

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

SAMUEL AMOS,)
)
) Employee,)
) Claimant,) INTERLOCUTORY
) DECISION AND ORDER
)
) v.)
) AWCB Case No. 201916954
)
) DAVID E. TIDWELL,)
) TRAVIS PLAMBECK, AND) AWCB Decision No. 21-0041
) PLAMBECK FLOOR CUSTOMS, INC.,)
) Employers,) Filed with AWCB Fairbanks, Alaska
) and) on May 10, 2021
)
)
) UMIALIK INSURANCE CO.,)
)
) Insurer,)
) Defendants.)
)

Plambeck Floor Customs, Inc.'s December 30, 2020 petition seeking review of the designee's December 8, 2020 ruling joining it as a party was heard on the written record in Fairbanks, Alaska on February 4, 2021, a date selected on January 12, 2021. Plambeck Floor Customs, Inc.'s December 30, 2020 petition gave rise to this hearing. Attorney Keenan Powell appeared and represented the employee, Samuel Amos (Amos). David Tidwell (Tidwell), a named employer, appeared and represented himself. Attorney Rebecca Holdiman Miller appeared and represented Travis Plambeck (Plambeck), the other named employer. Attorney Adam Sodoski appeared and represented Plambeck Floor Customs, Inc. (PFCI) and Umialik Insurance Company (Umialik). Attorney Kim Stone appeared and represented the Benefits Guarantee Fund (Fund). The record closed at the hearing's conclusion on February 4, 2021.

ISSUES

On January 25, 2021, Tidwell petitioned to have the hearing continued. His petition was heard as a preliminary matter. Tidwell contended he has had difficulty finding legal representation due to conflicts of interest arising from the number of parties to this case. He contended he had an appointment to speak with an attorney later in the day, an appointment with another attorney on February 17, 2021, and if those meetings did not result in him being able to secure legal representation, he would have to look for an out-of-state attorney to represent him.

PFCI contended looking for legal representation does not constitute good cause for a continuance and it opposed Tidwell's petition. It further contended Tidwell had not exercised due diligence in his search for an attorney since he has been a named employer since November 2019, and had been looking for an attorney since at least April 2020, so his petition should be denied. Amos and Plambeck also opposed a hearing continuance, while the Fund contended it would leave the issue to the panel's discretion. The panel denied Tidwell's petition.

1) Did the panel correctly deny Tidwell's petition for a hearing continuance?

PFCI contended the designee's ruling was arbitrary, capricious and manifestly unreasonable because she failed to apply the prescribed considerations for joinder set forth at 8 AAC 45.040(j), and neglected to account for the "overwhelming evidence" that the project on which Mr. Amos was injured had no relation to PFCI. It seeks review of the designee's ruling and denial of Tidwell's November 3, 2020 petition seeking its joinder.

The Fund contended the designee cited and applied controlling law and regulations related to joining parties and considered evidence PFCI employed Tidwell, who in turn employed Amos; a PFCI expediter assisted or supervised the construction project; Plambeck, PFCI's owner, supervised the construction project; PFCI's credit card was used to purchase some of the construction materials; and Tidwell was on PFCI's payroll. It contended this evidence was sufficient under the substantial evidence standard to support a right to relief against PFCI as an employer, special employer, or project owner, and provides a legal basis for joining PFCI as a party whose presence is necessary for complete relief and due process among the parties. The

Fund emphasized, whatever conflicting evidence may exist cannot be re-weighed nor may new inferences be drawn in the instant proceeding; and contended it has a due process right to a hearing so witnesses can be cross-examined under oath before PFCI can be dismissed as a party.

Amos contended the designee is authorized to exercise discretion at a prehearing conference and some evidence “establishes a presumption” that PFCI may be an employer liable for compensation. He contended the prehearing conference, after which the designee made her ruling, was not a full evidentiary hearing, but one is needed because certain witnesses should be examined under oath.

Tidwell contended PFCI should be a party because he was given time from his schedule at PFCI to work on the construction project and PFCI sent laborers and a vehicle to aid in the construction.

Plambeck contended his position mirrors PFCI’s, especially with respect to PFCI’s evidentiary contentions and, while there is some evidence to suggest he and PFCI might have been an employer liable for compensation, more evidence should have been required before he and PFCI became encumbered with the instant litigation.

2) Did the designee abuse her discretion in joining PFCI as a party?

FINDINGS OF FACT

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

1) On October 21, 2019, Amos was injured when he fell from the roof of a structure being constructed at Plambeck’s personal residence at 2150 Peede Road in North Pole, Alaska, sustaining injuries to his bilateral wrists and one elbow. (Claim for Workers’ Compensation Benefits, November 25, 2019; Plambeck affidavit, December 3, 2020).

2) On November 25, 2019, Amos claimed workers’ compensation benefits arising from his October 21, 2019 injuries. He named Tidwell and Plambeck as his “Employer at the Time of Injury,” and stated:

Samuel Amos was hired by Travis Plambeck and David Tidwell as part of a crew to construct a shop on Mr. Tidwell’s premises. On the third or fourth day of work,

Samuel Amos fell through the roof while working, fractured both wrists and one elbow and may have sustained a TBI.

His reason for filing a claim was “Employer claims he is uninsured”; and he included the Fund as a defendant. (Powell’s Entry of Appearance, November 25, 2019; Claim November 25, 2019).

3) On December 10, 2019, Sadoski entered his appearance as attorney for “the Employer, TRAVIS PLAMBECK AND DAVID TIDWELL, and its workers’ compensation Insurer, UMIALIK INSURANCE COMPANY” (Entry of Appearance, December 10, 2019 (caps in original)).

