# ALASKA WORKERS' COMPENSATION BOARD

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

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| ROBIN HUGHES,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>MEDICAL PARK FAMILY CARE,<br><br>Employer,<br>and<br><br>REPUBLIC INDEMNITY CO. OF AMERICA,<br><br>Insurer,<br>Defendants. | FINAL DECISION AND ORDER<br><br>AWCB Case No. 201810200<br><br>AWCB Decision No. 22-0003<br><br>Filed with AWCB Anchorage, Alaska on January 13, 2022 |

Employee Robin Hughes' May 7, 2021 claim was heard on December 8, 2021, in Anchorage, Alaska, a date selected on July 27, 2021. A June 23, 2021 hearing request gave rise to this hearing. Attorney Tasha Porcello appeared and represented Employee. Attorney Vicki Paddock appeared and represented Medical Park Family Care and its insurer (collectively Employer). Employee, James Lord, M.D., and vocational counselor Loretta Cortis appeared and testified for Employee. William Breall, M.D., appeared and testified for Employer. The record remained open for additional filings and closed on December 20, 2021.

## ISSUES

Employee contends the Hepatitis B vaccine she received due to her work injury caused postural orthostatic tachycardia syndrome (POTS). She contends she became permanently totally

disabled (PTD) due to POTS and seeks temporary total disability (TTD) benefits from April 29, 2021, through May 6, 2021, and PTD benefits from May 7, 2021, and continuing.

Employer contends Employee's POTS diagnosis is unrelated to the Hepatitis B vaccine or work. It contends she is not entitled to disability benefits.

**1) Is Employee entitled to TTD or PTD benefits?**

Employee contends her earnings history does not fairly and accurately reflect her earning capacity and lost earnings during her post-injury disability. She contends her PTD compensation rate should be adjusted based upon her potential future earnings working as a phlebotomist.

Employer contends any adjustment to Employee's compensation rate is limited to her gross weekly earnings at the time of injury. It contends her request for a compensation rate adjustment should be denied.

**2) Is Employee entitled to a compensation rate adjustment?**

Employee contends she needs continuing medical care for her work injury.

Employer contends Employee's medical benefits should be denied because her disability or need for medical treatment due to POTS is unrelated to her April 27, 2018 injury.

**3) Is Employee entitled to medical benefits and related transportation costs?**

Employee contends she is entitled to a late-payment penalty because Employer stopped paying TTD benefits on April 28, 2021, based on two medical opinions, which do not support its controversion.

Employer contends Employee is not entitled to a penalty because she is not entitled to TTD or PTD benefits and evidence or law support its controversion notice.

**4) Is Employee entitled to a penalty?**

Employee contends she is entitled to past and ongoing benefits resulting from her attorney's efforts. Therefore, she seeks interest and attorney fees and costs.

Employer contends Employee is not entitled to additional benefits. Therefore, it contends there is no basis for interest, attorney fees or costs.

**5) Is Employee entitled to interest and attorney fees and costs?**

FINDINGS OF FACT

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

1) On September 20, 2016, Employee began working for Employer as a full-time phlebotomist. Her initial hourly wage was $17; on April 27, 2018, it was $19.51. (Employee).

2) On April 27, 2018, Employee accidentally stuck her finger with a contaminated needle while working for Employer, a medical clinic. The clinic provided her with a Hepatitis B vaccine injection. Shortly after receiving the vaccine, Employee experienced symptoms, ultimately determined to result from a POTS diagnosis. (First Report of Injury, July 20, 2018; Lord report, August 15, 2018).

3) On August 15, 2018, Employee's attending physician Dr. Lord diagnosed "very symptomatic" POTS caused by a Hepatitis B vaccine. (Lord report, August 15, 2018).

4) On September 12, 2018, Employee claimed TTD, temporary partial disability (TPD) and permanent partial impairment (PPI) benefits, medical and transportation costs, interest, and attorney fees and costs. (Claim for Workers' Compensation Benefits, September 12, 2018).

5) On October 30, 2018, Employer admitted TTD, TPD and PPI benefits, medical and transportation costs, and attorney fees. (Answer to Employee's Workers' Compensation Claim, October 30, 2018).

6) On November 16, 2018, Gregory Zoltani, M.D., saw Employee for an employer's medical evaluation (EME), diagnosed POTS "unrelated to any hepatitis B vaccination," and opined the substantial cause was idiopathic. (Zoltani report, November 16, 2018). On February 7, 2019, Dr. Zoltani responded "This is outside of my expertise" when asked to explain his November 16, 2018 opinion. (Zoltani report, February 7, 2019).

7) On March 19, 2019, Daniel Gottlieb, M.D., saw Employee for an EME, diagnosed POTS with anxiety, and opined POTS "in general tends to occur in young, healthy women. However, no particular issues in [Employee's] past would seem to predispose her to this diagnosis." He stated:

> Although it is disturbing that [Employee's POTS] occurred beginning several days after the hepatitis B vaccine, in general it can occur fairly suddenly in a certain percentage of cases, and therefore if it does occur suddenly, it will always be a question about whether something in the past week was the causative factor. To my awareness, there are no specific toxic or specific etiologies. I would definitely recommend a review of all the literature revolving around either pre-marketing or post-marketing of the hepatitis vaccine, but at this time I cannot confirm that this is the cause or the "substantial cause." It certainly may have contributed to some of the examinee's anxiety. (Gottlieb report, March 19, 2019).

