# ALASKA WORKERS' COMPENSATION BOARD

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

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| JOSEPH P. BOL,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>TRIDENT SEAFOODS CORPORATION,<br><br>Employer,<br>and<br><br>AMERICAN ZURICH INSURANCE COMPANY,<br><br>Insurer,<br>Defendants. | ) | FINAL DECISION AND ORDER<br><br>AWCB Case No. 201907992<br><br>AWCB Decision No. 22-0017<br><br>Filed with AWCB Anchorage, Alaska on March 7, 2022 |

Joseph Bol's July 19, 2019 claim was heard in Anchorage, Alaska on February 2, 2022, a date selected on November 11, 2021. A March 24, 2020 hearing request gave rise to this hearing. Joseph Bol (Employee) appeared and represented himself. Attorney Jeffrey Holloway appeared and represented Trident Seafoods Corporation and its insurer (Employer). Witnesses included Employee, who testified on his own behalf, and Employer's claims manager, Cecilia Harvey, who testified on Employer's behalf. The record closed at the hearing's conclusion on February 2, 2022.

## ISSUES

Employer contends Employee did not report an injury as required by law, and since there is no applicable excuse for him to not have done so, his claim should be dismissed.

Employee acknowledges Employer provided him with a work injury report form before he left his work location and he never completed it; however, he contends he was in "bad shape" at the time and could not remember what he did with the form.

**1) Should Employee's claim be dismissed for failure to report an injury?**

Employee contends he was poisoned at work by homemade yellow pills given to him by Employer's medical provider. Employee contends he is entitled to medical costs, temporary total disability (TTD), temporary partial disability (TPD) and a compensation rate adjustment.

Employer contends there is no evidence Employee was injured at work and he has provided no evidence to support his claim. It contends his claim should be dismissed.

**2) Did an injury to Employee arise out of and in the course of his employment?**

FINDINGS OF FACT

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

1) On January 4, 2019, Employer hired Employee, who lives in Seattle, Washington, as a seasonal seafood processor. (Employer Report of Occupational Injury or Illness, undated).

2) On January 21, 2019, while Employee was working on Saint Paul Island, Alaska, Employer prepared an employee counselling form that documented the following events: On January 7, 2019, Employee became upset and argumentative when he was placed in "case-up." Employee was transferred to work in the freezer. On January 9, 2019, Employee was argumentative and left the freezer often because he was cold. Employee was transferred to the packing line. On January 20, 2019, Employee announced he was taking a half-hour break, left the line and refused to return to work. (Employee Counselling Form, January 21, 2019). Employee signed the counselling form on the same date it was prepared. (Observations). Employee agreed to accept direction from his "leads," was advised that argumentative and hostile behavior were unacceptable under company policy, and that a further refusal to work would result in his termination. (Employee Counselling Form, January 21, 2019).

3) On February 1, 2019, Employer prepared another employee counselling form for Employee that documented the following events: Employee left his position on the dock, spent one hour in

the bathroom and did not clock out. He then left the plant to go shower and did not clock out. Employee spent three and one-half hours off the line while he was on the clock. He also went to lunch, without permission, outside of his scheduled lunch break. (Employee Counselling Form, February 1, 2019). Employee signed, but did not date, the counselling form. (Observations). He agreed to not leave the line without permission and to limit unscheduled bathroom breaks to a reasonable time. (Employee Counselling Form, February 1, 2019). The document notes that this was Employee's second write-up for leaving the line. (*Id*).

4) February 3, 2019, Employee quit his job with Employer prior his contract's expiration. The last day he worked at Saint Paul Island was February 1, 2019. As a courtesy, Employer provided Employee with an airline ticket to his home in Seattle, Washington, instead of Anchorage, Alaska. (Separation Notice, February 3, 2019). Employee signed and dated his separation notice. (Observations).

5) Employee's signatures on the January 21, 2019 and February 1, 2019 counselling forms, as well the February 3, 2019 separation notice, are distinct and match the signature on his July 31, 2019 claim form. (Observations).

