ALASKA WORKERS' COMPENSATION BOARD

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

DENNIS LYNN WISE, Employee, Claimant, v. WOLVERINE SUPPLY, INC., Employer, and OHIO CASUALTY INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201817334 AWCB Decision No. 20-0095 Filed with AWCB Juneau, Alaska On October 13, 2020

Dennis Lynn Wise's (Employee) May 14 and 20, 2019 claims were heard on August 18, 2020 in Juneau, Alaska, a date selected on June 9, 2020. A May 6, 2020 affidavit of readiness for hearing (ARH) gave rise to this hearing. Attorney Lee Goodman appeared and represented Employee, who appeared and testified. Attorney Stacey Stone appeared and represented Wolverine Supply, Inc. and Ohio Casualty Insurance Company (Employer). Charlene Wise testified on behalf of Employee. The record remained open to obtain R. David Bauer's, M.D., deposition testimony, written closing arguments, Employee's supplemental fee affidavit and Employer's response. The record closed on September 18, 2020.

ISSUES

Employee contends he filed a request for cross-examination on Dr. Bauer's February 14, 2019 EME report, Employer did not produce him for hearing and he was unavailable for deposition

after the hearing. He contends Dr. Bauer's Employer's Medical Evaluation (EME) report should be excluded.

Employer did not offer any defense on the issue; it is assumed it opposes it.

1) **Should Dr. Bauer's February 14, 2019 EME report be excluded?**

Employee contends the work injury is the substantial cause of his need for medical treatment. He contends the work injury aggravated his preexisting conditions. Employee requests an order awarding reasonable and necessary medical benefits, including cervical surgery.

Employer contends Employee's preexisting medical conditions are the substantial cause of his disability and need for medical treatment. It contends cervical surgery is not reasonable or necessary. Employer requests an order denying medical benefits.

2) **Is Employee entitled to additional medical benefits?**

Employee contends the work injury is the substantial cause of his disability and he has not reached medical stability. He requests an order awarding temporary total disability (TTD) benefits from February 18, 2019, and ongoing.

Employer contends Employee's preexisting medical conditions are the substantial cause of his disability. Alternatively, it contends he reached medical stability 30 days after the work injury. Employer requests an order denying TTD benefits because it paid TTD benefits through February 19, 2019.

3) **Is Employee entitled to past and continuing TTD benefits?**

Employee contends he has not reached medical stability. He contends permanent partial impairment (PPI) benefits should not be awarded until he reaches medical stability.

Employer contends Employee did not sustain an impairment. It requests an order denying PPI benefits. Alternatively, it contends (1) if Employee is found medically stable and to have

sustained an impairment, the rating cannot exceed 12 percent and (2) if Employee is found to not be medically stable, it would not be proper to consider PPI benefits.

4) Is Employee entitled to PPI benefits?

Employee contends he is entitled to interest on TTD benefits awarded.

Employer contends Employee is not entitled to interest.

5) Is Employee entitled to interest?

Employee contends he is entitled to reasonable attorney's fees and costs and statutory fees on future benefits.

Employer contends Employee is not entitled to attorney's fees and costs because Employee is not entitled to additional benefits. Alternatively, if Employee is entitled to additional benefits, it contends there is no basis to award more than the statutory minimum. Employer contends AS 23.30.145(a) is similar to Civil Procedure Rule 82 which limits a prevailing party recovery to 20 percent of its fees and costs.

6) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

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

1) On January 6, 2016, a cervical spine magnetic resonance imaging (MRI) revealed moderate multilevel cervical spondylosis most significant from C3-6 and severe central spinal canal stenosis at C5-6. (MRI report, January 6, 2016).

2) On July 16, 2018, Employee visited Barbara Doty, M.D., for pain management for a lumbar back injury. She refilled Employee's Percocet. (Doty chart note, July 16, 2018).

3) On November 11, 2018, Employee went to the emergency room for more severe mid-thoracic back pain which developed at work on November 9, 2018. He described the pain as constant, severe and worse with twisting and it radiated across his back to under to his shoulder blades. Usually he took half of an Oxycodone 10/325 mg tablet twice a day for his low back

pain he had since his fusion but his mid-thoracic pain was not relieved. Employee said he has had pain in the mid-thoracic region on and off for about five years. Charles Rolfe III, M.D., noted exquisite point tenderness to superficial light touch at the T5-6 level which was not consistent with his long-term mid-level thoracic discopathy. He was prescribed naproxen and Flexeril. (Rolfe Emergency Room Report, November 11, 2018).

4) On November 14, 2018, Employee said he was doing overhead work at a funny angle when he heard a pop and experienced an acute onset of mid-thoracic pain while working on November 8, 2018. Flexeril helped his pain but he was unable to work and continued to have new persistent pain "over 6-8 vertebral spinous processes and radiation to the left." Employee was diagnosed in 2016 with underlying cervical stenosis and his symptoms are not related to that condition. He had three prior spine surgeries in his lower lumbar area. Dr. Doty continued Flexeril, ordered an updated thoracic spine MRI and continued his usual dose of Oxycodone. She referred Employee to Timothy Cohen, M.D., who performed his prior lumbar surgeries. (Doty chart note, November 14, 2018).