8) On January 14, 2020, Dr. Lord opined Employee "will be unable to work being symptomatic." The "natural course of [POTS] takes several years before symptoms begin to improve." (Lord report, January 14, 2020).

9) On February 11, 2021, Dr. Lord opined Employee's symptoms improved with an intravenous (IV) infusion several times per week. He ordered continued IV infusions for the next six months. Dr. Lord removed Employee from work for one year. (Lord report, February 11, 2021). He later opined her prognosis for recovery was "very poor." (Videoconference Deposition of Dr. James Lord, May 13, 2021).

10) On March 31, 2021, Dr. Breall saw Employee for an EME and diagnosed POTS and paroxysmal orthostatic hypotension. He noted Employee eats "cheese once a week," "three meals daily," "raw fruits or raw vegetables three to four times a week," and "protein daily." Dr. Breall concluded Employee does not have "an industrially related disease" because his literature review did not reveal POTS was ever caused "by any type of vaccination," including Hepatitis B. He opined "there is no known reason or causation of POTS," but "there might be a dietary factor which was present at the time of [Employee's] needle prick." Dr. Breall further stated Employee was not medically stable and there was no good single treatment for POTS; he recommended "exercise." He was "very positive" Employee would be able to return to work as a phlebotomist or obtain training for sedentary to light work, though he did not provide a specific date for either. (Breall report, March 31, 2021).

11) On April 5, 2021, another EME, Peter Mohai, M.D., diagnosed "(1) history of Reynaud's of toes, (2) PFO per echocardiogram, (3) POTS, and (4) history of hepatitis B vaccination." He opined the April 27, 2018 incident was not the cause of any condition he could identify and found no connection between a Hepatitis B vaccine and POTS. Dr. Mohai stated he reviewed "the current literature including the summary article in up-to-date 'postural tachycardia syndrome' by William P. Cheshire," which identified mechanisms responsible for POTS as (1) hypovolemia and deconditioning; (2) neuroendocrine dysfunction; (3) neuropathy; and (4) autoimmunity. However, he concluded POTS is "essentially idiopathic" and recommended appropriate water and salt intake, exercise, activity, compression garments and selective medications to elevate Employee's blood pressure, as appropriate treatments. Dr. Mohai opined Employee will not have the physical capacities to return to work as a phlebotomist but could return to work as a receptionist and could participate in retraining for sedentary to light work. (Mohai report, April 5, 2021).

12) On May 6, 2021, Employer denied medical benefits and transportation costs related to POTS, disability benefits, PPI benefits, and reemployment benefits based on Dr. Breall's March 31, 2021 and Dr. Mohai's April 5, 2021 reports. (Controversion Notice, May 6, 2021).

13) On May 7, 2021, Employee claimed PTD, TTD, and PPI benefits, medical and transportation costs, interest, a compensation adjustment, a penalty and attorney fees and costs. (Claim for Workers' Compensation Benefits, September 12, 2018).

14) On May 13, 2021, Dr. Lord testified medical literature supported his opinion that the Hepatitis B injection caused the POTS diagnosis because vaccines stimulate immune system and Employee's symptoms came on very close following the injection. (Videoconference Deposition of Dr. James Lord, May 13, 2021).

15) On June 2, 2021, Employer denied all claims based on Drs. Breall and Mohai's opinions. (Controversion Notice, June 2, 2021).

16) On November 4, 2021, Denton Scow, PT, saw Employee for a functional capacity evaluation (FCE) and reported: (1) if Employee were to return to work, a position that is classified as sedentary to avoid prolonged or repetitive standing or walking would provide the most potential for success; (2) Employee is most likely to succeed initially with work at a part time designation as a way to avoid excessive exertion on multiple consecutive days which has been reported as a major limiting factor; (3) work schedule could be modified around her

infusion schedule to maximize her good days; (4) Employee has severe limitations to functional activities that involve repetitive lifting due to weakness and deconditioning of the arms and upper body; (5) Employee was able to complete 2.75 hours of FCE without any notable tachycardia episodes that were concerning or out of the expected range based on the activities being performed; and (6) Employee presented no pain or limitations to active range of motion or full body mobility with some degree of gradually building fatigue with repeated lifting and pushing and pulling, which are not essential functions typically in a sedentary position. (Scow report, November 4, 2021).

17) On November 17, 2021, Cortis reported: "An employer who would be willing to hire [Employee] for 3 hours per day and accommodate her physical capacities and infusion schedule along with allowing her to lay down during her work hours would be rare and would be considered odd lot. Based on Dr. Lord's recommendations and Ms. Hughes' FCE, it is this Rehabilitation Specialist's opinion that Ms. Hughes does not have the ability to work a full-time or part-time job." (Vocational Evaluation Report, November 17, 2021).

18) On December 1, 2021, Dr. Mohai testified that "absolutely no one knows why [POTS] occurs." He said, "[. . .] the speculation in my mind, [. . .] she certainly could have had POTS before [the April 27, 2018 injury] and it was Dr. Lord who had his antennas out because, again, the prior records show a lot of similar symptoms, a low blood pressure, a baseline, and then also being put on medications that are known to affect blood pressure[.]" (Perpetuation Deposition upon Oral Examination of Peter Mohai, M.D., December 3, 2021).

