ALASKA WORKERS' COMPENSATION BOARD

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

ALLISON LEIGH, Employee, Claimant, v. ALASKA CHILDREN'S SERVICES, Employer, and REPUBLIC INDEMNITY CO. OF AMERICA, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201503591 AWCB Decision No. 22-0025 Filed with AWCB Anchorage, Alaska on April 21, 2022

Employee Allison Leigh's January 11, 2017 workers' compensation claim as amended was heard on March 22, 2022, in Anchorage, Alaska, a date selected on December 7, 2021; a December 7, 2021 request gave rise to this hearing. Southeast panel members participated in all hearings held in Anchorage this date by the Commissioner's transfer under AS 23.30.005(e). Employee was sent a Zoom link but did not participate. Attorney Colby Smith appeared and represented Alaska Children's Services and its insurer (Employer). Employer contended the hearing should proceed without Employee. After considering the Division's hearing notice to Employee, and March 22, 2022 emails among Employee, Employer and the Division before the hearing, the panel proceeded with the hearing in her absence. Josetta Cranston and Susan Daniels testified for Employer. The record closed after the hearing's conclusion when Employer filed Cranston's written report, on

March 22, 2022. This decision examines the oral order to proceed without Employee and addresses the other issues set for hearing.

ISSUES

Though in email contact with the Division on the hearing date, Employee did not explain why she could not appear by Zoom but stated she did not want a hearing continuance. She requested Americans with Disabilities Act (ADA) accommodations and said the hearing officer could email her with any questions for the hearing.

Employer contended the hearing should go forth as Employee had notice of it and gave no reason for her inability to attend by Zoom. It further contended it had witnesses waiting to provide testimony. An oral order directed the hearing to go forward without Employee.

1) **Was the oral order to proceed with the hearing without Employee, correct?**

Stating "discovery is liberal in workers' compensation," Employee at the December 7, 2021 prehearing conference requested Employer hand over "all discovery" in its possession including Electronic Data Interchange (EDI) "report calculations." She contended the "fraud exception" applied to attorney-client privilege and therefore all discovery must be produced un-redacted. When the designee pressed her to identify what she was seeking, Employee responded, "All."

Employer at the December 7, 2021 prehearing conference contended all requested discovery had been produced. The designee denied Employee's request for "all discovery" as "ambiguous and overbroad," and denied her request for "EDI report calculations" as ambiguous and because Employer had already produced relevant information regarding benefits it had paid. The designee set the discovery matter on for hearing anticipating Employee would appeal it.

2) **Did the designee abuse his discretion in denying Employee's discovery request?**

Employee contends attorney fees for her former attorneys Eric Croft and Patricia Huna were improperly approved before she had received any benefits. It is unclear what relief she seeks.

Employer contends it stipulated with Croft and Huna to resolve their attorney fees for services rendered to Employee, and their stipulation was approved. It contends the stipulation did not affect Employee's right to benefits. Employer contends Employee sought review from the Alaska Workers' Compensation Appeals Commission (AWCAC), which extended her time to file a petition for review, but she never did. It contends the AWCAC found the attorney fee issue was "moot" because the fees had already been paid and denied Employee's motion for stay of payment. Employer contends Employee took the issue to the Alaska Supreme Court, which closed its case because she failed to file petitions as ordered. Therefore, Employer contends *res judicata* also bars Employee from relitigating the attorney fee issue.

3) Is Employee entitled to relief regarding attorney fees Employer paid Croft and Huna?

Employee contends Huna will not return her file and owes her money for "transportation" and "mediation costs." She implicitly seeks an order requiring Huna to return her file and pay her.

Employer provided no position on this contention.

4) Can this decision order Huna to return Employee's file and pay her transportation and mediation costs?

Employee contends she is entitled to unspecified temporary total disability (TTD) benefits.

Employer contends Employee is not entitled to TTD benefits after April 10, 2019.

5) Is Employee entitled to additional TTD benefits?

Employee contends she is entitled to unspecified temporary partial disability (TPD) benefits.

Employer contends Employee is not entitled to TPD benefits.

6) Is Employee entitled to additional TPD benefits?

Employee contends she is entitled to unspecified permanent partial impairment (PPI) benefits.

Employer contends Employee is not entitled to additional PPI benefits because it already paid the only PPI rating it had and Employee has provided no higher rating.

7) Is Employee entitled to additional PPI benefits?

Employee contends the Rehabilitation Benefits Administrator's designee's (RBA-designee) finding that she was not eligible for vocational reemployment benefits should be "re-visited."

Employer contends the RBA-designee correctly found Employee was not entitled to vocational reemployment benefits based on several physicians' opinions. It further contends Employee did not timely appeal the ineligibility determination.

8) Did Employee timely appeal the RBA-designee's finding that she was not eligible for vocational reemployment benefits?

Employee contends she is entitled to permanent total disability (PTD) benefits.

Employer contends Employee is not entitled to PTD benefits based on Cranston's hearing testimony and medical opinions from several physicians.

9) Is Employee entitled to PTD benefits?

Employee contends she is entitled to an unspecified compensation rate adjustment.

Employer did not address this contention but is presumed in opposition to it.

10) Is Employee entitled to a compensation rate adjustment?

Employee contends she is entitled to past and ongoing medical benefits for her work-related orthopedic injuries, including treatment at the Hospital for Special Services (HSS) and a home in Anchorage with a swimming pool.

Employer contends it paid all reasonable and necessary past, work-related medical benefits for which it was provided appropriate documentation. It contends it pre-authorized prescribed medical

care at HSS for Employee's injury, which Employer contends she has not obtained. Employer contends there is no medical prescription for Employee to have a house with a pool. It contends it paid all transportation expenses for medical care that have been properly presented.

11) Is Employee entitled to any past or future medical care and related transportation costs for her work-related orthopedic injuries?

Employee contends Employer frivolously or unfairly controverted benefits due and she seeks an associated finding.

Employer contends it did not frivolously or unfairly controvert any benefits due.

12) Did Employer frivolously or unfairly controvert benefits due?

Employee contends she is entitled to an unspecified penalty.

Employer contends it already paid Employee a penalty and she is not entitled to an additional, unspecified penalty.

13) Is Employee entitled to a penalty?

Employee seeks an order asking the Workers' Compensation Division director to refer this case to the Division of Insurance because Employer frivolously or unfairly controverted benefits due.

Employer did not specifically address this contention but is presumed in opposition to it.

14) Should this decision ask the Workers' Compensation Division Director to refer Employer to the Division of Insurance?

Employee contends she is entitled to interest.

Employer contends Employee is not entitled to additional interest.

15) Is Employee entitled to interest?

Employee contends she is entitled to reimbursement for deposition costs.

Employer did not address this contention but is presumed opposed.

16) Is Employee entitled to litigation costs?

FINDINGS OF FACT

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

1) On November 13, 2013, Employer hired Employee as a Psychiatric Treatment Counselor (PTC). (Employment Notice, November 13, 2013).

2) On February 20, 2015, Employee went to the emergency room with "an obvious right ankle deformity" after she slipped and fell on the ice at work for Employer just prior to her arrival. She denied any other acute pain or injury. The attending physician diagnosed a displaced trimalleolar fracture, reduced the ankle, placed it in a splint and referred her to an orthopedic surgeon. (Emergency Room reports, February 20, 2015).

3) On February 20, 2015, John Duddy, M.D., performed surgery with hardware. (Operative Report, February 20, 2015).

4) On February 22, 2015, Employee reported to the emergency room with increased ankle pain. (Emergency Room report, February 22, 2015).

5) On February 23, 2015, Dr. Duddy said Employee canceled her appointment for that day. Employee had called "late Friday night/Saturday morning" complaining about drainage. She called the following day at 8:00 PM and said she had been bleeding all day. Dr. Duddy asked why she did not call earlier and charted, "She did not answer me." He told Employee to meet him at the emergency room the next morning at 9:00 AM. He received a call at 2:00 AM the next morning from the emergency room stating Employee was there with pain and drainage; a physician had changed her dressing and gave her "hydromorphone in addition to the 120 Hydrocodone that [Dr. Duddy] had just given her." Dr. Duddy asked Employee to come to his office for evaluation and to bring all her narcotics "to assess what she has either taken or disposed of otherwise." Employee made an appointment initially for 2:30 PM but canceled stating she did not have transportation. (Duddy report, February 23, 2015).

6) On February 24, 2015, Employee visited Nella Davis, ANP, who had last seen her on February 17, 2015. Her chief complaint was, "I'm pretty upset about" her slip and fall at work four days prior. ANP Davis recorded Employee was "angry." Employee described her mood as "pissed." ANP Davis assessed her situation as "mood angry after recent ankle fracture at work." (ANP Davis report, February 24, 2015).

7) On February 25, 2015, Dr. Duddy saw Employee who explained, "I was walking on an unmaintained parking lot headed for company vehicle, slipped and fell." (Duddy New Patient Intake Form, February 25, 2015).

8) On March 2, 2015, the adjuster's representative contacted Dr. Duddy's office stating she needed a work status for Employee faxed to the adjuster. Dr. Duddy said, "No work until F/U." He later said Employee was unable to work from February 20, 2015 to March 9, 2015, her next follow-up visit. (Duddy response; report, March 2, 2015).

9) On March 9, 2015, Employee requested a special pillow, "one big pillow," to elevate her foot; Dr. Duddy told her it was not necessary. He noted she also had a personal care attendant (PSA) that he said should be available for two or three weeks maximum. Dr. Duddy said, "Most people do not have personal care attendants for ankle fractures." He anticipated releasing Employee to light duty work in three weeks. Employee was restricted from any work through March 30, 2015. (Duddy report; Work Status Request, March 9, 2015).

10) On April 4, 2015, Richard Navitsky, M.D., saw Employee with right ankle pain on an emergent basis. Employee stated, "it feels like the screws are coming out of my skin." She reported since her ankle surgery, her pain had progressively been improving. But recently, after she stopped taking narcotics her pain progressively increased a few days prior and she had to start taking narcotics again. Employee reported having fallen in the shower one week prior and landed on her right shoulder but did not hit her foot or twist her ankle. An x-ray showed surgical hardware in proper position. Dr. Navitsky diagnosed post-surgical pain and referred Employee to Dr. Duddy. (Navitsky report, April 4, 2015).

