ALASKA WORKERS' COMPENSATION BOARD

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

ANDREW N. BLOM, Employee, Claimant, v. FRED MEYER STORES, INC., Employer, and THE KROGER CO., Insurer, F Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201914195 AWCB Decision No. 21-0048 Filed with AWCB Anchorage, Alaska on June 3, 2021.

Fred Meyer Stores, Inc.'s March 24, 2021 petition for a written decision on the March 17, 2021 oral orders finding the parties' January 27, 2021 compromise and release (C&R) agreement not in Employee Andrew Blom's best interests and oral order for an SIME was heard on the written record on May 5, 2021, in Anchorage, Alaska, a date selected on April 14, 2021. Employee represents himself. Attorney Vicki Paddock represents Fred Meyer Stores and its insurer The Kroger Co. (Employer). The record closed at the hearing's conclusion on May 5, 2021.

ISSUES

Employer and Employee both contend the C&R agreement reached by the parties and filed for review on January 27, 2021 should be approved.

At a compromise and release (C&R) denial hearing an oral order was issued finding a second independent medical examination (SIME) was needed prior to acting on the agreement. . This decision examines the oral order.

Was the oral order for an SIME correct?

FINDINGS OF FACT

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

1) On October 12, 2019, Employee injured his knee while working for Employer. (First Report of Injury, October 12, 2019).

2) On October 15, 2019, Robert McRorie, PA, provided Employee a return to work letter. Employee stated he was walking at work when his knee gave out, popped, and began to hurt and swell. The knee had improved slowly and now he felt well enough to return to work. (Chart Note, PA McRorie, October 15, 2019).

3) On October 29, 2019, Employee complained his left knee was still very swollen, hurt badly, and felt unstable. He stated it was still hard to walk. PA McRorie's examination revealed moderate joint line edema, limited range of motion, and tenderness over the patella and quadriceps tendon. He ordered a left knee x-ray and wrote a letter excusing Employee from work. (PA McRorie clinic note, October 29, 2019).

4) The October 29, 2019 left knee x-rays showed no fractures, dislocations, or suspicious bony lesions. The joint spaces were relatively well-preserved. There was mild to moderate joint effusion. (Jesse Kincaid, M.D. x-ray report, October 29, 2019).

5) On October 31, 2019, Employee continued to complain of left knee pain, swelling and instability. He stated he could work if he was able to sit, but could not walk, stand or lift. PA McRorie diagnosed left knee effusion and left patella dislocation, which had happened twice while he was at work. He released Employee to light duty work as long as he could sit and not use his knee. PA McRorie ordered left knee magnetic resonance imaging (MRI). (PA McRorie clinic note, October 31, 2019).

6) The November 6, 2019 left knee MRI showed physiologic knee joint fluid and no evidence of internal derangement. (Muneer Desai, M.D. MRI report, November 6, 2019).

7) On November 13, 2019, PA McRorie noted valgus deformity, tenderness over the patella and quadriceps tendon, as well as moderate joint line edema and limited range of motion (ROM). He noted Employee's knee MRI and x-ray were normal, but did not correlate with the physical exam. He referred Employee for physical therapy (PT) and encouraged him to wear a knee brace. (PA McRorie clinic note, November 13, 2019).

8) On November 14, 2019, PA McRorie restricted Employee from working until further notice. (PA McRorie letter, November 14, 2019).

9) On November 14, 2019, Employee began PT for left knee limited mobility and hyperalgesia around the left patella and posterior knee. He reported to he had dislocated his left knee the prior month while lifting a couch. His left knee had popped and was extremely painful. Initially he could not walk, but after five minutes he was able to walk. However, his knee popped again. Employee received PT at the clinic and was instructed in a home exercise program (HEP). (Nicole Warren, PT clinic note, November 14, 2019).

10) Employee continued PT at the clinic every two to four days until December 2, 2019. On December 2, 2019, Employee reported a significant increase in left knee pain and a new onset of left hip pain. He was referred to his primary care provider (PCP) for follow up. (Haley Bowen, PT, December 2, 2019).