19) At hearing on December 8, 2021, Dr. Breall said he agreed with Dr. Mohai that "literature says POTS is idiopathic"; however, he opined POTS is caused by dietary issues. He admitted there is no medical literature supporting that POTS is related to dietary issues but opined Employee began developing POTS sometime between 2015 and 2017, prior to the April 27, 2018 work injury, when she had low blood pressure and her body mass index (BMI) was low at 18.5. Yet, Dr. Breall said Employee looked healthy when he conducted an EME on March 31, 2021, via Zoom; he did not inquire about any dietary irregularities. Dr. Breall opined Employee has POTS and is disabled, but she is not permanently totally disabled and will get well with proper treatment. (Breall).

20) According to the U.S. Department of Health & Human Services website, a BMI of 18.5 falls within the normal BMI range. (Employee's Hearing Brief, Exhibit 18, December 1, 2021).

21) Employee has maintained a 1500-calorie diet since high school, eating "cheese once a week," "three meals daily," "raw fruits or raw vegetables three to four times a week," and "protein daily." She used to be very active engaging in different sports; but since she was diagnosed with POTS, Employee gets easily exhausted – even doing the dishes would be her "one task for the whole day." She has a port implanted to get intravenous fluids three times per week so she can do some daily activities. Employee enjoyed her work as a phlebotomist and had no plan to change her employment. (Employee; Cortis).

22) Given Employee's physical restrictions and her need for infusions, it would be hard to find an employer willing to hire her. (Cortis). "The Alaska Career Information system reports that the median wage in Anchorage is $18.95 per hour and the upper 75% of Phlebotomists earn at least $22.75 per hour. . . . It is anticipated that [Employee's] salary would increase as she gained additional experience. According to the Department of Labor the 90th percentile of Phlebotomists earn $27.82 per hour." (Vocational Evaluation Report, November 17, 2021). It is not unreasonable for Employee to increase her salary through raises to this amount or more within seven years. (Cortis).

23) Employer paid TTD benefits through April 28, 2021. (Agency file).

24) On December 10, 2021, Employee asked for $83,503.50 in attorney fees and $8,164.19 in costs, totaling $91,667.69. She also asked for statutory attorney fees on all future benefits due and paid after the date of this decision, if she prevails. (Affidavit of Counsel in Support of Attorney's Fees and Costs, December 3, 2021; Affidavit of Counsel in Support of Attorney's Fees and Costs, December 10, 2021).

25) On December 20, 2021, Employer unopposed Employee's December 3 and 10, 2021 attorney fee affidavits. (Review of Employee's Affidavit of Counsel in Support of Attorney's Fees and Costs, December 20, 2021).

26) In 2016, Employee earned $13,166; in 2017, she earned $36,459. From January 1, 2018, through May 6, 2018, Employee earned $16,799. (Social Security Statement, June 2, 2021; Notice to Intent to Rely, August 19, 2021).

## PRINCIPLES OF LAW

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

> (1) This chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

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

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. . . .

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

> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter. . . .

The presumption applies to any claim for compensation. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). In the first step, the claimant need only adduce "minimal" relevant evidence establishing a "preliminary link" between the injury and employment. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.,* 742 P.2d 239, 244 (Alaska 1987). Credibility is not weighed here. *Resler v. Universal Services Inc.*, 778 P.2d 1146 (Alaska 1989).

In the second step, to rebut the presumption, an employer must present substantial evidence that either (1) a something other than work was the substantial cause of the disability or need for

medical treatment or (2) that work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). The defendant has the burden to overcome the presumption with substantial evidence to the contrary. *Huit* stated, "merely reciting the proper words as an opinion is not necessarily enough to rebut the presumption of compensability, because the employer must provide *substantial evidence* that the disability was not work-related." "Substantial evidence" is such "relevant evidence" as a "reasonable mind might accept as adequate to support a conclusion." *Tolbert*, 973 P.2d at 611-12. Credibility is not examined at the second step either. *Resler*. If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065 (Alaska 1997).

In the third step, if the defendant's evidence rebuts the presumption, it drops out and the claimant must prove his claim by a preponderance of the evidence. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The evidence is weighed, inferences drawn and credibility determined. *Steffey v. Municipality of Anchorage*, 1 P.3d 685 (Alaska 2000). The presumption analysis does not apply to undisputed issues. *Rockney v. Boslough Construction Co*., 115 P.3d 1240 (Alaska 2005).

> **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, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

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

> complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries. . . .

Attorney fees in workers' compensation cases should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging,* 787 P.2d 103, 108 (Alaska 1990). *State of Alaska v. Wozniak*, AWCAC Decision No. 276 (March 26, 2020), held a lump sum award of fees incurred to the date of hearing and a separate award of ongoing fees on Employee's ongoing PTD benefits is a "reasonable and compensatory award of fees for the benefit obtained, based on the statutory ten percent of compensation awarded."

> **AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .
> . . . .
> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment.
> . . . .
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> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due. . . .