11) On April 6, 2015, Dr. Duddy x-rayed Employee's ankle and found post-surgical changes and a healing fracture. He had expected to start her on partial weight-bearing and a walking boot. However, since she weaned herself from all narcotics and then "suddenly" on Saturday, without trauma, had pain, he decided to wait two weeks. At that point, she could begin weight-bearing with a walking boot. As an "addendum" to his report, Dr. Duddy stated, "As the patient was

checking out I noticed that she was weight-bearing on her foot. When she noticed me, she subsequently placed her knee on the scooter." Employee asked for another PCA; Dr. Duddy advised she did not need one for an ankle fracture and noted PCAs are "reserved for debilitated people." He released Employee to sedentary work effective April 7, 2015, through May 4, 2015, with anticipation of light duty in the next two to four weeks. (Duddy report, April 6, 2015).

12) On May 4, 2015, Employee said since weight-bearing she had pain and occasional swelling in her right knee. She had surgery on it eight years earlier for a meniscal tear but said, "She has not had pain or symptoms in the knee for years, however." Dr. Duddy recommended a right-knee MRI, and continued her sedentary work restrictions from May 4, 2015, until May 18, 2015. If the knee MRI was negative, he was going to proceed with physical therapy (PT). She was unable to drive due to her walking boot. (Duddy report, May 4, 2015).

13) On May 12, 2015, a radiologist reviewed Employee's right-knee MRI and found a probable nondisplaced horizontal cleavage tear in the medial meniscus. (MRI report, May 12, 2015).

14) On May 12, 2015, Employee's supervisors Rob Morris and Jeannie Fanning signed a disciplinary notice stating Employee had been instructed in a May 6, 2015 letter that Employee received on May 7, 2015, to report to work for Employer on May 11, 2015, at 10:00 AM. The disciplinary notice said Employee did not return to work on May 11, 2015 and did not tell Morris she would not be able to report to work. The disciplinary notice gave her a "Written Warning" that "failure to improve performance or correct behavior" could result in disciplinary action including termination. Employee refused to sign this form to acknowledge receipt. (Disciplinary Notice, May 12, 2015).

15) On May 12, 2015, Employee, Morris and Fanning signed a light-duty return to work agreement. Effective May 11, 2015, at 10:00 AM, Employee would return to work for Employer with sedentary work duties pursuant to Dr. Duddy's May 4, 2015 work release. Employer accommodated this work by creating a temporary office on the ground floor close to the reception area, restrooms and beverage facilities. The agreement included six expectations concerning Employee's safety, work and communication with supervisors, and was subject to review after her next medical exam. (Light Duty Return to Work form, May 12, 2015).

16) On May 13, 2015, Dr. Duddy reviewed the knee MRI with Employee who was "very teary-eyed today," because her grandfather had recently died, and she was coping with this "poorly." He released her to full weight-bearing on her ankle with a walking boot. But for the knee injury,

he would progressively have her remove the walking boot; but given the meniscal injury, he was going to perform surgery at her request as soon as possible. Dr. Duddy restricted Employee from work from May 15, 2015, to May 27, 2015. (Duddy reports, May 13, 2015).

17) On May 14, 2015, Northern Adjusters gave authority to proceed with the knee surgery. (Surgery Orders, May 14, 2015).

18) On May 15, 2015, Dr. Duddy performed a right medial meniscus repair on Employee. He noted her fall at work and fractured ankle after which she began to have knee pain as her ankle pain subsided. Dr. Duddy found a small under-surface tear on the medial meniscus. (Operative Report, May 15, 2015).

19) By May 27, 2015, Employee's knee was doing well, and she was weight-bearing while using two crutches and a walking boot. Dr. Duddy prescribed PT primarily for her ankle for eight weeks and took her off work from May 27, 2015, to June 10, 2015. (Duddy report, May 27, 2015).

20) On June 1, 2015, Employee reported her ankle began to hurt once she removed the walking boot and it continued to awaken her at night. She had difficulty walking up four stairs at home and said she could not go back to work until she had full, functional ankle motion because she could not do "mandatory holds if necessary." Employee stated she currently worked two jobs. She was injured while working for Employer, but she was also "an accountant" and performed "computer-based activities," which she did from home. (PT report, June 1, 2015).

21) On June 10, 2015, Employee reported she had attended four PT sessions, but Dr. Duddy noted, "Interestingly she is still using crutches. Additionally, she stated that her right shoulder is hurting. This is the first time that I have heard of this. She did not mention it to the physical therapist on her initial evaluation as of June 1, 2015." Ankle x-rays showed a healed ankle fracture. Dr. Duddy recommended aggressive PT for strengthening. (Duddy report, June 10, 2015).

22) On June 10, 2015, Employee told PT she was able to walk without crutches for a wedding over the weekend but only for a short time. (PT report, June 10, 2015).

23) On June 11, 2015, Dr. Duddy recommended PT evaluate and treat Employee's right shoulder at the same frequency they were treating her ankle and knee. (Duddy report, June 11, 2015).

24) On June 18, 2015, Dr. Duddy restricted Employee from work from June 10, 2015, to June 24, 2015. (Duddy Work Status report, June 18, 2015).

25) By June 23, 2015, Employee reported her foot, ankle and right knee were feeling "pretty good" and all had "greatly improved." (PT report, June 23, 2015).

26) On June 24, 2015, Dr. Duddy stated, "At this point I feel that she is ready to be released to full duty." He noted PT records showed she had made substantial gains over the past week. Employee expressed concern about working with children and her ability to run. Dr. Duddy said he would restrict her to "no running." He recommended a final check in six weeks. Dr. Duddy made an addendum to his report:

> The patient came back to the office after checking out. She had an issue with her work release. She became essentially threatening. She stated that she would be "very mad if she got hurt again at work."
>
> Clinically, I feel that she is capable of returning to full duty, but given her state of mind, she can work all the details out with her work comp adjuster. They may want to consider a functional capacity evaluation. If they would recommend that, I will certainly write an order for it. Once again, she has a healed fibular fracture, resolved pain from a knee arthroscopy and resolved pain probably just from crutches in her shoulder. (Duddy report, June 24, 2015).

Dr. Duddy completed a return-to-work release form for Employee to return to work with no restrictions on June 25, 2015, except for "NO RUNNING!!" There is a similar form stating Employee "is unable to work" from "June 24, 2015, to August 15, 2015." The reevaluation date on this latter form has been whited out and the date "8/5/15" written over the original date. (Duddy work release forms, June 24, 2015).

27) On June 25, 2015, Dr. Duddy responded to a nurse case manager's letter about Employee's right shoulder. He stated Employee's work injury was the substantial cause for her right shoulder treatment, secondary to crutch use. Dr. Duddy reiterated Employee was "released to full duty with <u>no</u> running," effective June 24, 2015. He opined her right shoulder symptoms were "<u>resolved</u>" (emphasis in original). Employee's referral for counseling was not related to her February 20, 2015 work injury. (Duddy response, June 25, 2015).

28) On June 29, 2015, Dr. Duddy ordered a Functional Capacity Evaluation (FCE). (Duddy order, June 29, 2015).

29) On June 29, 2015, Employer controverted "All Benefits Related to mental health counseling," and relied upon Dr. Duddy's opinion that mental health counseling was not related to Employee's work injury. (Controversion Notice, June 26, 2015).

30) On June 30, 2015, Employee told PT her ankle was "really hurting" after PT the day prior and stair training irritated it. She stated her knee also buckled on stairs. (PT report, June 30, 2015).

31) On June 30, 2015, Employee was reevaluated by PT after 17 visits. She was currently not working but had "been released to full duty per Dr. Duddy." She was feeling about 40 percent better than when she began PT. Her therapist reported "significant improvements" in both ankle and knee motion as well as improved strength and balance. The therapist recommended additional PT three times a week for four weeks. (PT report, June 30, 2015).

32) On July 1, 2015, Dr. Duddy charted Employee's shoulder pain complaints began March 9, 2015, because she was not using her crutches correctly. On April 4, 2015, she reported falling one week prior and landing on her right shoulder. Employee complained about ankle and shoulder pain at the emergency room on April 4, 2015; she complained of shoulder pain at PT on June 1, 2015, and again on June 24, 2015, in Dr. Duddy's office. He decided to see Employee and evaluate her right shoulder. (Duddy report, July 1, 2015).

33) On July 1, 2015, Employee saw her family practitioner Kathryn Sexson, ANP. Employee's arms and legs had normal motion and strength measured at "5/5" except her right shoulder, which had limited motion in several planes, and her ankle, which had limited motion, pain and a slight limp when she walked. (Sexson report, July 1, 2015).

34) On July 5, 2015, Dr. Duddy responded to a June 24, 2015 letter from reemployment specialist Josetta Cranston, as part of a vocational reemployment eligibility evaluation. He predicted Employee would have a PPI rating greater than zero from her work injury. Dr. Duddy opined she would have a "possible medium work restrictions" going forward. He reviewed "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" (SCODRDOT) job descriptions for Employee's 10-year work history and predicted she would have permanent physical capacities to perform physical demands of Psychiatric Technician, Accountant and Controller. (Duddy responses, July 5, 2015).