4) On December 16, 2019, Sadoski controverted benefits on behalf of Plambeck and Tidwell, contending Amos was not an Employee of PFCI, Amos’ injuries did not arise in the course of any employment with PFCI, there was no employment relationship between Amos and PFCI, or any between Amos and Plambeck, or Amos and Tidwell, in their personal capacities. (Controversion Notice, December 16, 2019). That same day, Sadoski amended his entry of appearance to indicate he was acting as counsel for PFCI and Insurer. (Amended Entry of Appearance, December 16, 2019). He also answered Amos’s claim on behalf of PFCI, contending PFCI was a flooring company owned in part by Plambeck and clarifying his law firm represented only PFCI and its insurer and did not represent Plambeck or Tidwell individually. The answer also stated,

The activity in which [Amos] was engaged at the time of injury was in no way connected to [PFCI]. The work consisted of constructing a shop on [Plambeck’s] personal property that was to be used exclusively for personal reasons. The property on which the injury occurred does not contain any space dedicated to or used in any significant manner for conducting the business of [PFCI]. . . . [Amos’s] injury . . . did not arise out of or in the course of any employment with [PFCI]. [Amos] was assisting a family friend of [Plambeck]-[Tidwell]-on a project at the personal property of [Plambeck]. There was no employment relationship between either [PFCI] or [Plambeck] personally and [Tidwell], no employment relationship between [Tidwell] and [Amos], and no employment relationship between [Amos] and either [PFCI] or [Plambeck].

(PFCI’s Answer, December 16, 2019).

5) On December 17, 2019, PFCI’s insurer completed a First Report of Injury (FROI). In the “Accident Description” portion of the report, the insurer wrote:

AND DAVID TIDWELL AS PART OF A CREW TO CONSTRUCT A SHOP ON MR. TIDWELL’S PREMISES. . . . INSURED CLAIMS THIS PROJECT WAS NOT RELATED TO THEIR BUSINESS IN ANYWAY [sic], THIS WAS THEIR PERSONAL HOME AND THE CLAIMANT IS NOT AN EMPLOYEE OF

THEIR BUSINESS. THIS PERSON WAS NOT HIRED BY THE INSURED, BUT WAS BROUGHT OVE [sic] SAMUEL AMOS CLAIMS HE WAS HIRED BY TRAVIS PLAMBECK[.]

(FROI, December 17, 2019) (caps in original).

6) On December 18, 2019, PFCI sought dismissal of Amos's claim against it as an employer on the basis his claim had "no relation" to its business. (PFCI's Petition, December 18, 2019).

7) On January 6, 2020, Amos answered PFCI's December 18, 2019 petition, stating he did not file a claim against PFCI, "[h]owever, it is noted that the [Fund] apparently was not served with [PFCI's] petition and may have a position regarding it." (Amos's Answer, January 6, 2019).

8) On January 21, 2020, the Fund answered Amos's November 25, 2019 claim and controverted benefits, contending the claim failed to "satisfy all the conditions necessary" and lacked "sufficient grounds" for him to collect benefits. (Controversion Notice, January 21, 2020).

9) On February 6, 2020, Employee requested a hearing on his November 25, 2019 claim. (Affidavit of Readiness for Hearing, February 6, 2020).

10) On February 12, 2020, Amos filed copies of text messages sent between him and Tidwell on October 16, 2019, October 18, 2019, October 19, 2019 and October 21, 2019. In those messages, Tidwell asked Amos, "When do you wanna [sic] start framing this shop[?]" The messages also contain references to Tidwell dropping off a tool bag, Tidwell asking Amos "Are you coming to north pole[?]," Tidwell instructing Amos, "Do not set or move anything besides getting the truck set up and ready," Tidwell admonishing Amos, "Don't be late," Amos replying, "Going to be a little," Tidwell asking Amos, "Where's my . . . air compressor[?]," Tidwell telling Amos he was going to run home and get his air compressor because he needed to get work done, and a discussion of starting "a little earlier tomorrow." (Employee's Certificate of Service, February 12, 2019; observations, unique facts of the case and inferences drawn therefrom).

11) On February 14, 2020, PFCI opposed a hearing on Employee's November 25, 2019 claim because of "significant confusion over the proper parties to the action," and until its December 18, 2019 petition to dismiss could be heard first. (Employer's Affidavit in Objection to Employee's Affidavit of Readiness, February 14, 2020).

12) On March 12, 2020, Plambeck sought dismissal of Amos's claim against him as an employer on the grounds Amos was not his employee. (Petition March 12, 2020).

13) On March 31, 2020, Amos opposed a hearing on Plambeck's March 12, 2020 petition to dismiss, contending Plambeck was liable for workers' compensation benefits since he was the project owner and his contractor and Tidwell failed to pay compensation. (Employee's Opposition to Travis Plambeck's March 12, 2020 Petition to Dismiss, March 31, 2020).

14) On April 21, 2020, the parties agreed to a bifurcated hearing on PFCI's and Plambeck's petitions to dismiss. The designee sent Tidwell an attorney list along with his copy of the summary. (Prehearing Conference Summary, April 21, 2020).

15) On July 1, 2020, Amos, Tidwell, Plambeck, PFCI and the Fund agreed to dismiss PFCI as a party. The stipulation contained the following caveat: "The terms of this Stipulation do not prevent any party from seeking joinder of PFCI as an employer in the future in the event evidence is discovered or developed suggesting Mr. Amos was working within the course and scope of employment with PFCI when he was injured on October 21, 2019" The designee approved the parties' stipulation the following day. (Parties' Joint Stipulation for Dismissal, without Prejudice, of Claims against Plambeck Floor Customs, Inc., July 1, 2020).