AS 23.30.155(e) provides penalties when employers fail to pay compensation when due. *Haile v. Pan Am. World Airways*, 505 P.2d 838 (Alaska 1973). An employee is also entitled to penalties on compensation due if compensation is not properly controverted by the employer. *Williams v. Abood*, 53 P.3d 134 (Alaska 2002). If an employer neither controverts an employee's right to compensation, nor pays compensation due, §155 imposes a penalty. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352 (Alaska 1992). To avoid a penalty, a controversion must be filed in good faith. *Id.* For a controversion to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the board would find that the claimant is not entitled to benefits. *Id*. However, "an insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence."

*Vue v. Walmart Associates, Inc*., 475 P.3d 270, 289 (Alaska 2020). Also, an opinion without a basis is mere speculation and cannot be the foundation of a valid controversion. *Id*.

> **AS 23.30.180. Permanent total disability.** (a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. . . . Loss of both hands and both arms, or both feet, or both legs, and both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be (1) area of residence; (2) area of last employment; (3) the state of residence; and (4) the State of Alaska. . . .

For an employer to rebut the presumption of compensability, it must produce substantial evidence that shows work within an employee's abilities is regularly and continuously available in the relevant labor markets described in §180(a) of the statute. *Leigh v. Seekins Ford*, 136 P.3d 214 (Alaska 2006). This burden may be satisfied with labor market surveys of the specific and relevant markets. *Id*.

In *Carlson v. Doyon Universal Ogden Services*, 995 P.2d 224 (Alaska 2000), the injured worker appealed denial of her PTD benefit claim. On appeal, the employer argued she failed to provide medical evidence she was PTD. *Carlson* stated this argument "oversimplifies" the total disability concept because Alaska adopted the "odd lot doctrine" in defining what constitutes permanent total disability. Under the odd lot analysis, a vocational reemployment expert's testimony demonstrated evidence of disability despite overwhelming medical evidence Carlson could perform "light duty" work. A competing vocational expert said a regular, stable labor market existed for people with Carlson's skills and capabilities. *Carlson* explained:

> To avoid paying PTD benefits, an employer must show that 'there is regularly and continuously available work in the area suited to the [employee's] capabilities, *i.e*., that [she] is not an 'odd lot' worker' (footnote omitted). The Board concluded that the three doctors' unanimous view that Carlson was not PTD and Jacobsen's testimony identifying continuous and suitable work sufficed to overcome the presumption. This evidence satisfies the 'comprehensive and reliable' requirement propounded in *Stephens* (footnote omitted). The Board considered Carlson's medical limitations and her competitiveness in the job market, specifically referring to the testimony of rehabilitation expert Jacobsen and her Anchorage area labor market survey. *Id*. at 229.

*Carlson* also affirmed the board's reliance on testimony from a vocational reemployment expert who reviewed Carlson's claim file and a labor market survey. The expert identified job classifications suitable to the employee given her physical and educational limitations. *Id*.

In *Mitchell v. United Parcel Service*, Slip Op. No. 7566, November 12, 2021, the Supreme Court stated the Board does not have to consider every aspect of an U.S. Department of Labor's Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCDRDOT) job description in every permanent total disability case. But when the employer's own medical evidence shows that an employee has specific limits on his physical capacities, the vocational evidence must correspond to those limitations. Otherwise, the evidence does not "account for relevant factors defining disability" and cannot be considered substantial.

> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.
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> **AS 23.30.220. Determination of spendable weekly wage**. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:
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> . . . .
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> (4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;
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> . . . .
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> (10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings

> by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury. . . .

In *Johnson RCA/OMS*, 681 P.2d 905 (Alaska 1984), the Alaska Supreme Court held the board was required to use an alternate §220 sub-section in cases where an injured worker's wages from prior years had no relationship to his earnings at the time he was injured. Though it did not decide the case on constitutional grounds, *Johnson* held for the first time:

> The objective of AS 23.30.220 is to formulate a fair approximation of a claimant's probable future earning capacity during the period in which compensation benefits are to be paid. Normally the formula in subsection (2) will yield a fair approximation of this figure. However, sometimes it will not, and in those cases subsection (3) of the statute is to be used. (*Id*. at 907).

Since *Johnson*, the Alaska Supreme Court has often repeated this objective, which it derived from Professor Larson's workers' compensation treatise in which he said:

> The entire objective of wage calculation is to arrive at a fair approximation of claimant's probable future earning capacity. His disability reaches into the future, not the past; his loss as a result of injury must be thought of in terms of the impact of probable future earnings, perhaps for the rest of his life. This may sound like belaboring the obvious; but unless the elementary guiding principle is kept constantly in mind while dealing with wage calculation, there may be a temptation to lapse into the fallacy of supposing that compensation theory is necessarily satisfied when a mechanical representation of this claimant's own earnings in some arbitrary past period has been used as a wage basis. (*Id*. at 907; citing 2 A. Larson, *The Law of Workmen's Compensation* §60.11(d), at 10-564 (1983) (footnote omitted)).

AS 23.30.220 was amended in 1983 to read in part:

> **AS 23.30.220. Determination of spendable weekly wage**. (a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:
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> (1) the gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury.
>
> (2) if the board determines that the gross weekly earnings at the time of the injury cannot be fairly calculated under (1) of this subsection, the board may

> determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history. . . .

