and caliber.
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> Impression:
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> 1. Tricomponent total knee arthroplasty in place with no significant postoperative complicating features.
>
> 2. Small joint effusion.
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> Key points: Original report is not provided for correlation. (Ballehr report, May 1, 2020).

19) Employee contends he is entitled to an order awarding prospective care, pursuant to the Alaska Supreme Court's *Summers* opinion, so Dr. Haughom can proceed with the right total knee arthroplasty revision surgery he recommends. He contends the May 21, 2015 work injury was the substantial cause for the initial total knee replacement surgery; consequently, Employee contends all treatment flowing from that surgery is also compensable. Employee also apparently seeks an order awarding other recommended care, such as lumbar sympathetic blocks, to treat Employee's CRPS. He contends Dr. Youngblood has not commented on the CT findings from January 2020, which present a new and "objective cause" for Employee's continued, chronic right knee

symptoms. Employee relies primarily on Dr. Curran's report for causation and Dr. Haughom's opinion for treatment. Dr. Curran ascribes causation to Employee's work injury; Dr. Haughom recommends surgery to fix a prosthesis "installed 20% out of alignment." In short, Employee contends the work-related right knee arthroplasty resulted in "harm caused by medical treatment for a compensable injury," which is itself compensable under Alaska law. He further contends a decision finding Employee's ongoing care compensable would place liability on Employer and resolve Medicaid liens; he also seeks attorney fees and costs. (Hearing Brief, June 18, 2020).

20) Employer contends Employee's right knee has been medically stable for at least one year. It relies on Dr. Youngblood's EME opinions and reports from Drs. Curran, Anderson, Tower and McAnally, all of whom it contends recommend against right total knee arthroplasty revision surgery. Absent a favorable response from more conservative treatments, Employer contends Employee is not entitled to any additional medical care for his right knee; consequently, it contends he is also not entitled to an attorney fee or cost award. (Employer's Hearing Brief, June 18, 2020).

21) No medical report in Employee's agency file addresses the disagreement between radiologists Drs. Reed and Ballehr, who reviewed the same CT images; this creates a gap in the medical evidence. There is a qualifying medical dispute between these two radiologists: Dr. Reed found part of Employee's right knee prosthesis was rotated 20 degrees; by contrast, Dr. Ballehr found the prosthesis' components were "normally aligned." Dr. Curran has never seen the CT images, Drs. Reed's and Ballehr's CT interpretations, or Dr. Haughom's surgical recommendation. The panel members, who are not radiologists or medical doctors, lack medical understanding on these opinions and cannot determine the significance, if any, of Dr. Reed's 20 degree rotation finding versus Dr. Ballehr's "no significant postoperative complicating features" interpretation of the same, January 22, 2020 right knee CT images. (Agency file; experience, judgment and inferences from the above).

22) On July 1, 2020, *Rodriguez-Roach I* raised concerns about gaps in the medical evidence, a new medical dispute since Dr. Curran's initial SIME report, and the panel's lack of understanding of disparate readings from two physicians looking at the same CT scans. *Rodriguez-Roach I* gave the parties an opportunity to brief the issue, not raised prior to the last hearing, whether a supplemental SIME should be ordered so Dr. Curran can review the medical records and answer questions applicable to *Rodriguez-Roach I*'s concerns; the parties had until July 8, 2020, to file optional, supplemental briefing on this issue. (*Rodriguez-Roach I*).

23) On July 8, 2020, Employer acknowledged the board's authority to order a discretionary SIME. Given the panel's comments in *Rodriguez-Roach I*, Employer contends "it seems that the only prudent path at this juncture is for the board to have Dr. Curran review the record and opine" as to the disparate medical records filed since his initial SIME report. Though it maintains its position that Employee's claim for additional medical benefits should be denied on its merits, Employer "defers to the discretion of the Board" on the supplemental SIME issue. (Employer's Supplemental Hearing Brief, July 8, 2020).

24) By close of business on July 8, 2020, Employee had not filed a brief. (Agency file).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
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> > 1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers. . . .

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).

> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
> . . . .
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> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires. . . .
> . . . .
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> (k) In the event of a medical dispute regarding . . . the amount and efficacy of . . . treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require . . . a second independent medical evaluation. . . .

> **AS 23.30.110. Procedure on claims**. . . .
> . . . .
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> (g) An injured employee claiming . . . compensation shall submit to the physical examination by a duly qualified physician which the board may require. . . .

Bah v. Trident Seafoods Corp. AWCAC Decision No. 073 at 2-3 (February 27, 2008), acknowledged the board's ability to order an SIME under AS 23.30.095(k), when there is a "qualifying medical dispute," and under AS 23.30.110(g) when a "significant gap" in the medical evidence exists or when a "lack of understanding of the medical evidence" prevents the board from "ascertaining the rights of the parties in the dispute before the board."