5) On November 15, 2018, a thoracic spine MRI revealed prominent T6-7 leftward osteophytes with robust bone marrow edema extending into the left-sided opposing endplates, trace bone marrow edema within the right side the superior endplate of T6, posterior spinal fusion at L3-5 with discectomies at L3-4 and L4-5 and mild multilevel lumbar spine degenerative changes. (MRI report, November 15, 2018).

6) On November 29, 2018, Employer reported Employee injured his upper back area while drilling a hole overhead in a tight spot. (First Report of Occupational Injury or Illness, November 29, 2018).

7) On December 5, 2018, Dr. Doty restricted Employee from working due to back pain beginning November 14, 2018, and referred him to a neurosurgeon. (Doty prescription form, December 5, 2018).

8) On January 14, 2019, a cervical spine computed radiography (CR) showed multilevel degenerative changes most pronounced at C4-5 and C5-6. (CR report, January 14, 2019).

9) On January 14, 2019, Employee stated he experienced immediate pain between his shoulder blades after he heard a pop while drilling into a beam overhead at work. He currently reported intermittent sharp pain in his mid-back on the left side between his shoulder blades radiating into his neck and headaches. Dr. Cohen reviewed imaging and opined Employee's symptoms are

likely coming from his cervical spine. He recommended a cervical spine MRI. (Cohen and Darcie Sorenson, PA-C, medical report, January 14, 2019).

10) On January 17, 2019, a cervical spine MRI revealed worsening spinal canal and neural formaminal narrowing at C5-6 due to the increased size of the disc herniation superimposed on disc bulge, when compared to a January 6, 2018 MRI, and endplate spondylosis. (MRI report, January 17, 2019)

11) On January 22, 2019, Dr. Cohen examined Employee and reviewed all of the imaging and recommended Employee undergo a C5-6 anterior cervical discectomy and discarthroplasty with a possible fusion. (Cohen and Sorenson medical report, January 22, 2019). PA-C Sorenson, restricted Employee from working, diagnosed C5-6 disc herniation and recommended C5-6 anterior cervical discectomy with possible fusion. (Sorenson Physician's Report, January 22, 2019).

12) On February 14, 2019, Dr. Bauer, an orthopedic surgeon, examined Employee for an EME. He diagnosed cervical pain without objective change or harm to body structure, cervical spondylosis without myelopathy or radiculopathy, preexisting and chronic pain treated with narcotics, unrelated status post lumbar discectomy and ultimate disc arthroplasty surgery. Dr. Bauer opined the work injury involved an overexertion of his thoracic musculature which did not result in a permanent change or harm to the structure of his body. Employee's preexisting chronic pain and narcotic use was not aggravated by the work injury. The cervical spine MRI found no evidence any traumatic or acute disc herniation and preexisting pain is a leading cause of the development of chronic pain in a new area. Employee may have had subjective complaints after a minor work injury but nothing explained his ongoing symptoms. His disability and need for medical treatment might have been attributable to the work injury for 30 days but afterwards it was due to his preexisting conditions. Dr. Bauer opined the work injury was not the substantial cause of Employee's current disability or need for medical treatment. He noted there was no evidence of any aggravation of a preexisting condition because there was no structural change or development of radicular pain or complaints. Dr. Bauer concluded the objective and structural findings throughout his spine are degenerative and preexisting and there was no evidence of any traumatic or acute disc herniation upon direct review of the cervical MRI. No additional medical treatment was necessary because Employee did not have any radiculopathy, radicular symptoms, or spinal cord symptoms for which consultation with a

surgeon would be necessary. Employee's ongoing use of narcotics was due to his preexisting and chronic conditions. He reached medical stability on November 15, 2018, when the MRIs showed only chronic conditions. There was no evidence of any permanent partial impairment arising from the work injury and Employee would retain the heavy physical demand level if he had it before the work injury. (Bauer EME Report, February 14, 2019).

13) On February 19, 2019, Employer denied all benefits based upon Dr. Bauer's February 14, 2019 EME report. (Controversion Notice, February 19, 2019).

14) On March 5, 2019, Employer reported it paid TTD benefits from November 8, 2018 through February 21, 2019. (Secondary Report of Injury, March 5, 2019).

15) On April 29, 2019, Dr. Cohen responded to an April 4, 2019 letter from Employee and indicated he believed the work injury is the substantial cause of Employee's current need for cervical spine treatment and the work injury aggravated, accelerated or combined with an existing condition to make it worse or accelerated the need for treatment. (Cohen response, April 4, 2019).

16) On May 14, 2019, Employee sought TTD and PPI benefits, medical costs, interest and attorney's fees and costs for a thoracic strain. (Claim for Workers' Compensation Benefits, May 14, 2019).

17) On May 20, 2019, Employee correct his claim and sought TTD benefits and PPI benefits, medical costs, interest and attorney's fees and costs for a neck injury. (Corrected Claim for Workers' Compensation Benefits, May 20, 2019).

18) On May 28, 2019, Employer filed Dr. Bauer's February 14, 2019 EME report on a medical summary form. (Medical Summary Form, May 28, 2019).