6) On February 4, 2019, Employee presented to the Providence Alaska Medical Center Emergency Department and reported he worked at Sand Point [sic], Alaska, and flew in that day because he feels sick. (Emergency Department Triage Notes, February 4, 2019). He was evaluated by Sean Meadows, M.D. Employee complained of diffuse abdominal pain that started one month previous, when he first arrived at Sand Point [sic] and began working as a seafood processor. He told Dr. Meadows about his conflicts with Christianity and Islam and Dr. Meadows redirected Employee to his chief complaint for presenting at the emergency department. Employee denied taking any medications as well as illicit drug use. He also told Dr. Meadows his supervisor at Sand Point [sic] smokes crack cocaine, which Employee believed was causing his abdominal pain. Employee reported working 16 hours per day, seven days per week. Employee also stated he wants to quit his job because he believed his co-workers had tuberculosis, although he denied ever having tuberculosis himself. At that time, Employee complained of chest pain, diffuse abdominal pain, nausea, and teeth itchiness. Employee reported recent weight loss, cough and black stools, as well as a burning sensation in his mouth when brushing his teeth. He admitted to using mouth wash often but denied drinking it. Employee also told Dr. Meadows he was handcuffed at the airport and brought to the emergency

department by police because he was "threatening people." According to triage personnel, Employee was not brought to the hospital by airport police in handcuffs. (Meadows chart notes, February 4, 2019).

7) Upon physical exam, Employee presented as an agitated male, who appeared not to be in acute distress. The surface of Employee's tongue was black, consistent with the overuse of mouthwash. Employee was alert and oriented but appeared to have psychosis and was agitated in mood and affect. He demonstrated flight of ideas. (*Id*.).

8) Employee's laboratory results were notable for slightly elevated ammonia, which Dr. Meadows did not think were clinically significant. Employee's drug screenings, including cocaine, amphetamine, cannabinoids, methadone, Methylenedioxymethamphetamine (MDMA), opiates, oxycodone, barbiturates and benzodiazepines, were all negative. Employee's chest x-rays were interpreted as normal. Employee's electrocardiogram (EKG) was notable for bradycardia with benign early repolarization (BER) consistent with Employee's body habitus. Dr. Meadows's final impression was "No diagnosis found." However, since Employee was showing signs of acute psychosis, Dr. Meadows ordered a mental health assessment. (*Id*.).

9) Employee was evaluated by mental health clinician Lisa Davis. His chief complaints were abdominal pain and bizarre speech. Employee told Ms. Davis he does not take medications. During Ms. Davis's assessment, Employee talked about speaking with God, seeing Jesus and having a special rapport with birds. Employee reported being handcuffed by police at the airport and brought to the hospital, but when Ms. Davis contacted the airport police, they had no record of any contact with Employee. Ms. Davis also contacted Employer's human resources person at Sand Point [sic], who did not have any record of Employee either. Ms. Davis then contacted Employee's sister, who had "more information." Ms. Davis, Employee and Employee's sister spoke by speakerphone. Employee and his sister primarily spoke in Arabic and, at times, their conversation became heated. At one point, Employee's sister said, in English, "Don't play games with the hospital people." Ms. Davis later spoke again with Employee's sister, who stated Employee did not have any history of psychosis or alcohol or drug use. Rather, Employee's sister thought Employee was acting bizarrely to get some gain from the hospital. She thought Employee should return to Seattle to be with family and start working there. Ms. Davis recorded Employee's thought content as showing "some hyperreligious and delusional thinking," but she did not think he required acute treatment or hospitalization. "Although [Employee] is making

some bizarre statements, it is unclear whether he is experiencing any psychosis," she wrote. Ms. Davis continued, "It is likely Employee had not been sleeping due to his job, which caused some of his symptoms, since he has no history of psychosis." She assessed, "Possible psychosis due to lack of sleep." Employee wished to go to the airport so he could return to Seattle and Ms. Davis did not think Employee met the criteria for involuntary hospitalization. Employee was discharged in stable condition to go to the airport by taxi. (Davis chart notes, February 4, 2019).