35) On July 6, 2015, Jon DeCarlo, OT, performed an FCE on Employee. She presented with a moderate pain profile; symptom exaggeration was not present, and she had a 100 percent validity score. The FCE showed Employee could work in the "light" physical demand classification. Her non-material handling limits included: constant sitting; occasional standing and walking; frequent bending; occasional right and frequent left reaching; nonfunctional squatting; never kneeling; occasional stairclimbing but never ladders; crawling was not tested secondary to difficulty with kneeling and squatting. OT DeCarlo did not have a detailed job description for her work but Employee reported there were many activities that involved outings for hikes, movies, and games

and she would need to climb in and out of a van and walk as necessary to keep up with teenagers. She may also need to restrain teenagers who acted out. This could involve grappling with individuals while trying to restrain them and taking them down to the ground. Employee said she may have to pivot or move quickly if someone attacked her. Her second job as an accountant was part-time and she worked 10 to 20 hours per week for Midnight Sun Court Reporting. Her psychiatric counseling job with Employer was four 10-hour shifts. OT DeCarlo opined Employee was "fully capable of returning to work in her job as an accountant." Assuming Employee's description of her job was accurate, OT DeCarlo would recommend deferring release to full duty at her counseling job because she had difficulty kneeling and rising and struggled with squatting. She did not demonstrate high-speed agility, which could affect her safety. Employee had difficulty ascending and descending stairs and ladders and this could pose difficulty in community outings. Her walking pace was slow, and she probably could not keep pace with teenagers. OT DeCarlo recommended continued PT and, if she plateaued without achieving her goals, a six-week work-hardening program to return to work as a psychiatric counselor. All these recommendations were pending Dr. Duddy's approval. (DeCarlo FCE, July 9, 2015).

36) On July 8, 2015, Dr. Duddy approved PT's June 30, 2015 PT recommendations. (Duddy response, July 8, 2015).

37) On July 8, 2015, Employee had ankle x-rays compared with her April 4, 2015 x-rays. The new x-rays showed healing fractures, anatomic alignment and no hardware complications. There was no new or acute abnormality. (X-ray report, July 8, 2015).

38) On July 8, 2015, Employee sought a protective order against Employer obtaining her mental health records. To support her request, Employee stated:

> While holding my position at AK Child and Family I witnessed bad business practices as well as neglect within the company. I brought the issues to the attention of my employer and have since experienced retaliation and harassment. The information that can be obtained from my records has the potential to lead to further retaliation, of not only myself but current employees as well. I wish to protect and ensure the names and privacy of current and past employees. (Petition, July 8, 2015).

39) On July 11, 2015, orthopedic surgeon Scot Youngblood, M.D., performed an employer's medical evaluation (EME) on Employee. She reported a history of anxiety, depression and attention deficit disorder (ADD). She was currently not working for Employer but worked as an

accountant from her home for Midnight Sun Court Reporters. She stated Dr. Duddy had not released her back to work as a Psychiatric Treatment Counselor. Dr. Youngblood diagnosed a right ankle fracture substantially caused by the work injury, which was medically stable; a right knee meniscus tear, substantially caused by the work injury, which was medically stable; subjective right shoulder pain, not substantially caused by the work injury, which was medically stable; obesity, not substantially caused by the work injury but contributing to any lower extremity condition; chronic tobacco abuse not related to the work injury but contributing to lower extremity conditions; and "disability conviction, with issues of noncompliance noted in the medical record." He opined no additional formal treatment was indicated, recommended, reasonable or necessary for the work injury. Dr. Youngblood opined the right ankle and knee conditions were medically stable effective June 24, 2015, when Dr. Duddy returned Employee to regular work without restriction. He provided a two percent PPI rating for the ankle; a one percent rating for the knee; which combined for a three percent whole-person PPI rating substantially caused by the work injury. Dr. Youngblood restricted Employee to no lifting or carrying greater than 50 pounds for the next six months after which that restriction would expire. He reviewed a job description for Psychiatric Treatment Counselor and opined Employee could perform that position effective immediately; he noted she had already returned to work as an accountant and released her to return to work as an accountant and controller after reviewing job descriptions for those positions. (Youngblood report, July 11, 2015).

40) On July 15, 2015, Employee told PT she was "feeling good." (PT report, July 13, 2015).

41) On July 16, 2015, Employee said her knee and ankle were feeling "pretty good" and she felt "pretty good" after yesterday's therapy. (PT report, July 16, 2015).

42) On July 20, 2015, Employee's right shoulder MRI was normal. (MRI, July 20, 2020).

43) On July 20, 2015, Dr. Duddy evaluated Employee for a "new problem, her right shoulder." He had initially attributed her shoulder pain to her crutches, but despite being off crutches her pain continued. Employee had deep pain in her Achilles tendon and some bruising there. She had been doing heel lifts without difficulty but now was having difficulty and did not recall a specific event or exercise that triggered this. (Duddy report, July 20, 2015).

44) On July 22, 2015, Dr. Duddy discussed Employee's normal shoulder MRI, diagnosed a probable muscle contusion, and recommended physical therapy and a "TENS" unit. He referred her to right shoulder PT for six weeks once or twice a day. (Duddy reports, July 22, 2015).

45) On July 23, 2015, Dr. Duddy applied the TENS unit to Employee's right shoulder. (Duddy report, July 23, 2015).

46) On July 27, 2015, Dr. Youngblood predicted Employee would have permanent physical capacities to meet Psychiatric Technician, Accountant and Controller physical demands. (Youngblood reports, July 27, 2015).

47) On July 29, 2015, Dr. Duddy reviewed Dr. Youngblood's July 11, 2015 EME report and said, "I concur with the findings." But Employee was adamant "something is wrong, very wrong" with her ankle. Dr. Duddy ordered an ankle MRI. (Duddy report, July 29, 2015).

48) On July 30, 2015, Employee told PT her right knee had been feeling good and was no longer painful. (PT report, July 30, 2015).

49) On July 30, 2015, Employee's right ankle MRI revealed osteoarthritis, synovitis and probable bodies in the joint; chronically torn ligaments; a healed ankle fracture; a small bone infarct; and a normal Achilles tendon. (MRI report, July 30, 2015).

50) On July 30, 2015, Employee appeared for a PT re-evaluation. She was currently not working for Employer but was a part-time accountant "for which she can do work at home on a computer." Employee's right knee felt relatively well, and she was not having "much pain or difficulty there." Her right ankle still caused difficulties with stairs and Employee reported an MRI earlier that day to assess cause for "this new onset of pain." Nonetheless, her lower extremity functional scale score went from "8/80" to "44/80," which PT said demonstrated perceived improvement with physical activity performance with continued deficits. PT recommended continued therapy for four weeks. (PT report, July 30, 2015).

51) On July 31, 2015, the adjuster asked Dr. Duddy if he agreed with Dr. Youngblood's EME report. On August 3, 2015, Dr. Duddy stated:

> I agree with all of Dr. Youngblood's IME with one exception. After the IME was performed, an MRI of the ankle demonstrated internal articular loose bodies in the ankle joint. . . . This may require surgical intervention. (Duddy response, August 3, 2015).

52) On July 31, 2015, Employee began right shoulder PT. She had with a backpack over both shoulders, which she was able to remove without irritation. (PT report, July 31, 2015).

53) On August 3, 2015, Dr. Duddy approved the recommendation for continued PT for Employee's knee and ankle. (Duddy response, August 3, 2015).

54) On August 5, 2015, Dr. Duddy reviewed Employee's July 30, 2015 ankle MRI, which showed loose bodies in her joint, osteochondral defects and chronic ligament tears. Dr. Duddy opined the loose bodies would account for her pain and her various inabilities to move her ankle. PT was appropriate treatment for the ligaments, and he recommended arthroscopic surgery to remove the loose bodies. (Duddy report, August 5, 2015).

55) On August 5, 2015, Dr. Duddy responded to the adjuster's inquiry and stated Employee needed surgery on August 7, 2015, was not medically stable and not released to any work. (Duddy responses, August 5, 2015).

56) On August 7, 2015, Dr. Duddy did a second arthroscopic surgery on Employee's right ankle. He removed loose bodies and did other repairs. Dr. Duddy recommended Employee be non-weightbearing for two weeks until her next visit. (Operative Report, August 7, 2015).

57) On August 13, 2015, the RBA-designee notified Employee she was "not eligible" for reemployment benefits based on Cranston's eligibility evaluation report, which said Dr. Duddy predicted Employee would have permanent physical capacities to perform physical demands for her job at time of injury, Psychiatric Technician, and other jobs she held in the 10-year period before her work injury, Accountant and Controller. The RBA-designee advised her she had 10 days to appeal. (Letter, August 13, 2015).

58) On August 19, 2015, Dr. Duddy reviewed Employee's ankle post-surgery. She was walking without crutches and "her ankle [felt] good." Employee still had stiffness and pain while attempting to perform a single leg stand and had not returned to PT. Dr. Duddy prescribed PT for six more weeks. (Duddy report, August 19, 2015).

59) On August 20, 2015, Employee reported her right shoulder was irritated again because she was using crutches following her recent right ankle surgery. (PT report, August 20, 2015).

60) On August 28, 2015, her Achilles "really hurt the most." (PT report, August 28, 2015).

61) On September 3, 2015, Employee told ANP Sexson her "ankle [was] still not right." When climbing stairs, her ankle locked up. Numbness interfered with walking because she did not know where her foot was landing. Employee wanted a second opinion and ANP Sexson referred her to Dr. Mason. (Sexson report, September 3, 2015).

62) On September 10, 2015, Bret Mason, D.O., saw Employee for her right ankle. Employee "[worked] as an accountant." Dr. Mason diagnosed a healed ankle fracture; posterior pain secondary to that; chronic ligament instability; and posttraumatic osteoarthritis all in the right

ankle. He gave a right ankle injection to see if it would provide relief, and recommended a rocker-bottom shoe, orthotics and a follow-up visit. (Mason report, September 10, 2015).

63) On September 15, 2015, Employee told PT her ankle was "kind of hurting more and more." (PT report, September 15, 2015).

64) On September 17, 2015, Employee said Dr. Mason's injection did not provide relief. (PT report, September 17, 2015).

65) By September 22, 2015, Employee's ankle pain was "slowly improving" and had some soreness after walking for 45 minutes. (PT report, September 22, 2015).

66) On September 24, 2015, Employee was not working for Employer secondary to her work-related injury. At her re-evaluation, she said her ankle was starting to slowly feel like it was getting better range of motion and function. She could walk more without limping. Employee still had a sensation issue, so she had to be careful where she was walking, and using stairs was still a problem. PT determined she had made "significant improvements" with ankle motion, and recommended additional PT. (PT report, September 29, 2015).