19) On May 28, 2019, Employee requested cross-examination of Dr. Bauer on the February 24, 2019 EME report to clarify his opinions, the reasons for his opinions and the facts underlying his opinion. (Request for Cross-Examination, May 28, 2019).

20) On June 6, 2019, Employer admitted reasonable and necessary medical costs on or before December 7, 2018, which are related to the work injury and performed in accordance with a treatment plan under AS 23.30.095(c), which comply with the usual and customary fee schedule and for which supporting documentation exists. It denied TTD and PPI benefits and medical costs after December 7, 2018, interest and attorney's fees and costs. (Answer, June 6, 2019; Controversion Notice, June 6, 2019).

21) On October 21, 2019, Employee complained of intermittent sharp pain in his mid-back on the left side between his shoulder blades radiating into his neck. He reported numbness, tingling and burning pain radiating down the lateral/posterior aspect of his arms and stopping at his wrist. Activity, working and standing for long periods of time aggravated Employee's symptoms. A neurological examination revealed stable hyperreflexia and bilateral Hoffman's reflex. He was diagnosed with cervical disc disorder with myelopathy, cervical radiculopathy and cervical spondylolysis. Dr. Cohen believed the C5-6 spinal canal and neural foraminal narrowing, due to the increasing size of the disc herniation superimposed on the disc bulge, and endplate spondylosis and C6-7 disc protrusion was contributing to Employee's symptoms. He recommended a C5-6 and C6-7 anterior cervical discectomy and discarthroplasty with a possible fusion. (Cohen and PA-C Sarah Frenzel-Lee medical report, October 21, 2019). Dr. Cohen restricted Employee's from lifting more than 20 pounds, permitted lifting 11-20 pounds infrequently and 1-5 pounds occasionally and restricted him from climbing. (Cohen Medical Source Statement (Physical), October 21, 2019).

22) On March 3, 2020, Paul C. Murphy, M.D., an orthopedic surgeon, examined Employee for a Second Independent Medical Evaluation (SIME). He concluded Employee sustained a cervical spine musculoligamentous sprain/strain, central and left-sided C5-6 disc herniation, preexisting and work aggravated cervical degenerative disc disease, thoracic spine musculoligamentous sprains/strain and preexisting and work aggravated thoracic degenerative disc disease. Dr. Murphy opined the work injury aggravated, accelerated and combined with the preexisting cervical degenerative disc disease to cause Employee's current disability and need for current treatment. The work injury caused a permanent change to his preexisting condition based upon the January 17, 2019 MRI. Dr. Murphy noted Employee's medical records were silent regarding his cervical spine until November 11, 2018. He concluded Employee's degenerative cervical changes were stable, did not require treatment and did not affect his ability to perform his job duties until after the work injury. Dr. Murphy disagreed with Dr. Bauer's conclusion Employee had cervical pain without objective change or harm to the structures of the body because there was a significant change at C5-6 as noted in the MRI and there was evidence of myelopathy and radiculopathy because Employee has hyperreflexia and positive Hoffman's testing. He stated Dr. Bauer failed to compare the 2016 cervical spine MRI to the January 17, 2019 cervical spine MRI. Dr. Murphy concluded Employee had not reached medical stability because he continued

to experience symptoms and was recommended to undergo cervical surgery. He anticipated Employee would obtain medical stability approximately four months after a cervical fusion or disc arthroplasty at C5-6. Dr. Murphy restricted Employee from lifting, pushing, pulling and carrying no more than 10 pounds for no more than one to two hours in an eight hour day. He concluded Employee was capable of sedentary work. The treatment Employee received has been reasonable and necessary and the substantial cause of the medical treatment is the work injury. Dr. Murphy opined the cervical surgery and reasonable and necessary and stated Employee will be able to retain the physical capabilities to return to his job at the time of injury after the cervical surgery and approximately four months of rehabilitation. He rated Employee with a 12 percent PPI rating. (Murphy SIME Report, March 3, 2020).

23) On March 31, 2020, Dr. Murphy stated a disc bulge is a radiographic finding within the spinal canal when the nucleus pulposus or the center of a normal disc pushes against the annulus fibrosus and the annual pulposus remains contained in by the annulus fibrosus. A herniated disc occurs when the nucleus pulposus ruptures through the annulus fibrosus, causing pressure against the spinal cord or the nerve roots. The January 6, 2016 cervical spine MRI showed a strictly posterior disc bulge and the January 17, 2019 cervical spine MRI identified a central to left paracervical disc herniation measuring 5.9 mm, indicating the nucleus pulposus broke through the annulus fibrosus and was now compressing the spinal nerve roots. Dr. Murphy considered Employee's cervical spine stable from January 6, 2016 until the work injury because he was seen on July 16, 2018 for his lower back injury and no cervical spine pain was noted and he was able to perform his work duties. The change between a disc bulge and disc herniation is significant. Dr. Murphy explained an anterior cervical discectomy and fusion is the "gold standard treatment" in patients of Employee's age. He did not recommend Employee undergo both a C5-6 disc arthroplasty and an anterior cervical discectomy, only one or the other. If Employee has an excellent outcome from surgery, he would have the potential ability to return to work. There is a possibility the surgery Dr. Murphy recommended could improve Employee's PPI rating. (Murphy Supplemental SIME report, March 31, 2020).