11) On December 5, 2019, McRorie, PA noted Employee's knee continued to have instability, which was not healing as expected. He planned to continue with PT and refer Employee to a surgeon for a second opinion on the left knee MRI. (McRorie, PA clinic note, December 5, 2019).

12) On December 5, 2019, McRorie, PA released Employee to sedentary work. (McRorie, PA work release, December 5, 2019).

13) On December 6 and 9, 2019, Employee continued PT. However, PT was discontinued on December 9, 2019 when Employee reported it was not helping with the pain. Employee also reported worsening symptoms and significant reduction in left knee mobility. (PT Warren, clinic note, December 9, 2019).

14) On December 11, 2019, on referral from PA McRorie, Scott Innes, M.D, reviewed Employee's left knee MRI and noted increased signal in the anterior horn of the medial meniscus without a discrete tear. Dr. Innes opined a "cold meniscus tear" could cause his symptoms and without surgery the pain would not resolve. (Dr. Innes clinic note, December 11, 2019).

15) On January 6, 2020, Daniel Keck, PA, who works with Dr. Innes, released Employee to work at a desk job, with no walking or standing. (PA Keck release to work, January 6, 2020).

16) On January 16, 2020, Employee reported increased left knee pain after working four hours as a greeter with Employer. PA Keck restricted Employee from work. (PA Keck clinic note, January 16, 2020).

17) On February 7, 2020, Employee underwent left knee arthroscopy with chondroplasty and lateral release. The post-operative diagnosis was left patella chondromalacia and medical femoral condyle with laterally tracking patella. (Operation report, February 7, 2020).

18) On February 11, 2020, Employee reported he felt his knee was locking up most of the time when he tried to walk and he felt it was unstable. He reported a pain level of 10. Dr. Innes reviewed the arthroscopy video with Employee. He had two areas of chondromalacia and his patella was tracking far laterally. Dr. Innes performed a lateral release to improve his tracking and suspected the lateral tracking was what had been causing the pain. He planned to have Employee start PT the following week. (Dr. Innes clinic note, February 11, 2020).

19) From February 17, 2020 to April 9, 2020, Employee participated in PT. On April 9, 2020, PT was put on hold until Employee contacted his surgeon due to increased pain and lack of progress toward goals. Jodi Dura, PT noted Employee had increased areas of abnormal fascial tension and exquisite tenderness with manual techniques to his left knee and lower leg. He also had decreased tolerance to exercise due to increased left knee pain. (PT Dura clinic note, April 9, 2020).

20) On July 31, 2020 orthopedic surgeon Todd A. Fellars, M.D., evaluated Employee in an employer's medical evaluation (EME). Dr. Fellars reviewed Employee's medical history and performed a physical examination. Employee stated when the injury occurred he was the lead in the furniture department and was moving furniture. He grabbed a table, turned, and felt his knee give out. He felt a pop. When he stood up and tried to walk, he "just dropped." Employee reported he continued to have pain in his left knee, which he rated at six on a scale of one to ten, with ten being the worst pain imaginable. He described a stabbing and aching pain in the anterior knee as well as pain and some numbness posteriorly. Employee also reported the pain level increased to greater than ten when aggravated. He reported he had trouble sleeping due to the sharp pain. Dr. Fellars reviewed the left knee x-rays, which he stated were normal. He also reviewed the left knee MRI, which he stated showed a slight lateral tilting of the patella. He diagnosed left knee strain,

medically stable; slight lateral tracking of the patella, pre-existing; and unexplained ongoing knee pain. Dr. Fellars opined Employee was medically stable and there was no objective orthopedic pathology likely causing his pain. He also stated Employee had no objective evidence of disability, only subjective pain complaints. There was no indication for further treatment. The substantial cause of his disability and need for medical treatment for the knee strain was work. However, the work injury did not cause Employee's continued subjective knee pain complaints. Dr. Fellars opined Employee has the physical capacity to perform his job at the time of injury. He also stated there was no indication for Employee to see another medical specialist or receive further treatment. (Dr. Fellars EME report, July 31, 2020).

21) On September 17, 2020, Dr. Innes checked the "yes" box on a form sent to him by Employer, indicating he had reviewed Dr. Fellars' EME report and concurred with Dr. Fellars' findings and recommendations. (Dr. Innes' response to Employer's letter, September 17, 2020).