10) Employee's medical record from the emergency department also include numerous nursing notes. He told Jennifer Coffey, R.N., he was not taking any medication and stated, "Someone poisoned me." (Coffey chart notes, February 4, 2019). Nurse Coffey thought Employee's speech was "rambling and disorganized at times." Julie Lamay, R.N., noted Employee was cooperative but engaged in "nonsensical conversation." (Lamay chart notes, February 4, 2019). Tami Todd, R.N., observed Employee spitting into an emesis bag and he told her, "[T]his is how I know I was poisoned." (Todd chart notes, February 4, 2019).

11) Later that afternoon, Employee was brought back to the hospital in handcuffs by airport police because they did not think he was safe to fly. The police stated Employee had been rescheduled on a 7:00 a.m. flight the next day but Employee could not stay at the airport. (*Id*.).

12) Mental health clinician, Christina Keeler, called Alaska Airlines and confirmed Employee was booked on a 9:00 a.m. flight to Seattle the next day and Employee would need to be at the airport by 7:00 or 7:30 a.m. (Keeler chart notes, February 5, 2019).

13) Ms. Keeler consulted with Daniel Safranek, M.D., who decided to place Employee in psychiatric observation. Dr. Safranek also ordered Haldol and Ativan be administered to help Employee sleep. The plan was to reassess Employee the following day. If Employee was "clear" enough, he would go to the airport for his flight. (*Id*.; Safranek chart notes, February 4, 2019). Employee denied taking medications to Dr. Safranek, whose impression was "Psychosis, unspecified psychosis type." (Safranek chart notes, February 4, 2019).

14) On February 5, 2019, Employee had slept for 11 hours and was re-evaluated by Ms. Keeler, who thought Employee had improved and was ready for discharge. (Keeler chart notes, February 5, 2019). Employee was also evaluated by Nicholas Papacostas, M.D., who though Employee still exhibited "a little bit of bizarre thinking" upon Employee telling Dr. Papacostas about a ritual he periodically does to remove toxins from his body, which involved taking daily hour-long showers using shampoo to bathe. However, Dr. Papacostas did not think Employee

should be held because he was not a safety risk to himself or others and neither was he gravely disabled. Dr. Papacostas opined it was in Employee's best interest for him to make his flight and get back home, where his family and social support structure were, so he concurred Employee was stable for discharge. His final impression was "Psychosis, unspecified psychosis type. (Papacostas chart notes, February 5, 2019). Employee was provided a taxicab voucher and discharged to airport security. (Keeler chart notes, February 5, 2019).

15) On June 11, 2019, Employer received a letter from the emergency department physicians who treated Employee. They were seeking payment for their services. (Alaska Emergency Med Associates letter, undated).

16) On June 19, 2019, Employer reported Employee suffered an injury on February 3, 2019 that involved "abdominal pain and bizarre speech." (First Report of Occupational Injury (FROI), June 19, 2019).

17) On July 3, 2019, Employer controverted all benefits because Employee had never reported a work injury and because Employee's need for medical treatment was unrelated to a work injury. It explicitly contended, "All benefits are barred by AS 23.30.100." (Controversion Notice, July 3, 2019).

18) July 31, 2019, Employee filed an incomplete claim form, dated July 19, 2019. (Workers' Compensation Claim form, July 19, 2019).

19) On August 1, 2019, workers' compensation division staff member called Employee and assisted him to complete the claim form. (Incident Claims and Expense Reporting System (ICERS) event entry, August 1, 2019). Employee was seeking TTD, TPD, and medical benefits as well as a compensation rate adjustment. He described his injury as "Abdominal Pain and Bizarre Speech," and the reason he was filing his claim was because he "Got hurt on work site & ER sent me to Seattle & ended in hospital." (Workers' Compensation Claim, July 19, 2019).