24) On April 24, 2020, Employee reported moderate to severe neck pain and bilateral upper extremity burning and aching pain, worse in his left arm and hand. James Bales, M.D., opined Employee's myelopathy and radicular pain in the distribution of C6-7 were consistent with the MRIs which demonstrated compression at those levels. Surgical intervention was warranted due

to the degree of neck pain, the mild cervical deformity and the ineffectiveness of conservative measures. Dr. Bales discussed with Employee the options of a disc arthroplasty versus the anterior cervical discectomy and fusion. He recommended the C5-7 anterior cervical discectomy and fusion. (Bales medical report, April 24, 2020).

25) On May 6, 2020, Employee requested a hearing on his corrected claim. (ARH, May 6, 2020).

26) On August 13, 2020, Employee filed paralegal fees detailing 19.6 hours at $185 per hour, totaling $3,626. (Affidavit of Paralegal Fees, August 13, 2020).

27) On August 13, 2020, Employee filed attorney's fees and costs, detailing 56.3 hours at $390 per hour, totaling $21,957, cost totaling $59.50. Total fees and costs equaled $25,642 and included paralegal fees. Employee recorded 22.2 hours as "Hearing brief" and 14.2 hours for hearing preparation. (Affidavit of Legal Fees and Costs, August 13, 2020).

28) At hearing August 18, 2020, Employee testified he was working overhead to place screws in an I-beam when he was injured. He pushed with all of his might with both hands to put in the last screw and experienced a pop and pain shot from his neck down to his shoulder blades. Prior to the work injury Employee did not have neck pain. He had to crawl part of the way in the emergency room on November 11, 2018 due to pain. Employee still gets job offers but has not worked since the day of the injury. His neck and upper back are not getting better; he still experiences severe pain and has difficulties sleeping due to the pain. Employee had a prior lower back work injury and Dr. Cohen performed three surgeries on it. He still has lower back pain from the previous injury but he was still able to perform his job duties before this work injury. Employee knew his physical limitations and used better lifting techniques to protect his lower back. He used prescription pain medication at night for lower back pain and maybe one a tablet day; somedays he did not take any pain medication. After this work injury, Employee experiences constant pain in his neck, shoulder blades and arms. He takes a pill in the morning, then he takes half a dose in the afternoon. Often Employee's arms fall asleep, becoming numb and tingly and painful from his shoulder blades down his arms when sleeping, and it wakes him up. He gets up, walks around for a while and takes another half dose to a full dose of pain medication to be able to go back to sleep. Employee was able to ride his Harley, snow machine, four wheel and hunt before the work injury but is unable to do those activities anymore. Dr. Cohen told him not to lift more than 10 to 15 pounds. Employee intends to get his back fixed so

he can go back to work. He has had no income since the work injury other than Social Security which began eight months ago. (Employee).

29) At hearing on August 18, 2020, Ms. Wise testified she married Employee in 2007. Employee built their house almost all by himself after his prior lower back injury. He always had pain after the prior lower back injury but it did not seem to slow him down. Employee used a half dose of pain medication in the morning and at night before the work injury at most. Now he has terrible sleepless nights and utilizes most of the prescription pain medication. They have had to buy wood for their home because Employee is not able to cut and chop it himself. He misses out on hunting and fishing with friends because of the pain and he does not ride four wheelers in the woods anymore. (Ms. Wise).

30) At hearing on August 18, 2020, the record was left open until August 28, 2020, to obtain Dr. Bauer's deposition, written closing arguments, Employee supplemental attorney's fees and costs affidavit and Employer's response. (Record).

31) On August 28, 2020, Employee filed supplemental attorney's fees and costs detailing an additional 27 hours at $390, totaling $10,530. He totaled all fees and costs to $36,172. Employee recorded 23.5 hours from August 14 to August 18 for hearing preparation, discussion with witnesses, direct draft examinations, re-reviewing the entire file and all medical records, preparing for Dr. Bauer's cross-examination and further research of medical issues. (Supplemental Affidavit of Attorney's Fees and Costs, August 28, 2020).

32) On August 28, 2020, Employee contended Dr. Bauer's February 14, 2019 EME report must be excluded because Employer never produced him for deposition. He contended without Dr. Bauer's February 14, 2019 EME report, Employer did not rebut the presumption of compensability. (Employee's Closing Argument, August 28, 2020).

33) On September 1, 2020, Employer objected to Employee's supplemental attorney's fees and costs affidavit, contending it was hard to discern the veracity of claimed hours because there are multiple entries with the same description for several days. It contends it was unfair and did not allow Employer to properly respond. Employer requested the amount to be adjusted down and sought a 25 percent reduction with an admonishment for the lack of detail. (Employer's Response to Employee's Affidavit of Supplemental Fees, September 1, 2020).