22) On September 23, 2020, Employee reported to Dr. Innes that his left knee pain had been getting worse since July 2020. Employee stated the pain spiked every 5-10 minutes. Although he had a knee brace, he could not wear it as it made the pain worse. Employee described the worst pain was located at the inner thigh, approximately at the junction of the middle and distal thirds of the femur. Employee rated the pain at 9/10. Dr. Innes stated he did not have a good explanation of where the pain was coming from and stated a referral to neurology might be helpful. He advised Employee to apply for charity care to cover any diagnostic tests the neurologist ordered. (Dr. Innes clinic note, September 23, 2020.)

23) On October 6, 2020, Employer controverted all benefits based on Dr. Fellars' July 31, 2020 EME report and attending physician Dr. Innes' "check-the box" concurrence with the findings and recommendations in the EME report. (Dr. Fellars' July 31, 2020 response to Employer's September 17, 2020 letter).

24) On October 9, 2020, on referral from Dr. Innes, neurologist David Rankine, M.D., evaluated Employee for his left knee pain complaints. Employee reported the February release surgery did not relieve his pain. After a fall that morning in the shower, he didn't have pain, but numbness and tingling on the outside of his left and back of the knee as well as numbness on the inside of the leg. He was unable to walk up and down stairs as he could not put full weight on the leg. He also had swelling on the back side of the leg behind the knee. Employee had used a knee brace, which did not help, but also used ice, elevation and resting. Dr. Rankine diagnosed Employee

with chondromalacia patellae, left knee and complex regional pain syndrome (CRPS), type I of the left lower extremity. He also considered the possibility of a baker cyst in the back of the leg. Dr. Rankine recommended using the pain reliever "icy hot," treatment to push the leg and work through it to loosen the knee, a copper sleeve knee brace, swimming, losing weight, small isometric exercises and starting the medication Gabapentin if needed. (Dr. Rankine clinic note, October 9, 2020).

25) On December 4, 2020, Employee reported he was doing better. He still had pain with activities such as running, jumping, and kneeling, and occasionally had tingling and numbness down his leg. He was using "icy hot," which relieved the pain. He had been unable to get the copper sleeve for his knee. Dr. Rankine advised Employee to get an ace bandage wrap and to call if there were any new or worsening symptoms. (Dr. Rankine clinic note, December 4, 2020).

26) On February 26, 2021, Dr. Rankine diagnosed chondromalacia patellae, left knee and left lower extremity CRPS type 1. Employee reported his knee was doing better and he was doing exercises to rebuild his strength. Employee's knee sometimes gave out, but not as bad as previously. He still had some issues with getting up from the ground without support. He was building up his running again. Dr. Rankine advised Employee to call if any new or worsening symptoms occurred. (Dr. Rankine clinic note, February 26, 2021).

27) Type 1 CRPS is a clinical syndrome of variable course and unknown cause characterized by pain, swelling, and vasomotor dysfunction of an extremity. This condition is often the result of trauma or surgery. Limb immobility may lead to type 1 CRPS. It may also develop in the absence of an identifiable precipitating event. (www.emedicine.medscape.com/article/334377-overview).

28) Employee testified he has continued to have left knee pain since his work injury and February 7, 2020 arthroplasty and post-surgical PT. He testified the pain comes and goes, but he has more bad days than good. (Hearing record, March 17, 2021).

29) He has not returned to work and has not been able to find a job since his work injury. (*Id*.)

30) He has medical insurance through Medicaid. He has used his Medicaid to consult a neurologist about his knee pain. The neurologist "did not know what was going on with the left knee." He stated he did need to make another appointment with the neurologist. (*Id*.)

31) Employee thought it was in his best interest to sign the C&R because he just wants to "be done with it" and see what he could do. (*Id*.)

32) Employee testified prior to the work injury he had not had any problem with either of his knees. (*Id*.)

33) Employee is a credible witness. (Experience, observation, judgment).

34) Employee is unrepresented and the settlement involved a $2,500 lump sum payment for his waiver of all benefits. (*Id*.)