20) On August 21, 2019, Employer answered Employee's July 19, 2019 claim and controverted all benefits because Employee failed to notify it of a work injury within 30 days, there was no evidence of a work injury, and Employee had failed to attach the compensability presumption since no medical provider had linked Employee's need for medical treatment to any work Employee performed for it. (Controversion Notice, August 21, 2019).

21) At a November 10, 2021 prehearing conference, the parties stipulated to a February 2, 2022 hearing on Employee's claim. TTD, TPD, medical costs and compensation rate adjustment were to be the hearing issues. (Prehearing Conference Summary, November 10, 2021).

22) On February 2, 2022, Employee testified he worked 16 to 18 hours per day for Employer. While working, he hit his head, hit his back and was bending all day. He couldn't sleep and would be up all night. Employee could not "go to the bathroom" and his stools were "all dark." He complained about other employees' drug use to Employer and Employer tried to "get rid of [him]" by giving him a drug test, but his test was "clear." Employee "got hurt" working inside a boat. He had a lot of pain from bending, lifting and the boat moving and went to Employer's medical clinic. Employee clarified, his workers' compensation claim was for abdominal pain and bizarre speech and no other injury. Employee alternatively testified he did not sign the January 21, 2019 counselling form, he signed the form, and he does not remember whether he signed the form. He does not remember if he signed the February 1, 2019 counselling form. Employee denied signing Employer's February 3, 2019 separation notice. Before he left Saint Paul Island, Employer provided him with a form to report a work injury, but he never completed it. Employee later testified he could not remember what he did with the work injury report form because he was in "bad shape." Employee clarified he is seeking benefits because Employer poisoned him by giving him homemade yellow pills. The "doctor" at Employer's medical clinic told him he had gone to pharmacy school and said the pills would make him "feel good." Employee told the emergency room nurse that he was taking medication that made him "crazy." Hospital personnel told him the pills made his tongue turn black. (Employee).

23) Employee's testimony was characterized by rapid speech, jumping from one topic to another, and an unorganized thought process. (Observations; record). His testimony was at odds with his medical and employment records, and he is not credible. (Experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn therefrom).

24) Cecilia Harvey is employed as Employer's claims manager. She oversees all of Employer's shoreside workers' compensation claims and acts as a liaison between Employer, its employees, its insurance carrier and medical providers. Ms. Harvey has worked in that capacity for 15 and one-half years. The "winter season" at Employer's Saint Paul plant runs from January through March. Ms. Harvey identified Employee's counseling forms and explained they are used to document verbal and written warnings. Employer's policy is for employees to sign these

forms. She identified Employee's separation form and stated employees are required to sign its separation forms. Employer has an on-site medical clinic at Saint Paul Island that is operated by a third-party contractor and staffed by a physician's assistant – certified (PA-C). A PA-C is a licensed medical provider and Ms. Harvey has never heard of a PA-C giving out homemade pills. She receives medical records involving workplace injuries but does not receive medical records for personal health conditions. From February 3, 2019 until June 11, 2019, Ms. Harvey had no record of Employee requiring medical attention. Then, on June 11, 2019, she received a letter from the emergency department physicians who treated Employee, which prompted Employer to file its June 19, 2019 injury report. (Harvey).

25) Ms. Harvey's presentation was sincere and forthright. She is credible. (Experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn therefrom).

26) Employee did not submit evidence of time loss or his earnings. (Observations).