AS 23.30.220 was amended again in 1988 to take into account workers who were "absent from the labor market" for a time. This version stated in part:

> **AS 23.30.220. Determination of spendable weekly wage**. (a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:
>
> (1) the gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury;
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> (2) if the employee was absent from the labor market for 18 months or more of the two calendar years preceding the injury, the board shall determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury. . . .

The seminal case resulting from this §220 iteration is *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922 (Alaska 1994). *Gilmore* held rigid application of the mechanical formula set out in §220 leads to quick and predictable results, but such an efficiency is gained at the sacrifice of fairness in result, and struck it down "as applied" to the case on equal protection grounds. It held legislative intent could be gleaned from session laws stating, "[i]t is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30." *Gilmore*. Following *Gilmore*, Alaska's legislature amended §220 in 1995 and incorporated many provisions from the "model statute." The "model" §220(a) included a method to account for variations in work histories, predict earnings and compensate injured workers for actual losses during their disability. Effective 1995, §220 said in part:

> **AS 23.30.220. Determination of spendable weekly wage.** (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:
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> . . . .

> (4) if at the time of injury the
>
> > (A) employee's earnings are calculated by the day, hour, or by the output of the employee, the employee's gross weekly earnings are the employee's earnings most favorable to the employee computed by dividing by 13 the employee's earnings, including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury;
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> > (B) employee has been employed for less than 13 calendar weeks immediately preceding the injury, then, notwithstanding (1)-(3) of this subsection and (A) of the paragraph, the employee's gross weekly earnings are computed by determining the amount that the employee would have earned, including overtime or premium pay, had the employee been employed by the employer for 13 calendar weeks immediately preceding the injury and dividing this sum by 13. . . .
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> . . . .
>
> (10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury. . . .

Only two Alaska Supreme Court cases addressed this §220(a) version. In *Flowline of Alaska v. Brennan*, 129 P.3d 881 (Alaska 2006), the court affirmed the board's decision to use §220(a)(4)(A) because it was the most appropriate formula for calculating the injured worker's rate, based on the facts in a 1999 case. *Brennan* again referenced *Gilmore* and stated:

> As we pointed out in *Gilmore,* a fair approximation of a claimant's future earning capacity lost due to the injury is the 'essential component of the basic compromise underlying the Workers' Compensation Act -- the worker's sacrifice of common law claims against the employer in return for adequate compensation without the delay and expenses inherent in civil litigation' (footnote omitted). Despite subsequent amendments to the statute aimed at increasing the efficiency and predictability of the compensation process, this compromise, and the fairness requirements it engenders, provide the context for interpreting the Workers' Compensation Act. (*Brennan*, 129 P.3d 882-83).

In *Thompson v. United Parcel Service*, 975 P.2d 684 (Alaska 1999), the Alaska Supreme Court declined to accept a "broad" view requiring the board to calculate TTD rates by determining

what was "fair" to both parties: the main question under *Gilmore* is not whether an award calculated according to AS 23.30.220(a)(1) is "fair," but rather, "it is whether a worker's past employment history is an accurate predictor of losses due to injury." *Id*. The objective of wage calculation is to arrive at a fair approximation of claimant's probable future earning capacity. *Id*. *Thompson* also held "intentions as to [future] employment . . . are relevant to [determine] future earning capacity' in determining proper compensatory awards." *Id*.

In *Dougan v. Aurora Electric, Inc*., 50 P.3d 789, 797 (Alaska 2002), the Alaska Supreme Court stated, after the legislature adopted the "model law" suggested in *Gilmore*, the *Gilmore* test was no longer applicable. *Dougan* held the law in effect at the time of Dougan's injury provided for a variety of methods to calculate a TTD rate, while *Gilmore's* version of §220 relied exclusively on the average wage earned during a period of over a year without providing an alternate approach if the result was unfair. AS 23.30.220 was finally amended in 2005 to its present form.

*Wilson v. Eastside Carpet Co.*, AWCAC Decision No. 106 (May 4, 2009), held an employer may presume that for an hourly worker, AS 23.30.220(a)(4) will provide a spendable weekly wage fairly approximating the employee's wages at the time of injury in most cases. The hourly employee has the burden to challenge the compensation rate established under §220(a) if it does not represent the equivalent wages at the time of the injury. The board "must look at the evidence and decide the facts in each case" when determining the spendable weekly wage. *Id*. at 4. In *Wilson*, the commission found the board could not have ascertained the wage equivalent from Wilson's small self-employment record, and therefore was required to use a different §220(a) subsection to fit these circumstances. *Wilson* further held though tax records may be used to prove reported income, the board is not limited to federal tax returns as proof of an employee's earnings. *Id*. Once an injured worker claims a compensation rate adjustment, "the board must conduct a broader inquiry" to obtain evidence sufficient to determine the spendable weekly wage. *Id*.