16) On July 2, 2020, Plambeck filed Tidwell's paycheck stubs from PFCI, a credit union account history and copies of text messages sent between Plambeck and Tidwell. (Plambeck's Affidavit of Service, July 2, 2020; PFCI's Hearing Brief, January 29, 2021). Many of the messages were in small font, and are blurry, faint and illegible. (Observations). One message authored by Tidwell to an unidentified recipient states, "He did not hire Sam And [sic] this has nothing to do with the flooring company[. T]his was a buddy deal" (Plambeck's Affidavit of Service, July 2, 2020; observations, unique facts of the case and inferences drawn therefrom). PFCI contends the recipient was Amos's girlfriend. (PFCI's Hearing Brief, January 29, 2021). Another message authored by Plambeck to an unidentified recipient states, "They somehow think I hired Sam. I did not hire Sam. He was helping you and he keeps calling me saying that he was working with me." (Plambeck's Affidavit of Service, July 2, 2020; observations, unique facts of the case and inferences drawn therefrom). PFCI contends the recipient was Tidwell. (PFCI's Hearing Brief, January 29, 2021).

17) On July 21, 2020, Amos and the Fund agreed to dismiss Amos's claim against Plambeck and cancel the hearing on Plambeck's March 12, 2020 petition to dismiss. The stipulation provided a signature line for Tidwell, who did not sign the document. (Stipulation to Dismissal of Travis Plambeck and Cancellation of the July 23, 2020 Hearing, July 20, 2020).

18) On July 23, 2020, the designee did not approve the proposed stipulation dismissing Plambeck, but rather continued the hearing on Plambeck's March 12, 2020 petition until a later date, and requested specific legal briefing and documentary evidence from the parties. (Tilly letter, July 23, 2020).

19) On July 24, 2020, Glenn Bressette averred he was acquainted with Tidwell and was present at the Peede Road property on the date of Amos's injury. He was there to assist Tidwell as a volunteer in constructing a personal storage building for Plambeck. He continued:

It was my understanding that while [Plambeck] owned a flooring company, the job for which he hired [Tidwell] was completely personal in nature and in no way related to his business, [PFCI]. It was further my understanding that an acquaintance of [Tidwell], [Amos], had fallen on hard times and that [Tidwell] took the project on in part to provide some help to [Amos] as he was having financial issues.

Bressette also described the events surrounding Amos's fall from the roof. (Affidavit of Glenn Bressette, July 24, 2020).

20) On July 28, 2020, Tidwell sought dismissal of Amos's claim against him as an employer on the basis Amos was not his employee. (Petition, July 28, 2020).

21) On July 31, 2020, Tidwell provided informal discovery responses and stated he was employed by PFCI from June 1, 2019 through March 15, 2020 and had never been employed by Plambeck as an individual. Regarding the construction project on which Amos was injured, Tidwell wrote:

2. . . . [Plambeck] inquired about [Tidwell's] experience and knowledge of erecting large buildings. [Plambeck] asked [Tidwell] if he wouldn't mind lending a helping hand to help erect a shed on [Plambeck's] personal property at Peede Rd[.] in his spare, free time and if he had any friends that wouldn't mind helping out too. [Tidwell] did not have any scheduled work through [PFCI] from 11/16/2019 through 11/31/2019 and agreed to help [Plambeck] as a friend. [Tidwell] gave suggestions and physically helped [Plambeck] on the procedures of erecting the shed, hauling products and trash to and from Peede Road.
3. [Plambeck] generously gave [Tidwell] \$3,000.00 in cash, as not only a thank you, but also as a "friend helping a friend" during the holiday season because he knew [Tidwell] had no scheduled work through [PFCI]. [Plambeck] was very grateful and appreciative of not only [Tidwell's]

knowledge and guidance, but also for [Tidwell's] willingness to volunteer his personal free time and acquaintances to physically help.

....

6. There were no contracts for employment of [Tidwell] except for the dates and times he was on the clock for [PFCI] which is reflected on the pay stubs provided. [Plambeck] highly suggested the project at Peede Road be started and completed as soon as possible before winter.

....

9. [Plambeck] gave [Tidwell] \$3,000.00 in cash on October 13th, 2019. [Plambeck] was the acting general contractor who purchased all materials for the project[.]

(Tidwell discovery responses, July 31, 2020).

22) On August 4, 2020, Amos opposed Tidwell's July 28, 2020 petition to dismiss Amos's claim against him, contending Tidwell was an employer liable for compensation. (Employee's Answer, August 4, 2020).

23) On August 6, 2020, Amos was planning on testifying at the hearing on Plambeck's petition to dismiss. His anticipated testimony included:

[H]is history of working for [Tidwell]. His history of working for [Tidwell] on a prior [PFCI] project known as "the Borne project," the formation of his agreement to work for [Tidwell] on the [PFCI] shop project, his agreement with [Tidwell] regarding payment, [Tidwell's] supervision of his labor, [Plambeck's] supervision of his labor, [Plambeck's] presence at the shop construction site, the presence of another [PCFI] employee at the shop construction site, his fall

(Amos's Witness List, August 6, 2020). Amos contended he was withdrawing from the agreement to dismiss Plambeck as a party. He now contended that evidence had recently come to light that showed Plambeck was a project owner or contractor who subcontracted to Tidwell who in turn hired him. Amos also contended the evidence showed PFCI benefitted from the project; Plambeck had sent a permanent, full-time, PFCI employee, an expeditor, to the job site to help with construction and Tidwell had planned to split the \$3,000 payment from Plambeck with Amos. He submitted documents, which he contended showed PFCI paid for construction materials for the project. The documents included a project estimate that named PFCI as the "contact," and screenshots showing the sale of "LIFETIME OAK AR ESTATE GRY" to PFCI as the "customer." (Employee's Hearing Brief, August 6, 2020).