35) On March 3, 2021, C&R approval was denied, since without additional information it was not clear it was in his best interest. (Denial letter, March 3, 2021).

36) Approval of the C&R was denied pending an SIME, which was orally ordered at the hearing. (Hearing record, March 17, 2021).

37) The parties stipulated to schedule a prehearing, which would give Employee a chance to consult with an attorney. (*Id*.)

38) On March 24, 2021, Employer petitioned for a written decision and board order for the SIME ordered at the March 17, 2021 hearing. (Employer petition, March 24, 2021).

39) On April 14, 2021, Employer filed its request for a hearing on its March 24, 2021 petition. (ARH, April 14, 2021).

40) On May 5, 2021, a written record hearing was held on Employer's March 24, 2021 petition. (Hearing, May 5, 2021).

PRINCIPLES OF LAW

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

> **AS 23.30.012. Agreements in Regard to Claims**. (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, is enforceable as a compensation order.

> (b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.
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> **AS 23.30.110. Procedure on claims.**
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> (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. . . .

Under AS 23.30.110(g), the board has discretion to order an SIME when there is a significant gap in the medical or scientific evidence and an opinion by an independent medical examiner or other scientific examination will assist the board in resolving the issue before it. *Bah v. Trident*, AWCAC Decision No. 073 (February 27, 2008).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided in 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....

In *Clark v. Municipality of Anchorage*, 777 P.2d 1159, 1162 (Alaska 1989), the Alaska Supreme Court directed the board to carefully consider settlement agreements, noting courts treat releases of this type differently than they would a simple release of tort liability. In *Olsen Logging Co. v. Lawson*, 856 P.2d 1155, 1158 (Alaska 1993), the Court noted under AS 23.30.012, approved settlement agreements "have the same legal effect as awards, except that they are more difficult to set aside." (Emphasis added). More recently in *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1013 (Alaska 2009), the Court remanded the issue of whether to set aside a settlement which was approved by the board in violation of its own regulations. There is a statutory presumption an

agreement settling entitlement to future medical benefits is not in an employee's best interests. *Id.* Before the board may approve such a settlement it is obligated to have a complete medical record. *Id.*

> **8 AAC 45.160. Agreed settlements.** (a) The board will review a settlement agreement that provides for the payment of compensation due or to become due and that undertakes to release the employer from any or all future liability. A settlement agreement will be approved by the board only if a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's beneficiaries. The board will, in its discretion, require the employee to attend, and the employer to pay for, an examination of the employee by the board's independent medical examiner. If the board requires an independent medical examination, the board will not act on the agreed settlement until the independent medical examiner's report is received by the board.
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> (d) The board will, within 30 days after receipt of a written agreed settlement, review the written agreed settlement, the documents submitted by the parties, and the board's case file to determine
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> (1) if it appears by a preponderance of the evidence that the agreed settlement is in accordance with AS 23.30.012; and
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> (2) if the board finds the agreed settlement
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> (B) lacks adequate supporting information to determine whether the agreed settlement appears to be in the employee's best interest or if the board finds that the agreed settlement is not in the employee's best interest, the board will deny approval of the agreed settlement, will notify the parties in writing of the denial, and will, in the board's discretion, inform the parties
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> (i) of the additional information that must be provided for the board to reconsider the agreed settlement; or
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> (ii) that either party may ask for a hearing to present additional evidence or argument for the board to reconsider the agreed settlement; to ask for a hearing under this paragraph, a party may write to the board or telephone the division; an affidavit of readiness for hearing is not required; the procedures in 8 AAC 45.070 and 8 AAC 45.074 do not apply to a hearing under this subparagraph unless a party requests a hearing by filing an affidavit of readiness for hearing. If a hearing is held under this section, the board will,