## ANALYSIS

**1) Is Employee entitled to TTD or PTD benefits?**

Employee's claim for TTD or PTD benefits turns on whether her POTS arose out of and in the course of her employment with Employer. AS 23.30.010(a). It is undisputed Employee has POTS and is not medically stable. Employee contends she developed POTS after receiving a Hepatitis B vaccine due to her work injury. She seeks TTD and PTD benefits. Employer contends the Hepatitis B vaccine did not cause Employee's POTS, and her disability is not work-related. Causation of Employee's POTS and entitlement to TTD or PTD benefits raise factual disputes to which the presumption of compensability applies. AS 23.30.120(a)(1); *Meek*.

***a) Employee has work-related POTS.***

Without regard to credibility, Employee raised the presumption that her POTS is a work-related condition that prevents her from returning to full-time employment based on Dr. Lord's opinion. *Cheeks*; *Resler*. To rebut the presumption, Employer must provide "substantial evidence" showing POTS is not work-related. *Huit*. The "negative-evidence" and "affirmative-evidence" tests apply and Employer must meet one or the other test to rebut the raised presumption. *Id*. In this case, the "negative-evidence" test requires Employer to provide substantial evidence in a medical opinion showing POTS is not related to the Hepatitis B vaccine. AS 23.30.010(a); *Huit*. To meet the "affirmative-evidence" standard, Employer needs to provide substantial evidence ruling out the Hepatitis B vaccine as a cause for POTS by identifying another cause. *Id*.

Employer's defense to Employee's presumption contention relies on Drs. Mohai and Breall's opinions. Citing lack of literature linking POTS with the Hepatitis B vaccine, Dr. Mohai opined that there is no connection between the two and concluded POTS is "essentially idiopathic." He reiterated that "absolutely no one knows why [POTS] occurs," and said, "[. . .] the speculation in my mind, [. . .] [Employee] certainly could have had POTS before [the April 27, 2018 injury]" In short, on "causation" Dr. Mohai's opinion does not provide "substantial evidence" adequate to rebut the raised presumption because (1) it is based on speculation; (2) it did not meet the affirmative-evidence test because he offered no substantial evidence of an alternative cause for POTS; and (3) it did not meet the negative-evidence test because he offered no substantial evidence that the Hepatitis B vaccine did not cause Employee's POTS. Given that opinion, Dr. Mohai "merely reciting the proper words" and stating the Hepatitis B vaccine was not the substantial cause for POTS "as an opinion is not necessarily enough to rebut the presumption of

compensability." *Huit*. Stated differently, a reasonable person would not rely on Dr. Mohai's internally inconsistent opinion because as a matter of law it is not "substantial evidence." *Tolbert*.

Similarly, Dr. Breall opined Employee does not have "an industrially related disease" because his literature review did not reveal POTS was ever caused "by any type of vaccination," including Hepatitis B. In his EME report, Dr. Breall agreed with Dr. Mohai that "there is no known reason or causation of POTS," but also said "there might be a dietary factor which was present at the time of [Employee's] needle prick." At hearing, Dr. Breall emphasized that although "literature says POTS is idiopathic," in his opinion, POTS is caused by dietary issues. He admitted there is no medical literature supporting that POTS is related to dietary issues. Yet, Dr. Breall said Employee began developing POTS sometime between 2015 and 2017, prior to the April 27, 2018 work injury, when she had low blood pressure and her body mass index (BMI) was low at 18.5.

Like Dr. Mohai's opinion, Dr. Breall's opinion is based on speculation. On "causation" Dr. Breall's opinion does not provide "substantial evidence" adequate to rebut the raised presumption because (1) it did not meet the affirmative-evidence test because there is no substantial evidence that Employee has dietary issues; and (2) it did not meet the negative-evidence test because he offered no substantial evidence that the Hepatitis B vaccine did not cause Employee's POTS. A reasonable person would not rely on Dr. Breall's groundless and inconsistent opinion because as a matter of law it is not "substantial evidence." *Tolbert*. In short, Employee has work-related POTS because Employer failed to provide substantial evidence to rebut the raised presumption. *Id*; *Huit*; *Rockney*.

Even if Employer had rebutted the presumption with substantial evidence, which it did not, Employee would prove she has work-related POTS by a preponderance of the evidence. *Saxton*; *Steffey*. Employee's attending physician Dr. Lord diagnosed a "very symptomatic" POTS caused by a Hepatitis B vaccine and opined she will not be able to work while being symptomatic. He opined Employee's prognosis for recovery was "very poor" and said medical literature supported his opinion that the Hepatitis B injection caused the POTS diagnosis because vaccines stimulate

the immune system and Employee's symptoms came on close following the injection. Dr. Lord has maintained his POTS diagnosis and provided Employee with different treatment options. His opinion would be given the greatest weight. AS 23.30.122; *Smith*. On the other hand, Drs. Mohai and Breall's opinions would be given no weight because they are speculative or groundless. *Id*.

In short, Employee has work-related POTS because (1) Employer failed to rebut the raised presumption with substantial evidence; and (2) even if Drs. Mohai and Breall's opinions were substantial evidence adequate to rebut the presumption, Employee would prove the POTS compensability by a preponderance of evidence. *Huit*; *Rockney*; *Saxton*; *Steffey*.

***b) Employee's work-related POTS renders her permanently and totally disabled.***

The remaining question is whether Employee is temporarily or permanently precluded from performing full-time employment due to POTS. Without regard to credibility, Employee raised the presumption that work-related injuries render her permanently and totally disabled based on Dr. Lord's opinion that her work-related conditions prevent her from returning to full-time employment. *Cheeks*; *Resler*.