34) On September 2, 2020, Employee replied to Employer's response. He contended the entire case may succeed or fail based upon a well drafted hearing brief and it is unnecessary to

breakdown the writing process in the fee affidavit. Employee contended breaking down the process and breaking down the hearing preparation process would invade the attorney-client privilege and work-product privilege. (Reply to Employer's Response to Employee's Affidavit and Supplemental Affidavit of Fees, September 2, 2020).

35) Employer failed to provide Dr. Bauer's deposition. (Record).

PRINCIPLES OF LAW

> **AS 23.30.001. Legislative intent.** It is the intent of the legislature that
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> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter; . . . .

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

> **AS 23.30.010. Coverage.** (a) . . . compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . or the employee's need for medical treatment arose 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.

In construing AS 23.30.010(a), *Morrison v. Alaska Interstate Construction, Inc.*, 440 P.3d 224, 237 (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* held 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*.). *Morrison* further held that preexisting conditions, which a work injury aggravates, accelerates or combines with to cause disability or the need for medical treatment, can still constitute a compensable injury. (*Id*. at 234, 238-39). *DeYonge v. NANA/Marriott*, 1 P.3d 90, 97 (Alaska 2000), held "a temporary increase in symptoms aggravating the disability" constitutes an injury under the Act.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .
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> **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
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> (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).

In the second step, to rebut the presumption, an employer must present substantial evidence that either (1) a something other than work was the substantial cause of the disability or need for medical treatment or (2) that work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). The defendant has the burden to overcome the presumption with substantial evidence to the contrary. "Substantial evidence" is such "relevant evidence" as a "reasonable mind might accept as adequate to support a conclusion." *Tolbert*, 973 P.2d 603, 611-12 (Alaska 1999). Credibility is not examined at the second step either. *Resler*. If an employer fails to rebut the raised presumption, the injured

worker is entitled to benefits based solely on the raised but unrebutted presumption. *Williams v. State, Department of Revenue*, 938 P.2d 1065 (Alaska 1997).

In the third step, if the defendant's evidence rebuts the presumption, it drops out and the claimant must prove his claim by a preponderance of the evidence. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The evidence is weighed, inferences drawn and credibility determined. *Steffey v. Municipality of Anchorage*, 1 P.3d 685 (Alaska 2000).

> **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). When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision No. 087 (August 25, 2008).

> **AS 23.30.145. Attorney Fees.** (a). Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . . In determining the amount of fees, the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries. . . .

The Alaska Supreme Court in *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), held attorney fees should be reasonable and fully compensatory, considering the contingency nature of representing injured workers, in order to ensure adequate representation. In *Bignell*, the court required consideration of a "contingency factor" in awarding fees to employees' attorneys in workers' compensation cases, recognizing attorneys only receive fee awards when they prevail on a claim. *Id*. at 973. The court instructed the board to consider the nature, length, and complexity of services performed, the resistance of the employer, and the

benefits resulting from the services obtained, when determining reasonable attorney fees for the successful prosecution of a claim. *Id*. at 973, 975.

In *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019), the court stated the AS 23.30.120 presumption does not apply to attorney fee amounts or reasonableness. It further held the board must consider all factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney fee and either make findings related to each factor or explain why that factor is not relevant. *Rusch* held attorney fee reasonableness is not a factual finding but is a discretionary exercise. *State of Alaska, Department of Corrections v. Wozniak*, AWCAC Decision No. 276 (March 26, 2020), held that if an award under AS 23.30.145(a) and (b) is reasonable, then an award of statutory fees on benefits awarded and divided between actual fees through the time of hearing and fees on future benefits is also reasonable.

In *Childs v. Copper Valley Electric Ass'n*, 860 P.2d 1184, 1190 (Alaska 1993), the Alaska Supreme Court cited AS 23.30.145 and distinguished it from Civil Rule 82, noting AS 23.30.145 provides "attorney's fees in workers' compensation cases should be fully compensatory and reasonable, in order that injured workers have competent counsel available to them." Fees incurred on lost, minor issues will not be reduced if the employee prevails on primary issues. *Uresco Construction Materials, Inc. v. Porteleki*, AWCAC Decision No. 152 (May 11, 2011).

> **AS 23.30.155. Payment of compensation.** . . .
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> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

Land and Marine Rental Co. v. Rawls, 686 P.2d 1187 (Alaska 1984), the Supreme Court held a workers' compensation award, or any part thereof, shall accrue lawful interest from the date it should have been paid.

> **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.

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

> **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. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.
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> **AS 23.30.395. Definitions.** . . .
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> (16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. . . .
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> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence. . . .

Lowe's v. Anderson, AWCAC Decision No. 130 (March 17, 2010), held an employer may rebut the continuing presumption of compensability and disability, and gain a "counter-presumption," by producing substantial evidence that the date of medical stability has been reached. If the employer raises the counter-presumption, "the claimant must first produce clear and convincing evidence" he has not reached medical stability. *Id*. at 9. The 45 day provision signals when "proof is necessary." *Municipality of Anchorage v. Leigh*, 823 P.2d 1241, 1246 (Alaska 1992).

8 AAC 45.052. Medical summary. . . .

(c) . . . .