24) On August 19, 2020, the hearing on Plambeck’s March 12, 2020 petition to dismiss was continued so the parties could undertake further discovery. (Prehearing Conference Summary, August 19, 2020).

25) November 3, 2020, Tidwell sought to join an unspecified employer as a party. (Tidwell Petition, November 3, 2020). An event entry in the agency’s database a day later indicates Tidwell was seeking to join PFCI. (Incident Claims and Expense Reporting (ICERS) event entry, November 4, 2020).

26) On November 10, 2020, Amos answered Tidwell’s November 3, 2020 petition, contending he was employed by Tidwell and Tidwell was either a project owner or a subcontractor hired by PFCI. He further contended, “There is evidence that shows [PFCI] paid for materials used on the project,” and “[t]here is a dispute as to whether this evidence is sufficient to support a conclusion that [PFCI] was a project owner or contractor in relation to this project”; Amos did not oppose a hearing to determine the respective liability of the parties. (Employee’s response to Travis Plambeck’s November 3, 2020 Petition to Join Plambeck Floor Customs, Inc., November 10, 2020).

27) On November 13, 2020, PFCI opposed a hearing on Tidwell’s July 28, 2020 petition to dismiss Amos’s claim against him as an employer, contending, since it was previously dismissed as a party, it would need to undertake additional discovery, including taking Tidwell’s deposition, before Tidwell could be dismissed as a party. (PFCI’s Affidavit of Opposition, November 13, 2020). The Fund also opposed a hearing on the same grounds. (Fund’s Affidavit of Opposition, November 16, 2020).

28) On November 19, 2020, Tidwell provided the Fund responses to its discovery requests, which included six and one-half months of semi-monthly paystubs from his employment at PFCI. His hourly rate was \$40 per hour and the paystubs covered the following periods:

Pay Period	Hours Worked	Amount Paid
6/1/2019-6/15/2019	61:14	\$2,449.33
6/16/2019-6/30/2019	49:40	\$1,986.67
7/1/2019-7/15/2019	69:38	\$2,785.33
7/16/2019-7/31/2019	87:26	\$3,497.33
8/1/2019-8/15/2019	103:48	\$4,152.00

8/16/2019-8/31/2019	108:18	\$4,332.00
9/1/2019-9/15/2019	33:09	\$1,326.00
9/16/2019-9/30/2019	189:03	\$7,562.00
10/1/2019-10/15/2019	65:06	\$2,604.00
10/16/2019-10/30/2019	(no paystub)	
11/1/2019-11/15/2019	58:18	\$2,332.00
11/16/2019-11/30/2019	98:15	\$3,930.00
12/1/2019-12/15/2019	106:27	\$4,258.00

Tidwell contended the paycheck for the period September 16, 2019 through September 30, 2019 for \$7,562.00 was his “normal” paycheck for work completed for PFCI, though he did not remember at what locations the work was performed. He denied the paycheck represented any advanced payment for work done at the Plambeck’s Peede Rd. jobsite. Tidwell denied having any text messages evidencing Plambeck stating he was giving him \$3,000 cash to help erect the building at Peede Rd. Even though he did not receive a paycheck for the pay period of October 16, 2019 through October 30, 2019, Tidwell understood he was still an employee of PFCI and Plambeck was still his boss. Tidwell also attached a receipt from Lowes, which he contended proves Plambeck used a PFCI business credit card to purchase materials for constructing the building at Peede Rd. He also attached a receipt from Fairbanks Truss Company, which he contended may have been paid with PFCI’s business credit card. Other documentation Tidwell provided included was a written estimate from Lowe’s for 80 “OC LIFETIME OAK AR ES” at a cost of \$2,284.80, as well as screenshots showing that same order was “SOLD” on October 11, 2019, and would be picked-up on October 17, 2019. PFCI was listed as the “CUSTOMER” on both the estimate and the screenshots. (Notice of Filing Evidence regarding Joinder of Plambeck Floor Custom’s, Inc., December 3, 2020; observations and inferences drawn therefrom).

29) On November 23, 2020, the Fund did not oppose Tidwell’s November 3, 2020 petition to join PFCI as a party because Tidwell had asserted he was being paid by PFCI for his work on the project on which Amos was injured and the evidence may support PFCI was either an employer or project owner. Consequently, it contended PFCI’s presence may be necessary for complete relief and due process among the parties, and its absence may affect the parties’ respective ability to protect their interests or subject them to the risk of incurring inconsistent obligations. (Guaranty

Fund's Non-Opposition to Tidwell's Petition to Join Plambeck Floor Customs, Inc., November 23, 2020). That same day, PFCI opposed Tidwell's November 3, 2020 petition to join it as a party because there was no evidence it employed either Tidwell or Amos at the time the injury occurred. (PFCI's Answer, November 23, 2020).

30) At a November 30, 2020 prehearing conference, the designee instructed the parties to file evidence she thought would assist a panel in determining the issues presented, including:

- 1) Copies of any building permits and/or any building plans relating to construction of the building ("shed") at issue.
- 2) Whether [Plambeck] received or anticipated receiving at the time of construction, any money and/or things of value/barter from the use of the shed (referenced car restorations, storage of items for others, or otherwise), regardless of the existence of any applicable business license(s).
- 3) Whether PFCI received any benefit from a) paying for materials (and/or) b) allowing materials for the shed build to be charged to its accounts for repayment, including but not limited to administrative servicing fees or upcharges.
- 4) Whether PFCI opened any project or account for the shed construction (and/or) whether PFCI maintained an ongoing project/account for the subject property.
- 5) Any payroll or other information regarding [Amos's] possible employment on the "Bourne" job for PFCI, including a) how he was paid, b) who paid him, and c) who hired him.