Without regard to credibility, Employer has to rebut the presumption with substantial evidence. *Huit*; *Resler*. Dr. Breall said with "exercise," he was "very positive" Employee would be able to return to work as a phlebotomist or obtain training for sedentary to light work, though he did not provide a specific date for either. Dr. Mohai said with "appropriate treatments," Employee could return to work as a receptionist and could participate in retraining for sedentary to light work. However, Drs. Breall and Mohai knew Employee easily gets exhausted – even doing the dishes would be her "one task for the whole day," and has an in-dwelling port to get intravenous fluids three times per week so she could do at least some daily activities. Drs. Breall and Mohai did not dispute Employee's disability or physical limitations, yet they gave optimistic prognoses, which do not "correspond to those limitations." Thus, Drs. Breall and Mohai's opinions do not "account for relevant factors defining disability" and cannot be considered substantial. *Mitchell*. To rebut the presumption, Employer should have produced substantial evidence, such as labor market surveys, showing work within Employee's abilities is regularly and continuously

available in Employee's area of residence, area of his last employment, and the State of Alaska. *Leigh*. It failed to do so. Therefore, Employee is entitled to PTD benefits. AS 23.30.010(a); AS 23.30.180.

Even if Employer had rebutted the presumption with substantial evidence, which it did not, Employee would prove her POTS renders her permanently and totally disabled by a preponderance of the evidence. *Saxton*; *Steffey*. Cortis reported, "An employer who would be willing to hire [Employee] for 3 hours per day and accommodate her physical capacities and infusion schedule along with allowing her to lay down during her work hours would be rare and would be considered odd lot." *Carlson*. Cortis' opinion would be given the greatest weight; Drs. Breall and Mohai's opinions will be given no weight based on the above analysis. AS 23.30.122; *Smith*.

In short, Employee is entitled to PTD benefits because Employer failed to rebut the raised presumption with substantial evidence. AS 23.30.010(a); AS 23.30.180; *Huit*. Had Employer rebutted the presumption, Employee would still be entitled to PTD benefits because she would prove her work-related POTS renders her permanently and totally disabled by a preponderance of the evidence from the date of the work injury and ongoing "during the continuance of the total disability." AS 23.30.180; *Saxton*; *Steffey*. This decision need not reach the TTD benefit issue because it has awarded Employee PTD benefits.

**2) Is Employee entitled to a compensation rate adjustment?**

Employee requested a PTD compensation rate adjustment. AS 23.30.220(a); *Gilmore*. It is undisputed Employee earned $19.51 per hour at the time of her April 27, 2018 work injury. However, Employee contends she was a skillful worker, and under the *Gilmore* rationale, the standard method for determining her spendable weekly wage under AS 23.30.220(a)(4) as an hourly worker is not an "accurate predictor of losses due to injury." *Thompson*.

A basic premise in Alaska workers' compensation law, and the "entire objective of wage calculation is to arrive at a fair approximation of claimant's probable future earning capacity." *Johnson*; *Gilmore*. The Alaska Supreme Court in *Gilmore* relied upon legislative intent, now

codified in the Act, "to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers." AS 23.30.001(1). But in amendments to §220(a) subsequent to *Gilmore* but before the current law, the legislature adopted the "model law," which provided alternative methods for calculating gross weekly earnings when the "standard" method used for hourly employees did not accurately reflect an injured worker's lost earnings during the disability period. Thus, for a time and for injuries arising under the amended "model" statute, the *Gilmore* test was no longer applicable. *Dougan*.

In 2005, the legislature amended §220 to its current form, which bears a striking resemblance to §220 as it existed when *Gilmore* was decided. Since the law reverted back to a similar statutory scheme in effect when *Gilmore* was decided, there is no reason to suppose *Gilmore* and its relevant progeny do not apply to Employee's claim. That may have been what the legislature intended when it adopted §220(a)(10) which states, "if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury." Thus, *Gilmore* will be applied but Employee bears the burden to show §220(a)(4) is not "an accurate predictor of losses due to injury." *Id*; *Wilson*; *Thompson*.

Because Employee reported she earned $13,166 in 2016 and $36,459 in 2017, if §220(a)(4) were strictly applied, her gross weekly earnings would be $729.18 ($36,459 / 50 = $729.18), and her weekly PTD rate $486.03. However, from January 1 through May 6, 2018, in 18 weeks, Employee earned $16,799; her weekly earnings were $933.28 ($16,799 / 18 weeks = $933.28 per week) at the time of her work injury. Using $933.28, as Employee's gross weekly earnings and applying this number to the division's "Benefit Calculator," Employee's spendable weekly wage would be $767.58 and her weekly PTD rate $614.06. AS 23.30.180(a); AS 23.30.220(a)(10).