67) On October 1, 2015, Employee told Dr. Mason the injection helped with swelling and her only complaint was posterior ankle pain. Employee's ankle range of motion was "close to normal, exactly as her other ankle." Stress tests for ankle instability were "unremarkable." Dr. Mason opined, "I'm not finding anything at this time that I would recommend as further treatment. I think it will be just time. It's been over six months since her surgery. I have nothing further to offer her orthopedically." He added there were no "physician-imposed restrictions," based on her anatomy or orthopedic condition. Employee noted in her job with Employer she had to walk one hundred feet and able to run to an emergency or physically restrain patients and did not feel she could do her job. Nonetheless, Dr. Mason stated "she [was] medically stable" and suspected she may have a PPI rating. The only other medical treatment would be hardware removal if it bothered her and that would not be done for at least 12 to 18 months. Employee asked about PT and Dr. Mason opined if PT had a plan to progress her to more uneven ground and start kinesiotherapy progressing to running that would be reasonable. (Mason report; responses, October 1, 2015).

68) On October 6, 2015, Employee told PT that Dr. Mason said based on her imaging she should be healed and without ankle pain. (PT report, October 6, 2015).

69) By October 8, 2015, Employee told PT her ankle was feeling "much better today." (PT report, October 8, 2015).

70) On October 27, 2015, Employee told PT her ankle had been feeling pretty good even after cleaning her garage. (PT report, October 27, 2015).

71) On October 27, 2015, PT discharged Employee, noting she had continued to improve with walking, stamina and mechanics and was more confident and no longer needed to watch her feet. She reported improved ability to use stairs and her perceived ability to perform normal daily activities had increased significantly. PT recommended a work-hardening program to improve endurance. Employee had achieved her PT goals. (PT report, October 28, 2015).

72) On November 2, 2015, Dr. Mason said he had no reason to disagree with Dr. Youngblood's PPI rating methodology for Employee's right ankle. He reviewed Employer's job description for Psychiatric Treatment Counselor and DOT occupational descriptions for Psychiatric Technician, Accountant and Controller and opined Employee had current physical capacities to perform those jobs as described on a full-time basis. (Mason responses, November 2, 2015).

73) On November 9, 2015, Employer denied Employee's right to TTD and TPD benefits based on Dr. Mason's October 1, and November 2, 2015 statements she was medically stable and could work full-time at her regular job. (Controversion Notice, November 6, 2015).

74) On November 17, 2015, Scott Naspinsky, M.D., x-rayed Employee's right ankle and compared it with her July 8, 2015 x-rays and July 30, 2015 MRI. He found a "5 mm intra-articular osteochondral body" in the front of the ankle joint, with associated joint effusion. (Naspinsky report, November 17, 2015).

75) On November 19, 2015, Dr. Mason reviewed Employee's November 17, 2015 x-rays and found a bony fragment but opined it could be in the capsule and not intra-articular. He called Employee who she said she still had problems with weight-bearing and pain in the front and rear of the ankle joint. "She states that her ankle is not improved. She was still no better and she is unable to work." Dr. Mason suggested an MRI to determine from where the bony fragment came and to see if her condition was getting better, worse or remaining the same. Employee wanted her hardware removed but Dr. Mason told her it was too early. In his opinion, she was still medically stable and did not expect her condition to change in the next 45 days. If someone wanted him to continue with her care, Dr. Mason would obtain an MRI. If the MRI showed progressing damage in the articular surface and new loose bodies, Employee may be a candidate for arthroscopic surgery, microfracture and possible stem cell protocol. He would wait to hear from her case manager. (Mason report, November 19, 2015).

76) On November 20, 2015, Employee had a right ankle MRI. The impression was: open reduction and internal fixation of ankle fracture with hardware in place; full-thickness cartilage erosion with bone marrow edema at the medial corner of the talar dome; full-thickness chondral erosion; a bone infarct without collapse; and scarring of interior ligaments. (MRI report, November 20, 2015).

77) On November 30, 2015, Dr. Mason reviewed the November 20, 2015 MRI with Employee. She stated her pain was "6-7/10 with every step." Her treatment options included: (1) conservative care with an ankle-foot orthosis and rocker-bottoms to immobilize her ankle but allow full weight-bearing while walking; (2) arthroscopic surgery, microfracture and stem cell protocol, but this was "investigational, experimental and not FDA approved"; (3) ankle fusion, which she "absolutely" did not want; or (4) total ankle replacement, which given her age and activity would not be a good choice. Employee presented information on a "juvenile allograft" called DeNovo; while this seemed promising, Dr. Mason had no knowledge of it or its availability in Alaska. He encouraged Employee to research the DeNovo graft and he "could refer" her to a provider who does that procedure "if she wanted." Dr. Mason also stated:

> The patient would like to be able to return to full weight bearing in her usual job description. It's possible she could do this with the AFO [ankle foot orthosis] and rocker-bottom shoe. I wrote her a script for Northern Orthopedics to fabricate this and, once she gets this device, it's possible she could return to work with full duties. We won't know until we try it.

Dr. Mason released Employee to return to "sedentary work only" effective November 30, 2015, and referred her back to Dr. Duddy, at her request. (Mason report, November 30, 2015).

78) On December 7, 2015, Dr. Mason referred Employee to "Dr. Matthew Roberts, Hospital for Special Surgery" (HSS) for her right ankle. (Request for Consultation, December 7, 2015).

79) The date Employer first received Dr. Mason's December 7, 2015 referral to HSS is not immediately clear from the agency file. (Experience, judgment, observations).

80) On December 9, 2015, Employee told ANP Sexson that Dr. Mason had sent Dr. Roberts at HSS the most recent MRI. Employee said her ankle pain was getting worse, she did home exercises and was scheduled to get her AFO on Friday. She had been cleared for sedentary work. Employee said Dr. Roberts reviewed the MRI and referred her to Constantine Demetracopoulos, M.D., his assistant who specialized in flat-foot deformity that Employee said she was developing,

and post-traumatic foot and ankle reconstruction and cartilage repair. ANP Sexson recommended continued weight loss and swimming. Employee was uncertain she needed to return to Dr. Duddy, said she did not want to, and wanted to be evaluated "outside." (Sexson report, December 9, 2015).

81) On December 14, 2015, Dr. Mason said on November 30, 2015, Employee asked to return her care to Dr. Duddy, and he returned her "to his care on that date." Dr. Mason no longer agreed Employee was medically stable but deferred to Dr. Duddy. He stated Employee was interested in joint resurfacing with DeNovo juvenile cartilage allograft. Dr. Mason had no experience with this; she requested referral to a center that does. He thought this "sounds interesting," but Employee requested to see Dr. Duddy, and Dr. Mason agreed. (Mason responses, December 14, 2015).

82) On December 15, 2015, Employer filed and served its first medical summary. Dr. Mason's December 7, 2015 referral to HSS was not attached to it. (Medical Summary, December 15, 2015).

83) On December 18, 2015, ANP Sexson wrote a note stating Employee was unable to drive independently with her AFO in place from December 18, 2015 through December 29, 2015. (Sexson note, December 18, 2015).

84) The date Employer first received ANP Sexson's December 18, 2015 note about driving is not clear from the agency file. The earliest known date is February 29, 2016, when Employer filed a medical summary with this document attached. (Medical Summary, February 29, 2016).

85) On December 22, 2015, Employer's former adjuster Jessica Rush entered a log note in Employee's claim adjusting file; the topic was "Denial of TTD/TPD":

> ER has offered the employee a sedentary position at a rate HIGHER than her rate at time of injury. She has refused to return to work in this position. Despite being told that the WC carrier is not responsible for transportation to/from her place of employment, she continues to indicate that she cannot drive herself to her job. She states that her new foot orthotic prevents her from driving. However, there are no medical authorizations indicating that she cannot drive and there is nothing that states she has to wear the orthotic while she drives. Also the Act only requires that the employer pay for transportation to/from medical appointments. Defense attorney will prepare and send the controversion of TL [time loss] benefits after 12/22/15. Adjuster has issued final TTD payment. We will also send letter to Ms. Sexton [sic] re: orthotic and ability to drive, etc. to clarify the situation. (Rush entry, December 22, 2015; Notice of Intent to Rely, December 16, 2021).

Employer previously produced this adjuster' s log to Employee's former attorney Croft on May 23, 2017 (as page 1501 of 1962 pages) and produced it to her on November 9, 2021. (Notice of Intent to Rely, December 16, 2021).

86) On December 22, 2015, Employer denied Employee's right to disability benefits stating:

> The employee was offered modified duty work with the employer at her same rate of pay earned at time of injury. She failed to accept this suitable gainful employment within the physical capacities assigned by her treating physician. Alaska Statute 23.30.395(16) defines "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury at the same or other employment." The employee is no longer disabled. Further, employee has the education, experience, and background to perform many types of sedentary work, including the work of a bookkeeper and accountant which could be performed either in a sedentary office environment or at home, as employee has done in the past, earning a wage comparable to or exceeding her rate of pay at time of injury (Controversion Notice, December 22, 2015).

87) On December 22, 2015, Employer had not yet received ANP Sexson's December 18, 2015 note regarding Employee's inability to drive while wearing her AFO. This conclusion is based in part on the adjuster's stated intention in her December 22, 2015 log note to ask ANP Sexson about this issue. (Experience, judgment and inferences drawn from all the above).

88) On January 11, 2016, a comment appeared on Employee's timesheet stating she was, "Late due to finishing an email regarding harassment in the workplace." (OnTime Timesheet for Period One, January 2016, January 11, 2016).

89) On January 12, 2016, a note appears on Employee's timesheet explaining that on January 7, 2016, she "was late leaving due to supervisor not knowing how to lock door or close office." (OnTime Timesheet for Period One, January 2016, January 12, 2016).