The designee was intending to determine Tidwell's November 3, 2020 petition to join PFCI at the next prehearing conference. PFCI contended, dependent upon the designee's determination, a further hearing may be required regarding the petition to join. The designee also set a January 21, 2021 hearing date for Amos's November 25, 2019 claim and Plambeck's March 12, 2020 petition to dismiss him as a party. (Prehearing Conference Summary, November 30, 2020).

31) On December 3, 2020, PFCI indicated it would be seeking a continuance for the hearing on Tidwell's November 3, 2020 petition to join it as a party because it was seeking documents that prove Tidwell was not an employee of PFCI and Plambeck paid for construction materials with his "private" funds. (Sadoski email, December 3, 2020). On that same date, Plambeck also sought attorney fees and costs from PFCI and Umialik because, if Plambeck was found to be a project owner, it would "necessarily mean" that he was undertaking the construction project on his property in the course of PFCI business and PFCI is the "only" party that can be found liable for workers' compensation benefits. (Travis Plambeck's Memorandum in Support of Petition for Attorney Fees, December 3, 2020). Plambeck further averred he was the owner of PFCI and a

part-owner of the personal property on which Amos was injured. Tidwell was employed by PFCI on a project-by-project basis and Plambeck and his wife also hired Tidwell to construct an outbuilding on their Peede Road property in North Pole. Tidwell was paid \$3,000 for his work on Plambeck's property, which was withdrawn from Plambeck's personal bank account. Plambeck also purchased materials for the project, such as lumber, trusses and roofing materials, with his personal credit card. He continued:

[Tidwell has attempted to present evidence he personally purchased or paid for materials relating to the project on our personal property. This is false. All materials used for the project on our personal property were paid for by myself or my wife using our personal credit cards. Any assertions or allegations that [Tidwell] personally paid for materials relating to the structure on Peede Lane are categorically false. . . .

Plambeck stated the materials reflected on the Lowes estimate that Tidwell provided were not paid with PFCI's account or business credit card and he provided attachments to his affidavit as evidence in support of his statement. He also explained Tidwell was installing hardwood floors during the September 16, 2019 through September 30, 2019 pay period and hardwood floors are very time consuming to install. Plambeck denied hiring or paying Amos, either himself or through PFCI. "Any hiring of or payments to [Amos] were done by [Tidwell]" (Travis Plambeck Affidavit, December 3, 2020).

32) At a December 8, 2020 prehearing conference, Tidwell contended he was an employee of PFCI; Plambeck was his boss; PFCI ordered materials for the project on which Amos was injured; and PFCI purchased some of the materials used in construction. He further contended he did not hire Amos in any capacity. PFCI contended text messages show Plambeck did not hire Amos; Tidwell previously signed a stipulation releasing PFCI from litigation; the use of the PFCI credit card on Lowe's receipt was an accidental use due to the similarity in appearance of the business and personal credit cards; all other construction materials appear on Plambeck's personal credit card except for a single charge of about \$400. PFCI also contended "anyone" could have put PFCI's name on the Lowes estimate and no benefit to PFCI from the construction project has been discovered. PFCI contended Plambeck paid Tidwell directly in cash for his work on the construction project and there was no evidence it was the employer of either Tidwell or Amos. Amos contended a full panel hearing with testimony was necessary to determine the proper parties to the case. He contended there was sufficient evidence to create a presumption the construction

was a PFCI project; Plambeck was a general contractor or project owner under the applicable statute; and Tidwell was either a contractor hired by Plambeck or a subcontractor hired by PFCI. Plambeck contended he and PFCI are “one in [sic] the same” and both should be released from litigation. He also contended there is no evidence PFCI or he hired Amos. The Fund contended Tidwell had non-stop work for PFCI, excepting only one pay period, and just before construction, Tidwell was paid approximately twice his normal amount. It contended only one \$3,000 payment for the construction project “seemed off,” and an explanation should be heard by a panel, with an opportunity for cross-examination by the parties, so a “classical weighing of material testimony” could occur. It contended a hearing should be held to determine whether Tidwell was employed on PFCI’s payroll at the time of construction and whether he was being paid by the job or the size of the project. (Prehearing Conference Summary, December 8, 2020).

33) Preceding her ruling in the December 8, 2020 prehearing conference summary, the designee set forth two pages of single-spaced bullet points summarizing the “inconsistent assertions/evidence/information” in the case, including the following:

- [Plambeck] and PFCI are one in [sic] the same
....
- [Plambeck] did not hire EE
....
- PFCI was not an employer of either [Amos] or [Tidwell] at the time of [Amos’s] injury
- [Amos] was not paid by [Plambeck] or PFCI
- [Plambeck] did not know [Amos] and did not hire him or pay him for any work
....
- [Plambeck] and [Tidwell] supervised EEs work on the shop build
- [Plambeck] supervised the shop construction
- [Plambeck] sent PFCI’s expeditor to help at the shop build
....
- PFCI paid for materials used on the project
- PFCI’s business credit card was used to pay for one Lowe’s receipt, likely materials for the shop build, in the amount of \$4418.58
....
- PFCI/[Plambeck] were listed as the customer / contact for a customer project / pickup sheet for “lifetime oak ar estate grey” with a 10/17/19 pickup
....

She also cited points of law, including AS 23.30.001; 8 AAC 45.065(a)(7) and 8 AAC 45.040(d).

Her analysis and ruling followed:

PFCI was dismissed without prejudice by stipulation of all the parties on July 2, 2020. The stipulation contained the following language: “The terms of this Stipulation do not prevent any party from seeking joinder of PFCI as an employer in the future in the event evidence is discovered or developed suggesting Mr. Amos was working within the course and scope of employment with PFCI when he was injured on October 21, 2019” Additional allegations/information/evidence have been filed since the stipulation was approved on July 2, 2020.