> **AS 23.30.135. Procedure before the board**. (a) In . . . conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

ANALYSIS

Should there be a supplemental SIME with Dr. Curran?

Employee seeks additional medical care for his right knee. AS 23.30.095(a). Dr. Curran previously performed an SIME. AS 23.30.095(k). However, since Dr. Curran's SIME report, additional medical evidence has been obtained. Dr. Reed interpreted a January 22, 2020 CT as showing a 20 percent rotation in part of Employee's right knee prosthesis; and relying on that interpretation, Dr. Haughom recommends a revision to Employee's right knee arthroplasty. But Dr. Ballehr's interpretation of the same CT images reveals no misalignment. The fact-finders do not understand what, if any, Dr. Reed's findings mean, or if they are even accurate, making it difficult to best ascertain the parties' rights. AS 23.30.135(a).

The different CT interpretations between Employee's attending physician Dr. Reed and Employer's EME physician Dr. Ballehr create an unaddressed medical dispute. AS 23.30.095(k). The fact-finders have no idea what the "Berber and Rubash" method is, what significance if any a "20 degrees internal rotation" of the tibial component has on Employee's right knee symptoms, or if Dr. Ballehr's CT interpretation is more accurate than Dr. Reed's. Dr. Curran has never seen the

CT images, Drs. Reed's and Ballehr's CT interpretations or Dr. Haughom's surgical recommendation. *Rogers & Babler*. The effect Employee's sleep apnea and patella issues have on his chronic pain are unclear. This creates a "gap" in the medical evidence; the medical complexity of the issues addressed in the radiologists' disparate reports creates a "lack of understanding of the medical evidence" in the fact-finders. *Bah*. For these reasons, this decision will ask Dr. Curran to address these recent records and offer his opinion on the radiologists' findings, and any effect these findings may have on Employee's right leg symptoms and appropriate treatment. AS 23.30.110(g). Even had Employee objected to the supplemental SIME, the result would be the same given the above analysis.

Proceeding in this fashion will help ensure "quick, efficient, fair, and predictable" delivery of medical benefits to Employee if he is entitled to them, at a reasonable cost to Employer, and will create a more "summary and simple" adjudicative process. AS 23.30.001(1); AS 23.30.005(h). To best ascertain all parties' rights, this decision will order a supplemental SIME with Dr. Curran; he can review the recent medical records and answer questions based thereon. AS 23.30.095(k); AS 23.30.110(g); *Bah*. The parties will be directed to appear at a prehearing conference at their earliest opportunity to establish procedures for the supplemental SIME.

CONCLUSION OF LAW

There should be a supplemental SIME with Dr. Curran.

ORDER

1) The parties are directed to attend a prehearing conference at their earliest possible opportunity to establish procedures and deadlines for the supplemental SIME with Dr. Curran.
2) The appropriate designee is directed to obtain the earliest possible date from Dr. Curran for a supplemental SIME based on written records and questions only; Employee need not appear in person for this SIME unless Dr. Curran determines it necessary for him to complete his evaluation.
3) The parties shall provide the prehearing conference designee with all medical records in their possession not previously provided to Dr. Curran for his April 8, 2019 SIME, and will obtain and

provide the electronic media containing the right knee CT images and any magnetic resonance imaging (MRI), for Dr. Curran's review, as soon as possible.

4) Since the initial SIME in this case occurred before regulatory changes to the SIME process, the parties may each file up to three questions for Dr. Curran's response.

5) In addition to any questions the parties may propose, the designee's questions will include:

   (1) Do you agree with Dr. McAnally's suggestion to treat Employee's sleep apnea to improve his chronic pain?

   (2) Is the work injury, or medical treatment to address it, the substantial cause of any need to treat Employee's laterally deviated patella?

   (3) Do you agree with Dr. Anderson's suggestion for surgery to correct Employee's laterally deviated patella?

   (4) Do you agree with Drs. Haughom's and Reed's interpretation of the January 22, 2020 right knee CT scans?

   (5) Do you agree with Dr. Ballehr's May 1, 2020 interpretation of the January 22, 2020 right knee CT scans?

   (6) Do you agree with Dr. Haughom's recommendation for a right knee arthroplasty revision?

   (7) If you do not agree with Dr. Haughom's right knee arthroplasty revision recommendation, is it nonetheless a reasonable and necessary recommendation to address his symptoms?

   (8) Will the proposed right knee arthroplasty revision likely reduce Employee's chronic left lower extremity pain and increase his function?

   (9) What is the "Berber and Rubash" method?

6) The parties will proceed in accordance with this decision; the panel reserves jurisdiction.

Dated in Anchorage, Alaska on July 9, 2020.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

/s/
Nancy Shaw, Member

PETITION FOR REVIEW

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Manuel D. Rodriguez-Roach, employee / claimant v. Manor Management of Alaska, Inc., employer; Liberty Mutual, insurer / defendants; Case No. 201508629; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 9, 2020.

/s/
Charlotte Corriveau, Technician WC