## PRINCIPLES OF LAW

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

> **AS 23.30.010. Coverage**. Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an Employee if the disability . . . or the Employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the Employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

> **AS 23.30.100. Notice of injury or death.** (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.
> . . . .
>
> (d) Failure to give notice does not bar a claim under this chapter
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> (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
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> (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
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> (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

In *Tinker v. Veco, Inc.*, 913 P.2d 488, 492 (Alaska 1996), the Supreme Court held timely written notice of an injury is required because it lets the employer provide immediate medical diagnosis and treatment to minimize the seriousness of the injury and facilitates the earliest possible investigation of the facts surrounding the injury. A failure to provide timely notice that impedes either of these two objectives prejudices the employer. *Id.* However, where an employer has knowledge equivalent to a legally sufficient written notification, "it would require an exceptional set of circumstances for this difference in the form by which the information was conveyed to prejudice the employer." *Id.*

To determine whether failure to provide timely written notice should be excused under AS 23.30.100(d)(2), the Court has endorsed a "reasonableness" standard, under which the 30-day period begins to run when "by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained." *Alaska State Housing Authority v. Sullivan*, 518 P.2d 759, 761 (Alaska 1974) (quoting 3 A. Larson, Workmen's Compensation s 78.41, at 60 (1971)). However, the exact date when an employee could reasonably discover compensability is often difficult to determine, and missing the short 30-day limitation period bars a claim absolutely, so for clarity and fairness, the 30-day period can begin no earlier than when a compensable event first occurs. *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997). It is not necessary that a claimant fully diagnose his injury for the 30-day period to begin. *Id*.

> **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 . . . .
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> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.
> . . . .

For claims arising after November 7, 2005, employment must be the substantial cause of the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011). If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (*citing Miller v. ITT Services,* 577 P 2d. 1044, 1046). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact-finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **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 finding." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009). If the board is faced with two or more conflicting medical opinions, each of which constitutes substantial evidence, it may rely on one opinion and not the other. *DeRosario v. Chenega Lodging*, 297 P.3d 139, 147 (Alaska 2013). The board alone is charged with determining the weight it will give to medical reports. *Smith v. University of Alaska, Fairbanks*, 172 P.3d 782, 791 (Alaska 2007).

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

> conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .
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> **AS 23.30.155. Payment of compensation.**
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> (h) The board may upon its own initiative at any time in a case . . . cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.
> . . . .

ANALYSIS

**1) Should Employee's claim be dismissed for his failure to report an injury?**

For compensation to be payable, the law requires an employee to report a work injury within 30 days, AS 23.30.100(a), and the failure to do so "absolutely" bars a claim, *Cogger*. Here, it is undisputed that Employee did not report an injury until he completed his claim form on August 1, 2019, seven months after leaving his employment with Employer. However, the law also provides certain exceptions to claim preclusion when an injury is not timely reported. AS 23.30.100(d).

Under AS 23.30.100(d)(1), untimely injury reporting can be excused if the employer had "knowledge equivalent to a legally sufficient written notification." *Tinker*. No evidence suggests Employer did here. To the contrary, Employer's claims manager, Cecilia Harvey, credibly testified she was unaware of Employee's need for medical attention until June 11, 2019, when Employer received a letter from Employee's emergency department physicians, five months after Employee had left his employment with Employer. Additionally, even at this hearing, where Employee presented numerous complaints concerning his employment with Employer, the nature of the injury for which Employee sought compensation was initially unclear. Employee complained of long work hours, hitting his head, hitting his back, as well as bending, lifting and motion inside a boat. Only during the later portions of Employee's testimony was it learned that Employee was seeking benefits on account of his belief that Employer had poisoned him by giving him homemade yellow pills.

Timely written notice of an injury is required because it lets an employer provide immediate medical diagnosis and treatment to minimize the injury's seriousness and facilitates the earliest possible investigation of the facts surrounding the injury. *Tinker*. A failure to provide timely notice that impedes either of these two objectives prejudices the employer. *Id.* Since Employee sought medical treatment the day after he left Employer's employ, a timely injury report might not have facilitated more immediate medical diagnosis or treatment. However, since Ms. Harvey testified Employer's "winter season" runs from January through March, a timely injury report would have certainly facilitated an earlier investigation of circumstances surrounding Employee's alleged poisoning, since seasonal workers with relevant knowledge concerning Employee's claim could have been located and interviewed. By August 2019, when Employee completed his claim form, these same workers would have long since left Saint Paul Island, and locating them at that point would be extraordinarily difficult if not impossible. *Rogers & Babler*. Since Employer's ability to investigate Employee's claim was prejudiced, Employee's failure to timely report an injury will not be excused under AS 23.30.100(d)(1). *Tinker*.