David Tidwell filed his petition to join PFCI on November 3, 2020. PFCI timely answered / objected to the Petition to Join on November 23, 2020.

Three (3) different individuals or entities are asserted to have been EE’s employer or otherwise liable by virtue of being a project owner or general contractor for the project; conflicting information been filed. EE has filed a claim for benefits against DT and TP personally; DT and TP individually do not have workers’ compensation insurance policies to provide benefits to injured employees, therefore a claim was also filed against BFG; at least some evidence and allegations have been received indicating that EE and/or DT may have been employees of PFCI, or that PFCI may otherwise be liable for payment of benefits. The presence of PFCI in the litigation is necessary for complete relief and due process among the parties.

PFCI’s absence from the litigation may affect its ability to fully protect its own interests, including whether PFCI was DT and/or EE’s employer for the construction build, and / or whether the build was a PFCI project or PFCI was serving as the general contractor for the project. Failure to include PFCI may subject multiple parties to the risk of incurring inconsistent obligations.

No claim was filed against PFCI by EE; rather EE’s claim was filed against David Tidwell and Travis Plambeck personally. It appears that PFCI may have been administratively added as a party upon the filing of an Amended Entry of Appearance on December 16, 2019. No defense is presently known that if filed by PFCI would bar EE’s claim.

A right to relief may exist against PFCI, and it will be joined as a party. Joinder is necessary to protect the due process rights of the parties; to assure the parties are not subjected to inconsistent obligations; to prevent additional future litigation; to ensure all relevant evidence is available prior to a hearing on the merits; and so that complete relief may be determined quickly, efficiently, predictably, and at a reasonable cost. A full panel hearing should be conducted to determine the appropriate parties to this case prior to proceeding to a hearing on the merits.

Ruling:

David Tidwell’s Petition to Join PFCI is GRANTED. The parties are ordered to copy PFCI /its attorney with any discovery not previously produced to PFCI within fourteen (14) days.

(Prehearing Conference Summary, December 8, 2020).

34) On December 30, 2020, PFCI sought the instant review of the designee’s decision to join it as a party. (Employer’s Petition, December 30, 2020). A hearing on PFCI’s petition was scheduled for February 4, 2021. (Prehearing Conference Summary, January 12, 2021).

35) On January 25, 2021, Tidwell petitioned for continuance of the February 4, 2021 hearing. (Tidwell’s Petition, January 25, 2021).

36) PFCI acknowledged at hearing, “as with most defenses,” its course and scope defense is disputed. (Record).

37) At hearing, the panel’s stated basis for denying Tidwell’s petition seeking a continuance included the length of Tidwell’s involvement in the case, Tidwell was provided an attorney list following the April 21, 2020 prehearing conference, and seeking legal representation is not “good cause” under the applicable regulation. (Record).

38) An ancillary dispute exists concerning PFCI’s historical participation in this case. It contends, although there was no mention of it in Amos’ claim, it was served with documents and treated as though it was an employer, even though Amos’s attorney clarified at initial prehearing conferences that Amos had not filed a claim against it. It contends it contacted several Workers’ Compensation Division staff members to determine how and why this occurred, but none could provide any explanation. (PFCI Hearing Brief, January 29, 2021). The Fund contends PFCI has been a party to this case from its beginning, and its attorney has actively participated in the litigation except for the four and one-half months between the parties’ stipulation to dismiss PFCI without prejudice and Tidwell’s petition to rejoin PFCI. It contends PFCI cannot argue that it has been prejudiced by being re-joined “after having barely ever left the litigation.” (Guaranty Fund’s Hearing Brief on Plambeck Floor Custom’s Petition seeking review of designee’s determination, January 28, 2021).

PRINCIPLES OF LAW

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 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

....

(4) hearings in workers’ compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

AS 23.30.045. Employer’s liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041 , 23.30.050, 23.30.095, 23.30.145, and 23.30.180 — 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

....

(f) In this section,

(1) “contractor” means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;

(2) “project owner” means a person who, in the course of the person’s business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) “subcontractor” means a person to whom a contractor sublets all or part of the initial undertaking.

AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.

....

(c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. . . . If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

. . . .

The legislature gave the board designee authority and responsibility to decide all discovery issues at the prehearing conference level, with the right of both parties to seek board review. *Smith v. CSK Auto, Inc.*, AWCAC Decision No. 002 (January 27, 2006). The designee's decision must be upheld absent an abuse of discretion. The Alaska Supreme Court describes abuse of discretion as "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985); *Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979). An agency's failure to properly apply controlling law, or follow its own regulations, may also be considered an abuse of discretion. *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1013 (Alaska 2009); *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

Abuse of discretion is also established where the findings are not supported by substantial evidence in light of the record as a whole. AS 44.62.570. When applying a substantial evidence standard, a "[reviewer] may not reweigh the evidence or draw its own inferences from the evidence." *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1049 (Alaska 1978). "If, in light of the record as a whole, there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, then the order . . . must be upheld." *Id.*

AS 23.30.110. Procedure on claims. (a). . . . the board may hear and determine all questions in respect to the claim.

. . . .

AS 23.30.122 Credibility of witnesses. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony . . . is conclusive even if the evidence is conflicting or susceptible to contrary conclusions.

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

AS 23.30.155. Payment of compensation.

. . . .

(h) The board may upon its own initiative at any time in a case in which . . . where right to compensation is controverted, or where payments of compensation have been . . . suspended . . . take the further action which it considers will properly protect the rights of all parties.

. . . .

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

(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. . . .

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

(i) If a claim has not been filed against the person served with a petition or notice to join, the person may object to being joined based on a defense that would bar the employee's claim, if filed.