(1) If the party filing an affidavit of readiness for hearing wants the opportunity to cross-examine the author of a medical report listed on the medical summaries that have been filed, the party must file with the board, and serve upon all parties, a request for cross-examination, together with the affidavit of readiness for hearing and an updated medical summary and copies of the medical reports listed on the medical summary, if required under this section. . . .

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

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

(B) If a party waived the right to request cross-examination of an author of a medical report listed on a medical summary that was filed in accordance with this section, at the hearing the party may present as the party's witness the testimony of the author of a medical report listed on a medical summary filed under this section. . . .

The worker's compensation system in Alaska favors the production of medical evidence in the form of written reports, and this preference serves a legitimate purpose. *Employers Commercial Union Insurance Group v. Schoen*, 519 P.2d 819; 822 (Alaska 1974). However, "the statutory right to cross-examination is absolute and applicable to the Board." *Id*. at 824. The medical summary and request for cross-examination process set out in 8 AAC 45.052 was developed in response to the Alaska Supreme Court's decision in *Commercial Union Insurance Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976) (holding the employer did not waive its right to cross-examine the employee's treating physicians). This decision is so firmly entrenched in the Alaska's workers' compensation system that the objection to the admission of medical reports based on the unavailability of the author for cross-examination is commonly referred to as a "*Smallwood* objection." AAC 45.900(11).

Medical records, including doctors' chart notes, opinions, and diagnoses, fall squarely within the business records exception to the hearsay rule. *Dobos v. Ingersoll*, 9 P.3d 1020; 1027 (Alaska 2000). However, letters written by a physician to a party or a party's representative to express an expert medical opinion on an issue before the tribunal are not admissible as a business record unless the requisite foundation is established showing it is the physician's regular practice to prepare and send such letters. *Liimatta v. West*, 45 P.3d 310; 318 (Alaska 2002).

> **8 AAC 45.142. Interest.** (a) If compensation is not paid when due, interest must be paid at the rate established in AS 45.45.010 for an injury that occurred before July 1, 2000, and at the rate established in AS 09.30.070(a) for an injury that occurred on or after July 1, 2000. . . .
>
> **8 AAC 45.180. Costs and attorney's fees.** . . .
>
> (b) A fee under AS 23.30.145 (a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145 (a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee. . . .
>
> **Evidence Rule 803. Hearsay Exceptions -- Availability of Declarant Immaterial.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
> . . . .
>
> (6) **Business Records**. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified

> witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

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).

ANALYSIS

1) Should Dr. Bauer's February 14, 2019 EME report be excluded?

Employee properly and timely requested cross-examination of Dr. Bauer on May 28, 2019 to clarify his opinions in the February 14, 2019 EME report. 8 AAC 45.052(c)(1),(5). Employer failed to provide Dr. Bauer for deposition. Dr. Bauer's February 14, 2019 EME report is hearsay prepared for litigation purposes and does not fall under the business record exception. Evidence Rule 803(6); *Smallwood*; *Dobos*; *Liimatta.* Therefore, it should be excluded from consideration.

2) Is Employee entitled to additional medical benefits?

Employer contends Employee's need for medical treatment was caused by his preexisting conditions and the recommended cervical surgery was not necessary treatment for the work injury because it was recommended for his preexisting conditions. Employee contends the work injury is the substantial cause of his need for additional medical treatment, including the cervical spine surgery. These factual disputes raise questions to which the presumption of compensability applies. AS 23.30.095(a); AS 23.30.120(a); *Meek*.

Without weighing credibility, Employee raises the presumption the work injury is the substantial cause of his need for medical treatment through his testimony and through Drs. Cohen's and Murphy's medical opinions. *Cheeks*; *Resler*. Employee testified before the work injury he did not experience neck pain and was able to perform his job duties while taking less than the prescribed dosage of pain medication for his preexisting lumbar spine pain but since the work

injury neck pain and pain between his shoulder blades require him to take more prescription pain medication.

Because Dr. Bauer's February 14, 2019 EME report has been excluded and cannot be considered, Employer has no evidence rebutting the raised presumption. Employee is entitled to medical benefits based solely on the raised but unrebutted presumption. *Williams*.

Alternatively, even if Employer had rebutted the raised presumption with Dr. Bauer's opinion that Employee's preexisting conditions are the substantial cause of his need for medical treatment, Employee would prove the work injury is the substantial cause of his need for medical treatment by a preponderance of the evidence. *Saxton*; *Steffey*. On November 11, 2019, Employee reported constant and severe pain between his shoulder blades since the work injury. Dr. Doty referred Employee to Dr. Cohen for an evaluation November 14, 2019, when he continued to complain of the same symptoms. On January 14, 2019, Dr. Cohen recommended a cervical spine MRI because he thought the pain symptoms Employee was experiencing between his shoulder blades and up into his neck likely originated in the cervical spine. The January 17, 2019 cervical spine MRI documented a significant change at C5-6 when compared to the pre-work injury MRI in 2016. Dr. Cohen opined the work injury aggravated, accelerated or combined with his preexisting conditions to cause his need for medical treatment. Employee credibly testified and the medical records show he made no neck pain complaints prior to the work injury and his reported pain symptoms are consistent with the medical record. AS 23.20.122; *Smith*.