90) On January 15, 2016, Dr. Youngblood examined Employee again. She was currently "in a position as a receptionist" full-time with Employer until she could return to work as a psychiatric treatment counselor. Employee told Dr. Youngblood that after Dr. Mason reviewed the November 20, 2015 MRI, she was not interested in returning to Dr. Duddy and said she and ANP Sexson "arranged" for a second opinion at HSS. Employee did not say a physician had referred her to HSS. Dr. Mason's December 7, 2015 referral to HSS was not mentioned or reviewed in the EME report, though Dr. Youngblood reviewed and discussed Dr. Mason's November 30, 2015 note, where stem cell protocol and juvenile cartilage allografts (DeNovo) and a December 3, 2015 email from attorney Robin Gabbert stating Employee was "apparently interested" in DeNovo, were discussed. Employee's primary pain was in the back of her ankle though she had full motion. She had ankle instability when walking without her brace and "she feels like she will fall." Employee

mentioned having anxiety, depression and ADD. Dr. Youngblood diagnosed: right ankle fracture post-reduction, internal fixation with mild post-traumatic arthritis substantially caused by the work injury, medically stable; right knee meniscus tear post arthroscopic debridement, preexisting and present on a July 26, 2005 MRI and not substantially caused by the work injury, also medically stable; subjective right shoulder pain without evidence of derangement, not substantially caused by the work injury, medically stable; obesity, not caused by the work injury but aggravating any lower extremity condition; chronic tobacco abuse, not related to the work injury but affecting any lower extremity condition; and disability conviction, noncompliance issues and subjective complaints in excess of objective findings particularly for the right ankle. He opined the right knee was the same on May 11, 2015, as it was on July 26, 2005, according to an MRI comparison. Therefore, the need to treat the knee was preexisting, not substantially caused by the work injury and was medically stable. There was no clear evidence of a right shoulder injury, and any symptoms were not related to or aggravated by the work injury. Dr. Youngblood stated Employee had a significant ankle injury on February 20, 2015, but it was appropriately treated. In his opinion, the right ankle was medically stable, with mild post-traumatic arthritis. Dr. Youngblood was concerned the September 10, 2015 ankle injection provided minimal pain relief when typically, an injection provides 100 percent relief for hours even with significant arthritis. He opined any treatment directed at cartilage lesions would provide minimal relief. Dr. Youngblood concluded the pain was not coming from the joint. While the most concerning area would be the osteochondral lesion near the front, Employee reported most pain was in the back of the ankle. In his opinion, additional surgical treatment was not reasonable or necessary. Dr. Youngblood opined a repeat arthroscopy and microfracture was "not incredibly unreasonable," but would be unlikely to significantly improve her symptoms. Cartilage transplant such as DeNovo was investigational and had not been proven to work in the ankle. Because Employee's ankle injury was a "shoulder lesion," cartilage transplant would not be expected to help and would likely be sheared off and displaced once motion and weight-bearing began. Dr. Youngblood did not think an osteochondral allograft would be effective because it would not do anything for the diffuse cartilage thinning elsewhere in the ankle joint. He agreed with Dr. Mason that a total ankle replacement in an overweight 33-year-old patient would fail, was too aggressive, and was unreasonable and unnecessary. Lastly, ankle fusion was also "not a great option" because Employee had an anatomic ankle and excellent motion with a good result after surgery; it would be a "terrible idea." Employee

had stated she would rather have her foot amputated than have an ankle fusion; Dr. Youngblood said this is an "even more terrible idea." He opined Employee "clearly has multiple psychosocial factors at play." She had multiple underlying psychiatric diagnoses including anxiety, depression and ADD. Employee was on a "veritable cocktail of psychotropic medications," and "is obviously under active psychiatric treatment, which pre-dates the industrial injury of February 20, 2015." In addition, Dr. Youngblood found clear medical noncompliance recorded by Dr. Duddy. Lastly, Employee's subjective complaints exceeded objective findings as follows: symptoms in the right shoulder with a completely normal MRI; her right knee still had symptoms, but she had appropriate treatment; and her right ankle's symptoms were excessive when compared to objective findings. He opined the substantial cause of the right ankle fracture and mild post-traumatic arthritis was the work injury; the substantial cause of the right knee meniscus tear was the 2005 knee injury; the substantial cause of the right shoulder pain was Employee's age and genetics. Dr. Youngblood opined the right ankle became medically stable on November 7, 2015; the right knee on June 24, 2015; and the right shoulder was medically stable, but he could not assign a date. He provided a three percent PPI rating for the right ankle, which was work-related, and one percent for the knee, which was not work-related. Dr. Youngblood said no additional surgical or medical treatment was indicated, recommended, reasonable or necessary for Employee's work injury. While she had multiple psychosocial issues, any treatment for those was not work-related. If Employee insisted on a third ankle opinion, he suggested Eugene Chang, M.D. Dr. Youngblood opined additional surgical treatment would not likely achieve desired subjective results. He reviewed DOT and Employer-provided job descriptions for Psychiatric Treatment Counselor and recommended work-related restrictions including no lifting, carrying, pushing or pulling greater than 20 pounds for the next year, at which time these restrictions ended. Dr. Youngblood opined she was currently approved to work as an accountant and controller as they were sedentary positions. (Youngblood report, January 15, 2016).

91) On January 28, 2016, Employee had purchased the AFO Dr. Mason ordered but still had ankle pain rated at "6-7/10" when walking. She took the AFO off for driving because she did not feel safe wearing flip-flops. ANP Sexson called Dr. Chang to see if he would evaluate Employee. (Sexson report, January 28, 2016).

92) On February 10, 2016, Employer denied Employee's right to further benefits for her right ankle injury. It stated the ankle injury was not the substantial cause of her knee condition or need for treatment, so all benefits related to her right knee were denied:

> This Controversion supplements prior Controversion Notices filed. Based upon the 01/15/16 IME of Scot Youngblood, M.D., the employee was most recently medically stable as of 11/07/15. No TTD or TPD is owed after that date. Alaska Statute 23.30.185 and .200. Per Dr. Youngblood, the employee's right knee meniscal tear preexisted the work injury as shown on a 2005 MRI, and the ankle event was not the substantial cause [of] that preexisting condition, need for treatment, or resulting PPI of the right knee. Employee's trimalleolar ankle fracture was appropriately treated by anatomic reduction and internal fixation and has healed with minimal to mild post-traumatic arthritis. As per two physicians, "it is what it is." One debridement by Dr. Duddy and a steroid injection by Dr. Mason have not stemmed subjective complaints which outweigh the objective findings. Per Dr. Youngblood, further surgical procedures such as DeNovo juvenile cartilage . . . allografting and microfracture with stem cell protocol surgery are not within the realm of acceptable medical options under the particular facts of this case. No additional medical or surgical treatment is deemed reasonable or necessary at this time for the reasons discussed at length in Dr. Youngblood's report. Physically, the employee is capable of doing any work that does not involve lifting, carrying, pushing, or pulling of greater than 20 pounds. After one more year, she will be able to work with no physical restrictions or limitations. *See* OMAC Medical Examination of Allison Leigh by Scot A. Youngblood, M.D. Date of Exam: 01/15/16 (attached). (Controversion Notice, February 9, 2016).

93) On February 10, 2016, ANP Sexson reported:

> I was contacted by Ms. Leigh this evening as her work is requesting a return to her PTC position on 2/11/16. She inquired if I had cleared her. I informed her I had not had contact with anyone regarding her case. I also informed her that I had not yet seen the report from the Independent Medical Examiner and could not speak to those findings, but given my findings at her exam on 1/28/16 I had not cleared her. I further informed her that my records did not indicate Dr. Mason cleared her from sedentary duty. Requested she contact the attorney for additional insight into the return to full duties. (Sexson note, February 10, 2016).

94) On February 18, 2016, Morris wrote to Employee:

> On Wednesday, February 10th I communicated in writing an expectation you attend two-day Mandt certification in preparation for return to PTC duties. This step was taken in light of the Independent Medical Examination releasing you back to work with some restrictions. Your refusal to attend that training and subsequent failure to report to work on Monday 15th February through today, Thursday February 18

> is being viewed as resignation without notice. As such your employment with AK Child & Family is terminated effective February 18, 2016.
>
> Your request for access to your medical record has been met on several occasions with copies of records provided more than once. If you wish to request another copy please do so in writing, addressing such a request to either myself or my supervisor, CEO Denis McCarville. (Morris letter, February 18, 2016).

95) On February 25, 2016, Employer denied Employee's right to medical costs related to renal colic, kidney stones, urinary calculi and pulmonary nodules. It stated there was no medical evidence stating Employee's internal medicine issues were related to her work injury. The notice further advised her that a person who knowingly made a false or misleading statement, such as telling a provider that a condition was work-related when it was not, could be subject to criminal penalties. (Controversion Notice, February 24, 2016).

96) On February 29, 2016, Employer filed ANP Sexson's December 18, 2015 note stating Employee was unable to drive with her AFO in place from December 18, 2015, through December 29, 2015, on a medical summary. Dr. Mason's December 7, 2015 referral to HSS was not attached to that summary. (Medical Summary, February 29, 2016).

97) On March 7, 2016, Dr. Chang evaluated Employee's ankle injury. She reported wearing an AFO to get around, but she was no longer working for Employer. Employee was "a little vague" as far as where her pain was but it was in the deep medial and posterior ankle. She denied any locking symptoms and had smooth motion. Dr. Chang took x-rays and diagnosed right ankle pain following a fracture with a secondary medial talar dome osteochondral defect, and lateral plate discomfort. He described this as "a tough problem." Dr. Chang opined Employee had some cartilage damage from her initial injury but given her age her options such as fusion "are pretty aggressive." He mostly agreed with Dr. Youngblood's "multiple options" but noted some options were more doable than others. Dr. Chang did not favor any sort of cartilage transplant because reciprocal and global cartilage damage would deteriorate such transplants and make that option more tenuous for long-term success; it would also require an osteotomy and lengthy recovery. (Chang report, March 7, 2016).

98) On March 21, 2016, Dr. Chang recommended removing the ankle hardware to see what pain relief Employee obtained and repeating the microfracture. (Chang responses, March 21, 2016).

99) On March 17, 2016, Employer filed a medical summary. Dr. Mason's December 7, 2015 referral to HSS was not included on this summary. (Medical Summary, March 16, 2016).