An employee's failure to timely report an injury may also be excused under AS 23.30.100(d)(2) when, for "some satisfactory reason," a report could not be given. The Alaska Supreme Court has endorsed a "reasonableness" standard under this subsection where the 30-day period begins to run when "by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained." *Sullivan*. However, since the exact date when an employee could reasonably discover compensability is often difficult to determine, and missing the short 30-day limitation period bars a claim absolutely, for reasons of clarity and fairness, the 30-day period can begin no earlier than when a compensable event first occurs. *Cogger*. Employee's February 4, 2019 emergency department visit, for which he now seeks medical costs, is a potentially compensable event and his comments to Nurses Coffey and Todd on that date evidence Employee was already cognizant of the poisoning theory he now advances. Thus, since Employee did not report an injury within 30 days of his February 4, 2019 emergency department visit, his failure to report will not be excused under AS 23.30.00(d)(2) either. *Sullivan*.

Employer first objected to Employee's failure to report an injury in its July 3, 2019 controversion notice, and has consistently done so ever since, including at this, the first, hearing on Employee's

July 19, 2019 claim. Consequently, Employee's failure to report an injury will not be excused under AS 23.30.100(d)(3) for Employer's failure to object. Given that no statutory exceptions excuse Employee's failure to report an injury, his claim will be dismissed.

**2) Did an injury to Employee arise out of and in the course of his employment?**

Since Employee's failure to timely report an injury cannot be excused, and since his claim will be dismissed, he is not entitled to medical costs, TTD, TPD or a compensation rate adjustment. Nevertheless, even if Employee's failure to timely report an injury had been excused, he would not enjoy the statutory presumption his claim is compensable, but rather would be required to prove his claim by a preponderance of the evidence. AS 23.30.120(b); *Koons*. Employee's theory that Employer poisoned him by giving him homemade yellow pills is only supported by Employee's own testimony, and because of significant discrepancies between Employee's testimony and his medical and employment records, he is not credible. AS 23.30.122.

For examples, during his first visit to the emergency department, Employee told Dr. Meadows he was handcuffed at the airport and brought to the emergency department by police because he was "threatening people." According to triage personnel, Employee was not brought to the hospital by airport police in handcuffs. Ms. Davis also contacted airport police, who had no record of any contact with Employee. Additionally, Employee testified he told the emergency room nurse that he was taking medication that made him "crazy." However, the medical record shows Employee told numerous providers he was not taking any medication at the time of his emergency department visit. Furthermore, Employee testified that hospital personnel told him the pills he had been given turned his tongue black, but Dr. Meadows attributed Employee's black tongue to the overuse of mouthwash, not taking pills. Moreover, Employee testified he did not sign the January 21, 2019 counselling form or the February 3, 2019 separation notice, yet both documents bear his distinct signature, which also matches the signature on his claim form.

Other evidence, too, is inconsistent with Employee's theory he had been poisoned on Saint Paul Island. Employee told Dr. Meadows his abdominal pain started when he first arrived at Saint Paul Island, which is inconsistent with Employee's contentions that he was poisoned by the physician's assistant at Employer's medical clinic, or his abdominal pain was caused by his

supervisor smoking crack cocaine, since both these events would have occurred after he had reportedly developed abdominal pain. Moreover, Employee's laboratory results, chest x-ray and EKG were essentially normal and his drug screening tests were negative. In short, other than Employee's psychosis symptoms, Dr. Meadows was unable to find anything physically wrong with Employee and his final impression was "No diagnosis found." Finally, Employee's contention that Employer's contracted medical provider, a professionally licensed physician's assistant, who was practicing under the supervision of a professionally licensed physician, was distributing homemade pills, not only stretches, but exceeds, the limit of credulity. AS 23.30.122; *contra Saxton*. Therefore, even if Employee's failure to timely report an injury had been excused, he still would not have proven his claim by a preponderance of the evidence. *Saxton*.