> in its discretion, notify the parties orally at the hearing of its decision or in writing within 30 days after the hearing; if after a hearing the board finds . . . the evidence is insufficient to determine whether the agreed settlement appears to be in the employee's best interest, the board will deny approval of the agreed settlement and request additional information from the parties; or the agreed settlement does not appear to be in the employee's best interest, the board will deny approval of the agreed settlement; the board will not prepare a written decision and order containing findings of fact and conclusions of law unless, within 30 days after the board's notification, a party files with the board a written request for findings of fact and conclusions of law together with the opposing party's written agreement to the request.
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> (e) An agreed settlement in which the employee waives medical benefits, temporary or permanent benefits before the employee's condition is medically stable and the degree of impairment is rated, or benefits during rehabilitation training after the employee has been found eligible for benefits under AS 23.30.041(g) is presumed not in the employee's best interest, and will not be approved absent a showing by a preponderance of the evidence that the waiver is in the employee's best interest. In addition, a lump-sum settlement of board-ordered permanent total disability benefits is presumed not in the employee's best interest, and will not be approved absent a showing by a preponderance of evidence that the lump-sum settlement is in the employee's best interests.
> . . . .

ANALYSIS

Was the oral order for an SIME correct?

When an employee is unrepresented or is waiving future medical benefits, a settlement agreement must be submitted for approval, and will be approved only after a finding the settlement is in the employee's best interest. AS 23.30.012. Likewise, if an employee agrees to waive medical benefits, temporary or permanent impairment benefits before the work related condition is medically stable or the degree of impairment is rated, the agreement is presumed not in the injured worker's best interest. 8 AAC 45.160(e). Here, Employee is both unrepresented and the settlement waives any entitlement he may have in all future benefits, including medical benefits. Therefore, the agreement is presumed not to be in his best interests unless a preponderance of the evidence establishes the waiver is in his best interests. AS 23.30.012(b); 8 AAC 45.160(d)(2)(B) & (e); *Smith*. A C&R agreement, once approved, is difficult to set aside and the decision to approve must be very carefully considered. *Olsen*; *Clark*.

Dr. Fellars was unable to determine the cause for Employee's continuing knee pain and merely attributed it to Employee's subjective complaints. Employee was advised by his treating physician to consult with a neurologist about his ongoing left knee pain. Through Medicaid coverage, he treated with neurologist Dr. Rankine, who diagnosed Employee with chondromalacia patellae of the left knee as well as left knee and left lower extremity CRPS, type 1. Since Employee testified he has ongoing left knee pain, with more bad days than good, and he has been diagnosed with CRPS, type 1, which may be related to the work injury and surgery performed to treat the knee injury, there is insufficient evidence to act upon the settlement at this time. 8 AAC 45.160(a). Additional information is needed to determine whether Employee's continuing left knee pain arose out of and in the course of his employment. By regulation, when an SIME is ordered to assist in evaluating the settlement, no action is to be taken on the settlement until after receipt of the SIME report. *Id*.

An SIME may be ordered when a settlement is submitted for review and the possibility of permanent disability exists or if a preponderance of the evidence does not demonstrate approval of the agreement is in an employee's best interest. AS 23.30.012(b); 8 AAC 45.160(a). An SIME may be ordered to assist in evaluating such a settlement and establishing the agreement either is or is not in the employee's best interest. *Id.*

Here, the EME physician Dr. Fellars and the attending physician Dr. Innes, both orthopedic surgeons, opined Employee's ongoing left knee pain did not arise out of or in the scope of employment. However, Employee's attending physician did refer him to neurologist, Dr. Rankine, who diagnosed Employee with chondromalacia patella and CRPS, type 1, which can result from an injury or surgery and can result in permanent disability. *Babler*.

There is a gap in the medical evidence concerning the cause of Employee's ongoing left knee pain and CRPS, type 1. Attending physician Dr. Innes opined he did not know what was causing Employee's knee pain, but as noted above, referred him to Dr. Rankine. EME physician Dr. Fellars, while he concurred the original injury was work-related, opined there was no objective orthopedic pathology causing employee's pain, but he did not address any other possible cause of the pain, such as nerve damage. Dr. Rankine did not offer an opinion on whether these conditions

are work-related. An SIME is needed to assist in making this determination. An SIME will assist in determining the cause or causes of the ongoing left knee pain and whether or not the left knee disability and need for ongoing medical treatment arose out of and in the course of employment. AS 23.30.110(g). *Bah*. Finally, an SIME with a neurologist to investigate the cause of Employee's left knee pain will assist in ascertaining the rights of the parties and whether the agreement is in employee's best interest. AS 23.30.135(a); 8 AAC 45.160(e). Therefore the oral order for an SIME was correct.