100) On March 30, 2016, Employee saw ANP Sexson for a pre-operative physical. She listed mental illnesses to include anxiety, depression and ADD. Employee told ANP Sexson her right ankle was "locking in the flex position" especially when using stairs. She was wearing her AFO and was ambulating normally. Employee said she had quit smoking in August 2015 to assist healing with her ankle. (Sexson report, March 30, 2016).

101) On April 13, 2016, Dr. Chang debrided Employee's ankle and micro-fractured her medial talar dome and removed all hardware. He found and removed an osteochondral fragment in the capsule. (Operative Report, April 13, 2016).

102) On April 29, 2016, Employee appeared before PA-C John Love at Dr. Chang's office for a post-surgery checkup. She complained of residual lower extremity numbness that she attributed to preoperative regional anesthetic. (Love report, April 29, 2016).

103) On May 13, 2016, Employee complained of subjective foot numbness. Dr. Chang "spoke frankly" and told her she had significant cartilage damage in her ankle, but he was happy with how the microfracture went. He was hopeful as Employee's activity gradually resumed the pain "that she settles with" will be better than what she had pre-surgery. She was to remain non-weight-bearing for two more weeks with gradual weight-bearing in her boot, which she should wear for four to six weeks. He referred her back to PT. (Chang report, May 13, 2016).

104) On May 26, 2016, Employee told PT she wanted to try driving and had been practicing in an empty parking lot. (PT report, May 26, 2016).

105) On May 31, 2016, Employee still had lost sensation in her right lower leg, which she believed affected walking on her right foot. (PT report, May 31, 2016).

106) On June 20, 2016, Employee was emotional, still had pain but there was incremental improvement. She still had numbness on the medial aspect of her ankle. Dr. Chang encouraged her to get into a new brace, out of the boot and to work hard on range of motion. He downgraded her to a cane, continued PT and told her to return in three months. (Chang report, June 20, 2016).

107) On July 13, 2016, Employee's attitude and effort were good and she had return of sensation in her right lower leg. (PT report, July 13, 2016).

108) On July 14, 2016, Dr. Chang said he would reevaluate her in September 2016, for further recommendations. He restricted her from working effective April 19, 2016, and her release date would be determined at her September 2016 evaluation; she was cleared to drive. (Chang responses, July 14, 2016).

109) On July 20, 2016, Employee stated her right inside ankle was numb and she was "emotional." PT noted she had "some psycho/social issues" with her surgeries in the past one and one-half years. (PT report, July 20, 2016).

110) On or about August 2, 2016, Employee had emergent gallbladder surgery. (Sexson report, September 20, 2016).

111) On August 7, 2016, Employee reported her right foot was getting "very cold" with extensive use. (PT report, August 7, 2016).

112) By August 16, 2016, Employee reported her foot was "getting colder." (PT report, August 16, 2016).

113) On August 22, 2016, Employer denied Employee's right to medical benefits for abdominal pain, chest pain and gallstones. It contended there was no medical evidence stating the need for treatment with respect to these issues was related to her work injury. Attached to this notice were health insurance claim forms for these health issues addressed to Employer's adjusters. (Controversion Notice, August 19, 2016).

114) On September 20, 2016, Employee had good ankle motion with continued pain "deep in the back of her ankle." X-rays showed slightly decreased joint space but otherwise looked normal. Dr. Chang diagnosed post-traumatic arthritis. "The patient still has pain that is more significant than the degeneration on the x-rays or MRI would suggest. She's quite emotional today." He performed a cortisone injection and referred her to a pain specialist. His report does not record Employee mentioning her foot being numb or cold. (Chang report, September 20, 2016).

115) On September 30, 2016, Dr. Chang recommended an ankle fusion to treat her ongoing, severe ankle pain. Employee was hesitant, so he sent her for a pain doctor consultation. She was not medically stable from the work injury. Employee said she had severe pain while sitting and standing, "so, cannot work per her opinion." (Chang responses, October 3, 2016).

116) On October 7, 2016, Heath McAnally, M.D., pain specialist, evaluated Employee's ankle. She described "throbbing, shooting, aching" pain in the rear right ankle area with radiation up to the knee. Employee also had numbness and hypersensitivity on the bottom of her foot with subjective and objective foot coldness, daily swelling and frequent discoloration without sweating or trophic changes. Dr. McAnally recorded:

> She admits to a considerable sense of injustice, etc., and negative emotions associated with the circumstances of her injury and subsequent treatment by her employer, etc. who fired her.

Dr. McAnally found her left foot was 90.7° F measured with a thermometer while her right foot was too cold to register on his device. He diagnosed chronic pain following surgery as primary; with posttraumatic right ankle arthritis; neuralgia of the right saphenous nerve; and complex regional pain syndrome (CRPS) type I in the right lower extremity. Dr. McAnally prescribed medication, over-the-counter vitamins and pool therapy for aquatic exercises and suggested she should consider discussing intra-articular platelet rich plasma (PRP) with Dr. Chang. He recommended his "Resume Course," a biopsychosocial program" to gain ground "in terms of forgiveness/releasing negative emotions and catastrophization that will facilitate physical symptom improvements." (McAnally report, October 7, 2016).

117) On October 7, 2016, Employee was "able to walk quite well" but was still using her cane. (PT report, October 7, 2016).

118) On October 20, 2016, Dr. McAnally referred Employee for pool therapy, which he said was "medically necessary" to heal her work injury. He requested a three-month pool membership. (Referral, October 20, 2016).

119) On October 26, 2016, Dr. McAnally prescribed "swimming pool passes/membership" to address her medical condition. (Prescription, October 26, 2016).

120) On October 27, 2016, Dr. McAnally charted:

> We spent a little more time today discussing biopsychosocial contributors, and she was somewhat emotional today discussing the overview of Resume Course, reporting that she is very frustrated and anxious with the loss of her most basic abilities (walking) and her favorite activities, loss of job and also loss of relationships due to inability to participate in peer activities. She expresses embarrassment regarding "being needy," and disappointment with inability to caregive. She reports that shortly after her accident her "Opa" (grandfather) died. She moved up to Alaska to care for him and after her accident she was not able to care for him as well as she wanted; she reports feelings of guilt and remorse over this. (McAnally report, October 27, 2016).

121) On November 8, 2016, Employer denied Employee's right to medical benefits for asthma. It said there was no medical evidence connecting Employee's asthma to her work injury. (Controversion Notice, November 7, 2016).

122) On November 10, 2016, Employee reported no significant improvements in her pain; she noted improvement in foot sensation. Employee said she had stopped smoking and purchased an Alaska Club membership but only swam once due to an upper respiratory infection. She was sleeping poorly and her "sleep hygiene" was not good, "including watching TV in bed, and daytime recumbency in her bed." Dr. McAnally directed her to only get into bed for sleeping, and all other activities should be in another room. (McAnally report, November 10, 2016).

123) On November 16, 2016, Employee reported gaining ankle motion and increased ability to walk and sleep comfortably. Her CRPS was diminishing. Employee thought she was ready to "move on to some NuStep that she can use to return to work and return to somewhat normal function." She had begun swimming lightly for exercise and to get out of the house. Employee was walking without her cane and her gait looked better. (PT reports, November 16, 2016).

124) By November 18, 2016, Employee had reached her PT "rehab potential maximum" and was awaiting a work-hardening prescription from Dr. Chang. (PT report, November 18, 2016).

125) On November 22, 2016, Employee said she felt "no worse but no better." (PT report, November 22, 2016).

126) On November 28, 2016, Employee reported she went to the emergency room "last week" because her shoulder "locked up" causing severe pain. PT noted she had "severe tightness/guarding and protection of overly painful rhomboids," and found it hard to differentiate her pain onset as there were "no initiating factors." She was scheduled to begin work-hardening "next week." (PT report, November 28, 2016).

127) On November 30, 2016, Employee had pain in her shoulder area with all activities "active + passive." She was "visibly distraught + expressing outwardly that she's reached her limit." (PT report, November 30, 2016).

128) On December 1, 2016, Employee told Dr. McAnally her right leg had not been bothering her much but her right shoulder was by far her biggest complaint and symptoms had begun over the last two weeks "without any known injury." However, her sleep had improved and she had stopped taking amphetamines at her mental health provider's request. Dr. McAnally administered a shoulder injection that relieved her pain completely. (McAnally report, December 1, 2016).

129) On December 5, 2016, Employee's therapist discharged her from PT as she was going to begin work-hardening the following Wednesday. (PT report, December 5, 2016).

130) On December 7, 2016, Employee stated she had returned to work in her 20-hour per week accounting position but was fired because she was not able to keep up her productivity. She could walk up and down stairs and ladders but demonstrated only two steps per stair and rung. (Work Hardening report, December 7, 2016).

131) On December 15, 2016, Dr. McAnally reported Employee:

> . . . Perceives great physical and also psychological discomfort from audible crepitus within the joint and perseverates quite a bit throughout the encounter on the fact that there is "no cartilage there."

She demonstrated "generalized hyperdynamic trends" and "hyperdynamic changes" that may be pain-related although Dr. McAnally noted her concurrent use of Nucynta and amphetamines were "undoubtedly contributory." He recommended she stop taking amphetamines. (McAnally report, December 15, 2016).

132) On January 11, 2017, Dr. McAnally opined Employee's right lower extremity CRPS was "definitely related to her workplace injury . . . and possibly subsequent necessary surgical correction." She had minimal benefit from conservative care, and he opined it was medically necessary for her to proceed to an "escalated treatment course" including lumbar sympathetic blocks and possibly pulsed neuromodulation. (McAnally letter, January 11, 2017).

133) On January 13, 2017, Employee said she was "walking on an unmaintained parking lot," fell and injured her right ankle, knee and shoulder. She contended the adjuster had "frivolously denied proper medical treatment and compensation" for her injury, resulting in further complications. Employee claimed she had not yet received "written notification from adjuster for denials." She requested unspecified TTD, TPD and PTD benefits, PPI benefits, a finding Employer made an unfair or frivolous controversion, a penalty for late-paid compensation, interest, and request to "re-visit retraining program." (Claim for Workers' Compensation Benefits, January 11, 2017).