Nevertheless, Cortis reported that "the median wage in Anchorage is $18.95 per hour and the upper 75% of Phlebotomists earn at least $22.75 per hour. . . . It is anticipated that [Employee's]

salary would increase as she gained additional experience." Further, Cortis testified that according to the Alaska Department of Labor, the 90th percentile of phlebotomists earn $27.82 per hour, and it would not be unreasonable for Employee to increase her salary through raises to this amount or more within seven years. Cortis' testimony is credible, and no evidence to the contrary was presented. AS 23.30.122; *Smith*. Employee said she enjoyed her work as a phlebotomist and had no plans to change her employment; her testimony is credible. *Id*. At $27.82 per hour, Employee's gross weekly wage would be $1,112.80. Applying this number to the division's "Benefit Calculator," Employee's spendable weekly wage would be $893.87 and her weekly PTD rate $715.10. AS 23.30.180(a); AS 23.30.220(a)(10).

Given the above analysis, the weekly compensation rate of $486.03 does not represent an "accurate predictor of losses due to injury." *Wilson*; *Thompson*. Therefore, Employee's weekly earnings based on her potential earnings will be used to calculate her PTD rate, and her PTD compensation rate will be adjusted. AS 23.30.220(a)(10); *Gilmore*. Her spendable weekly wage will be $893.87 and her weekly PTD benefit rate will be $715.10.

**3) Is Employee entitled to medical benefits and related transportation costs?**

This decision establishes Employee suffered a compensable injury; thus, under §095(a), Employer must provide medical care "which the nature of the injury or the process of recovery requires."

**4) Is Employee entitled to a late-payment penalty?**

Penalties are imposed when employers fail to pay compensation when due. AS 23.30.155(e); *Haile*. To avoid a penalty, a controversion must be filed in good faith. *Abood*; *Harp*. For a controversion to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the claimant would not be entitled to benefits. *Id*. "An insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence." *Vue*. Employer controverted Employee's claims based on Drs. Breall and Mohai's opinions that Employee's POTS was not caused by the

Hepatitis B vaccine. However, as analyzed above, those opinions are mere speculation and cannot be the foundation of a valid controversion. *Id*. Further Drs. Breall and Mohai's vocational opinions did not take into consideration Employee's specific limits known to Employer; thus, their opinions cannot account for relevant factors defining disability and cannot be considered substantial. *Mitchell*. In short, a panel considering only the medical opinions on which the controversion was based would not have found Employee was not entitled to benefits. Thus Employer's controversion was not issued in good faith, and Employee is entitled to a late-payment penalty. *Harp*.

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

Interest is mandatory. AS 23.30.155(p). Employee is entitled to accrued interest on unpaid benefits. *Id*. This decision finds Employee is entitled to PTD benefits. Employer will be directed to calculate and pay interest in accordance with the Act and regulations.

Employee requests attorney fees and costs. AS 23.30.145(a). Attorney fees should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay*. This is a complex case with voluminous medical records. *Rogers & Babler*. Employee prevailed on all her claims. Employer controverted Employee's claim, which allows for actual attorney fees under AS 23.30.145(a). Employee complied with 8 AAC 45.180(b), which requires an attorney requesting fees in excess of statutory fees to file an affidavit "itemizing the hours expended as well as the extent and character of the work performed." She submitted an itemized fee affidavit with $83,503.50 in attorney fees and $8,164.19 in costs, totaling $91,667.69. Further, since PTD benefits continue during the continuance of Employee's total disability, Porcello is also entitled to a statutory minimum attorney fee on ongoing PTD benefits because Employer controverted paying PTD compensation and Employee prevailed on her claim. AS 23.30.145(a); *Wozniak*. Lastly, Employer reviewed Porcello's fee affidavits seeking both actual and statutory fees and unopposed them.

Thus, Employer will pay Porcello $91,667.69 in actual attorney fees and costs and statutory minimum fees on ongoing PTD benefits, during the continuance of those benefits, beginning with the next bi-weekly payment following this decision and order.

## CONCLUSIONS OF LAW

1) Employee is entitled to PTD benefits.
2) Employee is entitled to a compensation rate adjustment.
3) Employee is entitled to medical benefits and related transportation costs.
4) Employee is entitled to a penalty.
5) Employee is entitled to interest and attorney fees and costs.

## ORDER

1) Employee's spendable weekly wage will be $893.87, and her weekly PTD benefit rate will be $715.10.
2) Employer shall pay Employee a weekly PTD benefits of $715.10 effective April 29, 2021, and during the continuance of her total disability, in accordance with the Act.
3) Employer shall pay interest on unpaid benefits in accordance with the Act and regulations.
4) Employer shall pay a late-payment penalty in accordance with the Act.
5) Employer shall pay Porcello $83,503.50 in attorney fees and $8,164.19 in costs, totaling $91,667.69.
6) Employer shall also pay Porcello statutory minimum fees on ongoing PTD benefits, during the continuance of those benefits, beginning with the next bi-weekly payment following this decision and order.

Dated in Anchorage, Alaska on January 13, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Jung Yeo, Designated Chair

/s/
Robert Weel, Member

/s/
Bronson Frye, Member

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

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

## APPEAL PROCEDURES

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

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

## RECONSIDERATION

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

## MODIFICATION

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

## CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Robin Hughes, employee / claimant v. Medical Park Family Care, employer; Republic Indemnity Co. of America, insurer / defendants; Case No. 201810200; dated and filed

in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on January 13, 2022.

/s/
Nenita Farmer, Office Assistant