CONCLUSIONS OF LAW

The oral order for an SIME was correct.

ORDERS

1) The parties' request for an approval of the January 27, 2021 C&R is held in abeyance and will not be acted upon until after an SIME report is received and reviewed.
2) An SIME with a neurologist is ordered in accordance with this decision.
3) The parties are directed to schedule and attend, within 30 days of this decision, a prehearing conference at which the designee will set forth the process and procedures for an SIME.
4) The SIME will be performed by a neurologist selected in accordance with the Alaska Workers' Compensation Act, applicable regulations, and normal processes and procedures.
5) The following questions are to be asked of the neurologist:
   (1) Please provide a diagnosis or diagnoses for Andrew Blom's left knee and left lower extremity pain.
   (2) Please list all causes of Andrew Blom's disability or need for medical treatment. Disability is defined under Alaska Statute AS 23.30.395(16) as "the 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."
   (3) If, in your opinion, one cause of Andrew Blom's disability, or need for medical treatment is a preexisting condition, did the October 12, 2019 work injury aggravate, accelerate, or combine with the preexisting condition to cause disability or need for treatment?

(4) If so, did the October 12, 2019 injury aggravate, accelerate, or combine with the pre-existing condition to produce a temporary or permanent change in the pre-existing condition?

(5) Please evaluate the relative contribution of different causes of Andrew Blom's disability, or need for medical treatment identified in question one.

(6) Which of the different causes identified in question one is "the substantial cause" of Andrew Blom's disability, or need for medical treatment? Please provide the basis for your opinion.

(7) If, in your opinion the October 12, 2019 work injury was "the substantial cause" of Andrew Blom's disability, does the work-related disability continue?

(8) If, in your opinion, Andrew Blom is no longer disabled from the work injury, when did the disability end?

(9) The Alaska Workers' Compensation Act defines "medical stability" as:

> [T]he date after which objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care of 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.

Please answer the following questions based upon this definition:

(a) Is Andrew Blom medically stable?

(b) If Andrew Blom is medically stable, on what date was medical stability reached?

(c) If Andrew Blom is not medically stable, on what date do you predict medical stability?

(10) What specific additional treatment, if any, do you recommend to address the October 12, 2019 work injury or its consequences?

(11) Andrew Blom has received a course of care including physical therapy, left knee arthroscopy, a knee brace, and pain medication. In your opinion, was or is this type of treatment reasonable and necessary for the injury? That is,

(a) Will the treatment help Andrew Blom recover from the injury?

(b) Will the treatment relieve chronic, debilitating pain?

(c) Will the treatment promote recovery from individual episodes of pain caused by a chronic condition?

(d) Will the treatment limit or reduce any permanent impairment?

(e) Will the treatment enable Andrew Blom to return to work?

(f) Will the treatment enable Andrew Blom to participate in a reemployment plan?

(12) Enclosed is a job description for your consideration in answering the following questions:

(a) Is Andrew Blom able to work as a "Furniture Lead," DOT title: 298.081-010 Displayer, Merchandise, SVP level 6, without any limitations or restrictions at this time?

(b) Is Andrew Blom able to work as a "Stock Clerk," DOT title: 299.367-014, SVP level 4, without limitations or restrictions at this time?

(c) If there are limitations or restrictions, please list them and state whether they are a result of the work-related injury or other specific factors.

(13) If Andrew Blom is medically stable, please perform a permanent partial impairment rating using the American Medical Association Guides to the Evaluation of Permanent Impairment, 6th Edition (Guides). An impairment rating may not be rounded to the next five percent.

Dated in Anchorage, Alaska on June 3, 2021.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Judith A DeMarsh, Designated Chair

/s/
Randy Beltz, Member

/s/
Nancy Shaw, Member

PETITION FOR REVIEW

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

or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of ANDREW N BLOM, employee / claimant v. FRED MEYER STORES, INC., employer; THE KROGER CO., insurer / defendants; Case No. 201914195; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on June 3, 2021.

/s/
Kimberly Weaver, Office Assistant II