134) On January 17, 2017, Dr. McAnally administered Employee's first lumbar sympathetic block. (McAnally report, January 17, 2017).

135) On January 20, 2017, OT DeCarlo wrote Dr. Chang:

> I received a call from Katherine Sexson, ANP, her provider on 01/18/2017, who (in summary) had concerns about Ms. Leigh reporting to her that she was leaving the work hardening program with a pain level of 8 or 9/10 each day (never communicated to me by Ms. Leigh). . . .

> . . . .
>
> Ms. Leigh did present to the work hardening program on Wednesday 1/18/17 to discuss her continued participation in the work hardening program. She stated she did get a return of warmth to her right foot after her block, but that her foot/ankle . . . still hurt with every step. She reported that it hurt at a level where it would not be acceptable for return to work. In addition, she stated that after participation in work hardening all she was capable of doing was lying in bed.

DeCarlo discharged Employee from work-hardening. (DeCarlo letter, January 20, 2017).

136) On January 30, 2017, the adjuster wrote Dr. Chang stating she had received a January 23, 2017 voicemail from his office seeking preauthorization and prepayment for a PRP injection. The adjuster said she left a return voicemail message stating she would process the bill per the Act once it was received but the Act did not require prepayment for medical treatment, and the carrier was without medical documentation or order supporting PRP injections. The adjuster asked Dr. Chang if he recommended PRP injections as reasonable and necessary medical treatment for the process of recovery from Employee's work injury. Dr. Chang responded, "No -- do not feel it will be beneficial." (Chang response, January 31, 2017).

137) On January 30, 2017, Dr. McAnally gave Employee her second lumbar sympathetic block. Employee had "strange" swelling and skin sloughing after her first injection, which she attributed to "being on her feet for a prolonged period on Saturday shopping." He noted no swelling or discoloration in her right foot, but there was skin loss on the bottom of the foot, and it was cold, without sensitivity to touch. He recommended Employee talk to Dr. Chang about PRP. (McAnally report, January 30, 2017).

138) On February 2, 2017, Employer denied Employee's right to PRP injections. Employer relied on Dr. Chang's January 31, 2017 report in which he said PRP injections were neither reasonable nor necessary treatment for her work injury. (Controversion Notice, February 1, 2017).

139) On February 2, 2017, Employee was "exceedingly distraught" that she had only one good day of relief following her second lumbar block. Following that one good day, she stated "the following day she also received news from Workman's Comp. that they were denying PRP injection, and she states that she became extremely dysphoric and angry over that and noted immediate recurrence of pain in the leg." (McAnally report, February 2, 2017).

140) On February 8, 2017, Employer denied PTD and PPI benefits exceeding three percent, reemployment benefits, penalties, and interest, and denied it had made an unfair or frivolous

controversion. Employer cited the RBA-designee's August 13, 2015 decision finding Employee not eligible for reemployment benefits and contended she failed to timely appeal it. It further contended Employee received disability benefits until February 9, 2016, when a controversion was filed based on Dr. Youngblood's January 15, 2016 report stating Employee was medically stable as of November 7, 2015. Employer stated she was terminated from employment for reasons unrelated to the work injury in February 2016. On March 21, 2016, Employer authorized surgery Dr. Chang recommended, and disability benefits resumed on the surgery date, April 13, 2016. It further contended no medical evidence supported finding Employee would be permanently precluded from returning to work. (Controversion Notice, February 6, 2017).

141) On February 15, 2017, Dr. McAnally found Employee in "good spirits," and she perceived "well over a week or more benefit" from her second lumbar block and was able to fly to Pennsylvania with no discomfort and only began feeling discomfort on the return flight. Employee admitted Lyrica provided "significant improvement" but "nonetheless" continued to use every "Magill short form descriptor" to get an "8" pain rating. She looked "markedly improved in affect" and had no swelling, sensitivity or discoloration in her right foot; she had nearly full active motion, but weight-bearing was painful. Regardless of whether Employee tried PRP or distraction arthroplasty, Dr. McAnally advised "her CRPS needs to come under full control prior to any intervention" or she risked significant condition worsening not only in her leg but elsewhere. He recommended pulsed neuromodulation followed by a sciatic block prior to PRP. Dr. McAnally advised against a spinal-cord stimulator because she was too young and was improving neuropathically and psychiatrically. He rewrote a prescription for a pool pass. Employee was still smoking, and he recommended cessation because smoking is pro-inflammatory and a pain-threshold-reducing product. He had spoken with Dr. Chang who said it was possible PRP may confer some benefit and he understood Dr. Chang encouraged him to pursue it. Dr. McAnally was going to re-discuss this with Dr. Chang before appealing to the adjuster, which had initially denied his request for authorization. (McAnally report, February 15, 2017).

142) On February 16, 2017, as shown by a "Received" date, Employer first received Dr. Mason's December 7, 2015 referral to send Employee to HSS. (Medical Summary, February 27, 2017).

143) On February 22, 2017, Dr. Chang referred Employee to "Dr. Beaman" for evaluation for right ankle post-traumatic arthritis and distraction arthroplasty. (Referral, February 22, 2017).

144) On March 7, 2017, the adjuster wrote Dr. Mason referencing his December 7, 2015 note stating Employee was interested in DeNovo joint-resurfacing and juvenile cartilage allograft. The adjuster stated Employee on February 21, 2017, produced a referral dated December 7, 2015 to HSS "which was not previously received by Northern Adjusters." The adjuster asked Dr. Mason what treatment Employee was seeking at HSS. He responded, "I suspect definitive management of her ankle pain (right ankle)." Dr. Mason opined treatment Employee sought at HSS was work-related, reasonable, necessary, and within the realm of acceptable medical options. He had no documentation that this referral was provided to Northern Adjusters on December 7, 2015, and noted Employee returned to Dr. Duddy's care. (Mason responses, March 9, 2017).

145) On March 7, 2017, the adjuster wrote Dr. Chang stating it had received an email from Employee about a referral to "Dr. Beaman" and seeking Dr. Chang's opinion. Dr. Chang stated the referral to Dr. Beaman was reasonable and necessary for the process of recovery from the work injury. There was no associated "letter of medical necessity" supporting this opinion, as the adjuster requested. (Chang response, March 10, 2017).

146) On March 9, 2017, Employee testified she obtained a bachelor's degree in accounting in 2004. She has training in QuickBooks and Sage accounting software. Employee agreed accounting was a skill she still had. She was proficient with Word and Excel. Employee worked concurrently for Employer and Midnight Sun Court Reporters, the latter as an accountant, at the time of her injury. She worked from five to 40 hours per week for Midnight Sun depending upon the workload, for approximately two years. Employee left Midnight Sun because she could not perform her job. She worked full-time as a controller and accountant for Alaska Jack's for approximately a year. Prior to Alaska Jack's, Employee took care of her grandfather; her family paid her for one month but thereafter she received unemployment during in 2009. She also worked full-time for Evergreen Nursery as an accountant and controller for perhaps a month or two. Prior to Evergreen Nursery, Employee worked full-time for Arctic Structures as an accountant for a year. Before Arctic Structures, Employee worked full-time in Arizona for Wolfe's Construction as an accountant and controller. Prior to Wolf's Construction, she worked full-time in Arizona for Vizicom, as an accountant for "a couple years." (Deposition of Allison Leigh, March 9, 2017).

147) Employee worked full-time for Employer as a Psychiatric Treatment Counselor from 60 to 80 hours a week. Morris became her supervisor until after her injury when she was fired. (Deposition of Allison Leigh, March 9, 2017).

148) Employee was physically abused by a parent and had received continuing counseling for that. She was involved in litigation involving her grandfather's estate at the time her deposition was taken. Employee had been hospitalized briefly around 2001 in Arizona. (Deposition of Allison Leigh, March 9, 2017).

149) Following her work injury, Employee went to PT and felt like she had "been in physical therapy for like years." She paid for medication for which she was not reimbursed; she had not yet submitted reimbursement receipts. Dr. Duddy treated her fractured ankle. ANP Sexson referred her to Dr. Mason, who referred her to HSS in December 2015; Employee did not know what treatment HSS was going to provide. ANP Sexson remained her primary care physician. Other than out-of-pocket medication costs, Employee could identify no unpaid medical bills related to her work injury. Dr. Chang did not refer Employee for PRP injections; he referred her to Dr. Beaman in Oregon for ankle distraction, which she thinks Dr. Chang recommended. Employee was seeing Dr. McAnally for her leg and shoulder; she did not know how her shoulder became injured but pain began when she was on crutches. Dr. Chang referred her to work-hardening, but she did not complete it because it was too painful, and it made her sick like she had a virus or bacterial infection. All conditions that arose from her work injury were currently being covered. (Deposition of Allison Leigh, March 9, 2017).

150) Employee applied for jobs at a "bunch of places" thinking she would be better by summer 2016. (Deposition of Allison Leigh, March 9, 2017).

151) At the time of her deposition, Employee's right ankle symptoms included "shooting pain, numbness, frozen and swollen." "[A]nything pretty much" made her symptoms worse including sitting. Employee's ability to walk varied. Her right shoulder pain was "uncomfortable," her right knee was "numb" but her foot pain was "unbearable." Employee could not estimate how long she could stand. She could sit and had been trying to "get used to just dealing with the pain." At home, Employee would read, watch TV and meditate. She was able to drive a stick shift truck. In her opinion, Employee could not return to work as an accountant because medication for her injury prevented her from taking her ADD medication, which affected her ability to concentrate. She also said accounting is not a sedentary position because she had to do filing "and all that other stuff" including kneeling. Employee hoped she was not permanently and totally disabled and conceded when she claimed that benefit she "didn't understand completely" what she was doing. (Deposition of Allison Leigh, March 9, 2017).

152) On March 10, 2017, right foot x-rays showed no acute osseous abnormality, a healed ankle fracture with successful removal of associated hardware, and no obvious complications. (X-ray reports, March 10, 2017).