Dr. Bauer attributed the Employee's need for treatment to preexisting degeneration because there were no structural changes or development of radicular complaints. However, the January 17, 2019 cervical spine MRI documented a herniated disc which was not present in the 2016 MRI. Dr. Bauer attributed the new cervical herniation findings to the preexisting degeneration. Dr. Murphy's March 31, 2020 supplemental SIME report thoroughly explained the differences between a disc bulge, which was present on the 2016 MRI, and a herniation, found on the 2019 MRI. Furthermore, Dr. Cohen diagnosed myelopathy and radiculopathy on October 21, 2019, as he believed the C5-6 spinal canal and neural foraminal narrowing, due to the increasing size of

the disc herniation superimposed on the disc bulge, and endplate spondylosis and C6-7 disc protrusion contributed to Employee's symptoms. Dr. Bales assessed myelopathy and radiculopathy on April 24, 2020. On March 3, 2020, Dr. Murphy agreed with the findings of myelopathy and radiculopathy based upon hyperreflexia and positive bilateral Hoffman's reflex. Employee credibly testified he still experiences pain, numbness and tingling from his shoulder blades and down his arms. AS 23.30.122; *Smith*. Even if Employer had rebutted the preliminary presumption with Dr. Bauer's opinion, Drs. Murphy's and Cohen's opinions would be given more weight than Dr. Bauer's opinion because there are documented cervical spine structural changes consistent with Employee's pain symptoms and because Employee developed myelopathy and radiculopathy. AS 23.30.122; *Smith*; *Moore*. Therefore, Employee is entitled to additional medical benefits on the raised but unrebutted presumption, and alternatively, based upon the preponderance of the evidence. AS 23.30.095(a); AS 23.30.120; *Saxton*; *Steffey*.

Without weighing credibility, Employee raises the presumption the cervical surgery is reasonable and necessary medical treatment with Drs. Cohen's and Murphy's opinions. *Cheeks*; *Resler*. Because Dr. Bauer's February 14, 2019 EME report has been excluded and cannot be considered, Employer has no evidence rebutting the raised presumption. The recommended cervical surgery is reasonable and necessary based solely on the raised but unrebutted presumption. *Williams*.

Alternatively, even if Employer had rebutted the raised presumption with Dr. Bauer's opinion the cervical surgery would not be work-related, Employee would prove the recommended cervical surgery is reasonable and necessary by a preponderance of the evidence. *Saxton*; *Steffey*. Drs. Murphy and Cohen opined the cervical surgery is reasonable and necessary and their opinions are given more weight than Dr. Bauer's based on the same analysis above. Therefore, the recommended cervical surgery is reasonable and necessary medical treatment based upon the raised but unrebutted presumption, and alternatively, based upon the preponderance of the evidence. AS 23.30.095(a); AS 23.30.120; *Saxton*; *Steffey*. Employer will be ordered to pay additional reasonable and necessary medical benefits, including the cervical surgery.

3) Is Employee entitled to past and continuing TTD benefits?

Employee contends the work injury is the substantial cause of his disability and he has not reached medical stability. He seeks TTD benefits from February 17, 2019 and continuing. Employer contends Employee is not entitled to TTD benefits after February 21, 2019, because his preexisting conditions are the substantial cause of his disability, he reached medical stability within 30 days of the work injury and Employer paid TTD benefits through February 19, 2019. These factual disputes raise questions to which the presumption of compensability applies. AS 23.30.185; AS 23.30.120(a); *Meek*.

Without regard to credibility, Employee raises the presumption as to his TTD benefit claim from with his testimony and with Drs. Doty's, Cohen's and Murphy's and PA-C Sorenson's opinions and work restrictions. *Cheeks*; *Resler*. Employee testified he could no longer perform his normal work with Employer after the work injury due to pain. On December 5, 2018, Dr. Doty restricted Employee from working beginning November 14, 2018. On January 22, 2018, PA-C Sorenson continued to restrict Employee from working. Dr. Cohen restricted Employee from lifting more than 20 pounds on October 21, 2019. Dr. Murphy restricted Employee from lifting, pushing, pulling and carrying no more than 10 pounds for no more than one to two hours in an eight hour day and limited him to sedentary work on March 3, 2020.

Because Dr. Bauer's February 14, 2019 EME report has been excluded and cannot be considered, Employer has no evidence rebutting the raised presumption Employee is disabled and it failed to raise the counter presumption of medical stability. Employee is entitled to TTD benefits based solely on the raised but unrebutted presumption. *Williams*.

Alternatively, even if Employer had rebutted the raised presumption with Dr. Bauer's opinion that Employee's preexisting conditions are the substantial cause of his disability, Employee would prove by a preponderance of the evidence that the work injury is the substantial cause of his disability for the same analysis above. *Saxton*.