Upon reviewing the medical record in this case, an ancillary issue presented itself, which will now be addressed. Employer not only contended Employee failed to report an injury, but it also vigorously contended there is no evidence of a work injury at all. The medical record does not support Employer's latter contention. Upon evaluating Employee, mental health clinician, Lisa Davis, wrote "It is likely Employee had not been sleeping due to his job, which caused some of his symptoms, since he has no history of psychosis." Although not a theory advanced by Employee, since Ms. Davis's remark relates Employee's need for treatment to his work for Employer, this evidence should be further evaluated to ascertain and protect the parties' rights. AS 23.30.135(a); AS 23.30.155(h).

When Ms. Davis's chart notes are evaluated in their entirety, some conclusions can be made. She wrote, "Although [Employee] is making some bizarre statements, it is *unclear* whether he is experiencing any psychosis." Ms. Davis continued, "It is likely Employee had not been sleeping due to his job, which caused some of his *symptoms*, since he has no history of psychosis." She assessed, "*Possible* psychosis due to lack of sleep." Thus, Ms. Davis was not certain whether Employee was even experiencing psychosis, and given her tentative diagnosis, her attribution of the cause of Employee's symptoms is not particularly persuasive either. *Smith*. Her opinion is accorded little weight. AS 23.30.122.

Further weakening Ms. Davis's theory explaining Employee's symptoms is Dr. Papacostas's observations the following day when, even after sleeping 11 hours, Employee continued to display bizarre thinking. Significantly, neither Dr. Meadows, nor Dr. Papacostas, attributed Employee's bizarre behavior to a work-related sleep deprivation, but rather assessed "Psychosis, unspecified psychosis type." Also significant is this panel's own experience listening to Employee's testimony. Different providers in the medical record described Employee's speech as "bizarre," "rambling and disorganized," "nonsensical" and demonstrating "flight of ideas." Three years later, these same descriptors could also be used to explain Employee's hearing testimony, which was characterized by rapid speech, during which he would jump from one topic to another, and an unorganized thought process. From a lay perspective, Employee's presentation at hearing strongly suggested a continuing mental health condition which, at this point, would be unrelated to a lack of sleep while working for Employer three years previously. *Rogers & Babler*.

Employee's interaction with his sister on the telephone during his emergency department visit is also illustrative. At one point, Employee's sister chastised him, "Don't play games with the hospital people." Her admonishment suggests Employee's presentation may have been intentional, which would also be consistent with her belief Employee was seeking some unspecified gain from the hospital. *Rogers & Babler*. Because of his sister's familiarity with Employee, her opinion is afforded significant weight. AS 23.30.122.

Thus, in evaluating the potential causes for Employee seeking treatment, including psychosis due to a work-related lack of sleep, a continuing mental health condition unrelated to Employee's work for Employer, and a desire to obtain some gain from the hospital, the first potential cause is the least persuasive of the three. *Contra Saxton*. Accordingly, Employee still would not have prevailed on his claim even if he had advanced the theory that his need for treatment and time loss benefits were due to a work-related lack of sleep. AS 23.30.110(a).

## CONCLUSIONS OF LAW

1) Employee's claim should be dismissed.
2) An injury to Employee did not arise out of or in the course of his employment.

## ORDERS

1) Employee's July 19, 2019 claim is dismissed.
2) Employee is not entitled to medical costs, TTD, TPD or a compensation rate adjustment.

Dated in Anchorage, Alaska on March 7, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

unavailable for signature
Pamela Cline, Member

/s/
Sarah Faulkner, Member

## 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 JOSEPH P. BOL, employee / claimant v. TRIDENT SEAFOODS CORPORATION, employer; AMERICAN ZURICH INSURANCE COMPANY, insurer / defendants; Case No. 201907992; 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 March 7, 2022.

/s/
Ronald C. Heselton, Office Assistant II