(j) In determining whether to join a person, the board or designee will consider

(1) whether a timely objection was filed in accordance with (h) of this section;

(2) whether the person's presence is necessary for complete relief and due process among the parties;

(3) whether the person's absence may affect the person's ability to protect an interest, or subject a party to a substantial risk of incurring inconsistent obligations;

(4) whether a claim was filed against the person by the employee; and

(5) if a claim was not filed as described in (4) of this subsection, whether a defense to a claim, if filed by the employee, would bar the claim.

....

8 AAC 45.065. Prehearings (a) At the prehearing, the . . . designee will exercise discretion in making determinations on

(1) identifying and simplifying the issues;

(2) amending the papers filed or the filing of additional papers;

(3) accepting stipulations, requests for admissions of fact, or other documents that may avoid presenting unnecessary evidence at the hearing;

(4) limiting the number of witnesses, identifying those witnesses, or requiring a witness list in accordance

(5) the length, filing, and date for service of legal memoranda

(6) the relevance of information requested

(7) petitions to join a person;

(8) consolidating two or more cases, even if a petition for consolidation has not been filed;

(9) the possibility of settlement or using a settlement conference to resolve the dispute;

(10) discovery requests;

(11) the closing date for discovery;

(12) the closing date for serving and filing of video recordings, audio recordings, depositions, video depositions, or any other documentary evidence; the date must be at least two state working days before the hearing;

(13) whether a party intends at the time of hearing to seek recusal of a board member . . . from participating in the hearing;

(14) whether a party's opening and closing arguments, including a statement of the issues, at the hearing should be longer than permitted

(15) other matters that may aid in the disposition of the case.

(b) The designee will, in the designee's discretion, conduct prehearings . . . without the presence of the board members.

(c) After a prehearing the . . . designee will issue a summary of the actions taken at the prehearing The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. . . .

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;

....

AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. . . .

(c) Each party has the following rights at hearing:

(1) to call and examine witnesses;

(2) to introduce exhibits;

(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;

(4) to impeach any witness regardless of which party first called the witness to testify; and

(5) to rebut contrary evidence.

(d) A party who does not testify in his own behalf may be called and examined by any party as if under cross-examination.

....

AS 44.62.570. Scope of review.

....

(b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. . . .

(c) . . . If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by

(1) the weight of the evidence; or

(2) substantial evidence in the light of the whole record.

....

ANALYSIS

1) Did the panel correctly deny Tidwell’s petition for a hearing continuance?

Continuances are not favored and may only be granted for “good cause.” 8 AAC 45.074(b). Seeking legal representation is not such a circumstance. *Id.* Furthermore, considering the length of Mr. Tidwell’s involvement with the case as a named employer in Amos’s claim, and considering he was provided with an attorney list following the April 21, 2020 prehearing conference, his stated basis is additionally unpersuasive and the panel correctly denied his petition for a continuance. *Id.; Rogers & Babler.*

2) Did the designee abuse her discretion in joining PFCI as a party?

The Workers' Compensation Act imposes liability for industrial injuries on employers, including subcontractors, contractors and project owners. AS 23.30.045(a). The regulations further provide, "Any person against whom a right to relief may exist should be joined as a party, 8 AAC 45.040(d). As it contends here, PFCI asserted a defense to Amos's claim that would bar the claim had Amos filed a claim against it. 8 AAC 45.040(i). Specifically, its defense was, Amos was not its employee. Meanwhile, the putative employers named in Amos's claim, Tidwell and Plambeck, were also contending Amos was not their employee either.

Indeed, as PFCI acknowledged early in these proceedings, there was "significant confusion over the proper parties to the action" and this confusion became more pronounced as discovery progressed. Evidence of this growing confusion includes Amos's evolving positions on who might be liable to him for compensation and in what capacity. He initially claimed benefits from Tidwell and Plambeck as employers, but after Tidwell produced evidence that indicated PFCI had purchased some of the construction materials used on the project, he contended Plambeck was either a project owner or contractor and Tidwell was a subcontractor. Amos next contended some evidence showed PFCI was a project owner or contractor until finally contending a full panel hearing with testimony was necessary to determine the proper parties to the case.

Further evidence of mounting confusion can be seen in the Fund's evolving positions as well. On July 1, 2020, it agreed to dismiss PFCI as a party. However, after Tidwell produced discovery that showed PFCI had purchased some of the construction materials and paid him \$7,562, an amount between two and three times more than his typical PFCI paycheck, just prior to the construction project's commencement on which Amos was injured, the Fund shifted its position and contended evidence may indicate PFCI was an employer or project owner. It thought an explanation for the paycheck and another \$3,000 cash payment to Tidwell should be heard by a panel at hearing so a "classical weighing of material testimony" could occur.

Amos's and the Fund's contentions that PFCI might be an employer liable for compensation were not without evidence or other support. Tidwell had submitted evidence that indicated PFCI had ordered some of the construction materials for the project and paid for them with its business credit card. Additional evidence and, the parties' contentions, indicated PFCI employed Tidwell;

Tidwell hired Amos; Plambeck was Tidwell's boss at PFCI; PFCI and Plambeck were "one in [sic] the same"; Plambeck supervised the construction project; Plambeck paid Tidwell \$3,000 cash for his efforts on the construction project; PFCI paid Tidwell two to three times his typical paycheck just prior to commencement of the construction project; PFCI sent its expediter to the jobsite to help with construction; and Amos had previously worked on other PFCI projects. The designee set forth most of these considerations in the bullet points preceding her ruling, and others are set forth in the parties' contentions during the conference.