Employee is not medically stable because further objectively measurable improvement is expected. AS 23.30.395(28); *Anderson*; *Leigh*. Dr. Murphy stated Employee will be able to

regain the physical capacities to return to his job at the time of injury after the cervical surgery and approximately four months of rehabilitation if Employee has an excellent outcome from surgery, and it is possible his PPI rating could improve after the surgery. Therefore, Employee is entitled to additional TTD benefits on the raised but unrebutted presumption, and alternatively, based upon the preponderance of the evidence and clear and convincing evidence. AS 23.30.120; AS 23.30.185; AS 23.30.395(16), (28); *Anderson*; *Leigh*. It is undisputed Employer stopped paying TTD benefits when it denied all benefits in February 2019. However, the specific date Employer stopped paying TTD benefits is unclear. Employer will be ordered to pay past TTD benefits starting the day after Employee was last paid and continuing TTD benefits pursuant to the Act.

4) Is Employee entitled to PPI benefits?

Employee claims PPI benefits. AS 23.30.190(a). However, he 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*. He is not entitled to a PPI benefit award at this time and he may refile if Employer fails to pay a future PPI rating.

5) Is Employee entitled to interest?

Because Employee prevailed on his claim for TTD benefits, he is entitled to mandatory interest. AS 23.30.155(p); 8 AAC 45.142(a); *Rawls*.

6) Is Employee entitled to attorney's fees and costs?

Employee requests attorney fees and costs. AS 23.30.145; 8 AAC 45.160. Attorney fees may be awarded when an employer controverts payment of compensation, and an attorney is successful in prosecuting the employee's claim. AS 23.30.145(a); *Childs*. Employee prevails on his medical benefits, past and continuing TTD benefits and interest claim. Employer controverted Employee's claim, which allows an award actual attorney fees under AS 23.30.145(a).

Employee's attorney's fees are not limited to statutory fees under AS 23.30.145(a) because attorney's fees in workers' compensation cases should be fully compensatory and reasonable in order to ensure injured workers have competent counsel available to them. *Childs*; *Bignell*. The statutory presumption of compensability does not apply to attorney fee amounts or reasonableness. *Rusch*. An injured worker may be entitled to statutory minimum attorney fees on part of an award and actual attorney fees on another part. *Wozniak*. Fees incurred on minor issues on which an injured worker loses at hearing will not be reduced if he prevails on primary issues. *Porteleki*.

Employee requested fees in excess of statutory fees and he filed an affidavit itemizing the hours expended as well as the extent and character of the work performed. 8 AAC 45.180(b). Employer did not object to the time Employee's attorney or his paralegal spent on this case or on their hourly rates. It contended Employee's general descriptions of hearing brief and hearing preparation and block-billing in the supplemental fee affidavit made it difficult to examine the veracity of the claimed hours. Hearing brief and hearing preparation are sufficient descriptions the extent and character of the work performed. The time spent on the hearing brief and hearing preparation was not excessive. Attorney fees will not be reduced on that basis.

Block-billing is generally discouraged because it is hard to determine whether specific tasks were related to issues prevailed upon or not. AS 23.30.145(a); *Childs*; *Rogers & Babler*. Some entries the supplemental fee affidavit might be characterized as block-billing as there were several tasks listed in one entry for several dates. However, Employee prevailed on medical benefits, past and continuing TTD benefits, and interest. PPI benefits were dismissed without prejudice, which was a relatively minor issue. Attorney fees will not be reduced on that basis. Employee will be awarded actual fees and costs totaling, $36,172.50 ($3,626 in paralegal costs + $59.50 in costs + $32,487 in attorney's fees = $36,172.50).

Employee is entitled to statutory minimum fees on the value of Employee's ongoing benefits because all future benefits originate from his attorney's efforts. *Wozniak*. Employer will be directed to pay Employee statutory minimum attorney fees on his continuing TTD benefits and on any future medical or other benefits to which he may be entitled under the Act.

CONCLUSIONS OF LAW

1) Dr. Bauer's EME report should be excluded.
2) Employee is entitled to additional medical benefits.
3) Employee is entitled to additional TTD benefits.
4) Employee's PPI claim will be dismissed without prejudice.
5) Employee is entitled to interest.
6) Employee is entitled to attorney's fees and costs.

ORDER

1) Employee's May 14 and 20, 2019 claims are granted in part and denied in part.
2) Employer shall pay reasonable and necessary medical costs for the work injury, including the cervical surgery.
3) Employer shall pay Employee past TTD benefits starting the day after Employee last received payment and continuing TTD benefits pursuant to the Act.
4) Employee's PPI benefits claim is dismissed without prejudice, in accordance with this decision.
5) Employer shall pay interest on unpaid TTD benefits pursuant to 8 AAC 45.142(a).
6) Employer shall pay $32,487 in attorney fees and $3,685.50 in costs.
7) Employer shall pay Employee's attorney statutory minimum attorney fees on all benefits provided to Employee from August 18, 2020, and continuing.

Dated in Juneau, Alaska on October 13, 2020.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Bradley Austin, 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.

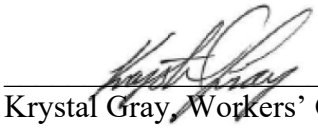
MODIFICATION

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 DENNIS LYNN WISE, employee / claimant v. WOLVERINE SUPPLY, INC., employer; OHIO CASUALTY INSURANCE COMPANY, insurer / defendants; Case No.

201817334; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified US Mail on October 13, 2020.



Krystal Gray, Workers' Compensation Technician