PFCI contends the designee's ruling was arbitrary, capricious and manifestly unreasonable because she failed to apply the prescribed considerations for joinder and neglected to account for the "overwhelming evidence" that the project on which Mr. Amos was injured had no relation to PFCI. It further contends none of the considerations for joining a party supported its joinder. Since PFCI alleges abuses of discretion under (j)(1)-(5) of the regulation, this decision will address each:

In her December 8, 2020 prehearing conference summary, the designee correctly recognized PFCI had timely objected to Tidwell's November 3, 2020 petition to join it as a party. 8 AAC 45.040(j)(1). However, merely entering an objection does not serve as a shield that prevents a party from being joined in unwelcome, inconvenient or costly litigation. Rather it is a threshold consideration to determine whether a party should be automatically joined "without further board action." 8 AAC 45.040(h)(2). The designee was not arbitrary, capricious or manifestly unreasonable in her consideration of PFCI's objection because she did not automatically join it as a party. *Id.*; AS 23.30.135(a); AS 23.30.155(h).

Considering 8 AAC 45.040(j)(2), the designee then noted, "Three (3) different individuals or entities are asserted to have been [Amos's] employer" and "at least some evidence and allegations have been received indicating [Amos] and/or [Tidwell] may have been employees of PFCI, or that PFCI may otherwise be liable for payment of benefits." The evidence and allegations, to which the designee refers, are summarized above, apparent in the record, and most were included in the bullet points preceding her ruling, while others are set forth in the parties' contentions during the conference. Since the designee based her ruling on this evidence and the parties' contentions, she was not arbitrary, capricious or manifestly unreasonable in her

consideration of whether PFCI's presence was necessary for complete relief and due process among the parties. AS 23.30.001(4); AS 23.30.135(a); AS 23.30.155(h).

Next, considering 8 AAC 45.040(j)(3), the designee explained, "PFCI's absence from the litigation may affect its ability to fully protect its own interests, including whether PFCI was [Tidwell's] and/or [Amos's] employer for the construction build, and / or whether the build was a PFCI project or PFCI was serving as the general contractor for the project." Here, the designee recognized the need to afford PFCI an opportunity to present its defense that the project on which Mr. Amos was injured had no relation to PFCI. She was not arbitrary, capricious or manifestly unreasonable in doing so. AS 23.30.001(4); AS 23.30.135(a); AS 23.30.155(h).

The designee correctly recognized that no claim had been filed against PFCI, 8 AAC 45.040(j)(4), but then incorrectly stated, "No defense is presently known that if filed by PFCI would bar the claim," 8 AAC 45.040(j)(5). The absence of a claim alone would not necessarily preclude joinder given that, as discovery progressed, evidence and the parties' contentions indicated PFCI might have been an employer liable for compensation. Amos's and the Fund's evolving positions evidence this. The evidence and contentions on which the designee relied, are summarized above, apparent in the record, and most were included in the bullet points preceding the designee's ruling, while others are set forth in the parties' contentions during the conference. Again, the designee was not arbitrary, capricious or manifestly unreasonable in her consideration of the absence of a claim against PFCI. AS 23.30.001(4); AS 23.30.135(a); AS 23.30.155(h).

However, the designee's statement concerning the lack of a defense that would bar Amos's claim is at odds with the facts, since PFCI has contended "Amos was not an Employee of PFCI, Amos' injuries did not arise in the course of any employment with PFCI, [and] there was no employment relationship between Amos and PFCI" since December 16, 2019. Therefore, the statement itself is plainly arbitrary, capricious or manifestly unreasonable. On the other hand, the prehearing conference summary as a whole, including the two pages of single-spaced bullet points summarizing the "inconsistent assertions/evidence/information" in the case, as well as the numerous conflicting contentions made by the parties during the conference itself, show the designee was keenly aware that PFCI's defense was being challenged by Tidwell, Amos and the

Fund. *Rogers & Babler*. Thus, overall, it is difficult to conclude the designee was ultimately arbitrary, capricious or manifestly unreasonable in her consideration of PFCI's defense, especially given her final conclusion recognizing a "full panel hearing should be conducted to determine the appropriate parties to this case prior to proceeding to a hearing on the merits." AS 23.30.001(4); AS 23.30.135(a); AS 23.30.155(h).

The issue presented for the designee's determination at the December 8, 2020 prehearing conference was not whether PFCI was an employer who might be liable for compensation but, rather, whether it should be joined as a party to determine whether it was an employer who might be liable for compensation. Prehearing conferences are informal proceedings where a designee's authority is expressly limited and includes joining parties. 8 AAC 45.065(a)-(c). It does not include determining whether a person is an employer. 8 AAC 45.065(a)(1)-(15). Such a determination is made at a hearing, where a panel has authority to decide "all questions in respect to the claim," AS 23.30.110(a), where credibility determinations are made, AS 23.30.122, and where parties are afforded due process to make their claims and assert their defenses. AS 23.30.001(4); 8 AAC 45.120(a), (c)-(d).

Any person against whom a right to relief *may* exist *should* be joined as a party. 8 AAC 45.040(d) (emphasis added). The evidence and parties' contentions, summarized above, are "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that PFCI should be joined as a party to determine whether it is an employer who might be liable for compensation. *Miller*. As PFCI acknowledged at hearing, "as with most defenses," its defense is disputed; and issues that remain in dispute at the end of a prehearing conference are resolved at hearing. 8 AAC 45.065(c). The designee did not abuse her discretion in joining PFCI as a party to "determine the appropriate parties to this case prior to proceeding to a hearing on the merits." *Id.*; AS 23.30.001(4); AS 23.30.135(a); AS 23.30.155(h).

CONCLUSIONS OF LAW

- 1) The panel correctly denied Tidwell's petition for a hearing continuance.
- 2) The designee did not abuse her discretion in joining PFCI as a party.

SAMUEL AMOS v. DAVID E. TIDWELL, ET AL

ORDER

Plambeck Floor Customs, Inc.'s December 30, 2020 petition seeking review of the designee's December 8, 2020 ruling is denied.