153) On March 10, 2017, Dr. Youngblood saw Employee for another EME. He reviewed numerous past and interval medical records since his last examination. She again included anxiety, depression and ADD in her medical history. Employee admitted she had restarted smoking. She stated that, "after the results of the last IME, she was fired from her position as a receptionist." Employee claimed she had not been able to return to any work since losing her receptionist job. She was on temporary disability based on Dr. Chang's April 2016 surgery. Employee became emotional and tearful during the history taking. Dr. Youngblood found "significant pain behaviors including moving gingerly and deliberately about the examination room"; marked antalgia when she tried to walk on the right leg; and "immediate withdrawal" to "feather touch" to parts of her right leg. Dr. Youngblood found no swelling around the ankle. Her right shoulder examination was normal. Compared to his January 15, 2016 EME, Dr. Youngblood found significant differences including withdrawal to very light touch diffusely about the ankle, foot and right leg, which he considered non-anatomic and nonphysiologic. Though her right foot and toes were "significantly cooler to touch" than the left, Dr. Youngblood opined this could be caused by two lumbar blocks she recently had. As for CRPS criteria, the only one met in Dr. Youngblood's opinion was cooler skin on the right foot compared to the left, which was not present on his prior two examinations. He noted nail polish with designs on all toenails, which Dr. Youngblood considered inconsistent with a CRPS diagnosis because a person with CRPS will have pain with simple light touch. He interpreted concurrent x-rays to show "very mild," early post-traumatic arthritis. Dr. Youngblood reviewed a March 20, 2017 right ankle MRI, which the radiologist interpreted showing degenerative changes throughout the ankle joint with slightly improved swelling in the medial corner of the talar dome from the last study; a less-prominent bony infarct on the distal tibia compared to last study; and other findings unchanged from prior exams. His diagnoses were like those in his previous examination, and he found no evidence of CRPS. In his opinion, Employee needed no further studies or testing. He disagreed with Dr. McAnally's CRPS diagnosis because the AMA *Guides to the Evaluation of Permanent Impairment*, Sixth Edition (*Guides*), requires eight CRPS points to establish the CRPS diagnosis and in this instance, there was only one point assuming the temperature disparity considered a CRPS sign was not just a

reaction from lumbar blocks. Dr. Youngblood opined Employee was intentionally refusing to put normal weight on her right leg during the examination, but ordinarily would, because there was no "disuse osteopenia" on concurrent x-rays, which one would expect if a patient chronically did not weight-bear on a lower extremity. In his opinion, the work injury was no longer the substantial cause for any current or ongoing disability or need for treatment; the injury ceased being the substantial cause on September 13, 2016. He attributed a three percent PPI rating to the work injury including only the right ankle. Dr. Youngblood opined treatment for the right ankle had been reasonable and necessary for the process of recovery and within the realm of accepted medical options, but no other treatment was necessary as in his view the shoulder, knee and any CRPS were not attributable to the injury. He disagreed with the recommendation for PRP injections and pulsed neuromodulation because PRP injections in his view "are completely unproven in the treatment of ankle arthritis or osteochondral lesions." The only "good studies" have shown their use was as effective "as a placebo." Dr. Youngblood said any invasive treatment was "strongly contraindicated" if in fact Employee has CRPS because it would make it worse. Since in his view there was no CRPS, neuromodulation was not indicated. Dr. Youngblood opined Employee had "multiple psycho-social issues," but any psychiatric treatment would not be related to her work injury. He noted as he predicted in his January 15, 2016 EME, "any additional surgical undertaking in this case will likely not achieve the desired subjective results for this patient," and in his opinion, her additional surgery "clearly did not." Dr. Youngblood imposed no work restrictions related to the work injury, and in his opinion, she could return to any work that did not involve lifting, carrying, pushing, or pulling greater than 20 pounds. He disagreed with using "ankle distraction" because it is controversial, requires a "psychologically prepared" patient, which he said Employee was not, and is reserved for "moderately severe or severe arthritis," which she did not have. (Youngblood report, March 10, 2017).

154) A March 20, 2017, right ankle MRI was consistent with Dr. Youngblood's understanding that the right ankle had "intact ligaments." (MRI report, March 20, 2017).

155) On March 24, 2017, Dr. Chang examined Employee who had significant right ankle pain. Her nerve issues had been getting under control with Dr. McAnally's help. "Yet, Allison is seeking additional surgical options, which will maintain the motion of her ankle." He recommended a "nationally known specialist with expertise in distraction arthroplasty, as well as management of

end-stage arthritis." For these reasons, Dr. Chang opined a visit with Dr. Beaman would be a reasonable consultation for Employee. (Chang report, March 24, 2017).

156) On March 31, 2017, Employer denied Employee's right to disability benefits after September 13, 2016, PPI benefits greater than three percent, reemployment benefits and medical treatment and related transportation costs after March 10, 2017. It based this on Dr. Youngblood's March 10, 2017 report. (Controversion Notice, March 30, 2017).

157) On April 1, 2017, Dr. McAnally wrote a "to whom it may concern" letter and noted he was not an orthopedic surgeon and would "fully defer to the consensus opinion of my orthopedic colleagues." Dr. McAnally acknowledged he had "very limited experience" with PRP injections but said anecdotally it often can provide significant long-term therapeutic and restorative benefits, which is why he initiated a discussion with Dr. Chang about trying PRP for Employee. "In a private conversation," Dr. Chang told him "while the likelihood of successful outcome is fairly low," and contingent upon adequate motion restriction and healing, so was the risk compared to Employee's other treatment options. Dr. McAnally said he also had a private conversation with Doug Vermillion, M.D., an orthopedic surgeon who favors stem cell treatments, and briefly discussed Employee's history with him. Dr. Vermillion opined considering PRP or stem cells was certainly worth exploring and offered to see her in consultation. Dr. McAnally acknowledged it was "far beyond [his] scope of practice" to express any expert opinion on either of these regenerative modalities, distraction arthroplasty, joint replacement or fusion. However, he considered himself an expert on CRPS, which is a potentially debilitating neuropathic pain state with significant functional limitations diagnosable only by clinical criteria according to expert consensus literature. Dr. McAnally opined the AMA *Guides* are not the "most widely accepted diagnostic criteria for diagnosing CRPS in this country"; the Budapest Criteria is. The Budapest Criteria requires three of four positive symptoms in the categories of sensory, vasomotor, sudomotor and motor/trophic, and two of four positive signs in the same categories. Dr. McAnally opined Employee met these criteria, all of which occurred before the two lumbar blocks he performed in January 2017, at his October 7, 2016 visit. He stated radiological studies, which Dr. Youngblood used to support his opinion, are irrelevant to diagnose CRPS in peer-reviewed literature. Dr. McAnally opined CRPS "has been noted for over a quarter century to often follow a waxing and waning course" and can be highly dynamic. He stated she is not "out of the woods yet." Dr. McAnally opined, contrary to what Dr. Youngblood, said there was copious orthopedic

and pain literature showing in many cases removing retained foreign bodies may result in improved or completely relieved pain, and functional restoration. He was perplexed Employee was repeatedly determined medically stable and then subsequently found to have significant issues including loose bodies requiring surgical removal. Dr. McAnally wanted it noted that he spent two hours preparing this letter on Employee's behalf to optimize her medical care and well-being and would not be billing any party for his time. (McAnally letter, April 1, 2017).

158) On April 25, 2017, Employee through former counsel Croft filed a correction sheet for her March 9, 2017 deposition. Among other minor corrections, Employee changed her hours worked while working for Employer:

> My hours @ AK Child varied. I have asked for my detailed wage & hour information and have not received it. I would sometimes work less than 40 hours a week . . . especially after my hours were cut (after I brought serious safety, HIPPA violations to upper mgmt. attention). (Deposition correction sheet, April 27, 2017).

159) On April 18, 2017, Dr. Chang evaluated Employee and diagnosed right ankle posttraumatic arthritis with lesions involving the tibiotalar joint, and CRPS managed by Dr. McAnally. Given the focal lesions in combination with her postoperative CRPS, he was not encouraging additional surgical intervention. "Although her recovery has been slow, I do feel she is some measure better than she was about a year ago." Dr. Chang was unfamiliar with distraction arthroplasty or osteochondral repair using fetal tissue. He recommended continued observation, PT and nerve pain management per Dr. McAnally. (Chang report, April 18, 2017).

160) On May 3, 2017, Dr. McAnally saw Employee who was in good spirits despite having "lost her workers' compensation benefits" and having to file for Medicaid. She was facing a stressful court mediation over her grandfather's estate and was estranged from her mother. Dr. Chang had told her there was nothing more he was willing to do for her. She wanted to do whatever it took to improve her ankle pain. Dr. McAnally noted Employee was impatient with the time it was taking to improve her situation but reassured her she had made "huge improvements." She was sleeping well and feeling rested. (McAnally report, May 3, 2017).

161) On May 7, 2017, Dr. Youngblood rebutted Dr. McAnally's April 1, 2017 letter. He noted the AMA *Guides* use the Budapest Criteria to diagnose CRPS as shown on page 453 of the *Guides*. Dr. Youngblood further noted using the CRPS diagnostic criteria can be "extremely subjective," and he never found any criteria in his examinations of Employee other than decreased temperature

on the right leg. He was unaware of any literature or case study suggesting CRPS improved with surgical treatment for arthritis. (Youngblood report, May 7, 2017).

162) On May 12, 2017, Employee through Croft's office filed her first medical summary in this case. (Medical Summary, May 7, 2017).

163) On May 17, 2017, Dr. Chang completed a questionnaire and diagnosed Employee with a medically stable post-traumatic ankle arthritis, for which work was the substantial cause; and no prior ankle condition aggravated by the work injury. He would not recommend return to work without restrictions but did not list any. Employee's ankle treatment had been reasonable and necessary, and he recommended activity modification, a brace, injections, observation, and consultation with Dr. Beaman for distraction arthroscopy. (Chang responses, May 17, 2017).

164) On May 31, 2017, Dr. McAnally saw Employee who reported no significant change in her condition. She had a "constellation" of ankle and foot pain with cold and intermittent pain to light touch. Employee had been concentrating on psychosocial management with ANP Davis. She reported "significant negative interaction" recently among family members about her grandfather's estate management and admitted to significant correlation between her neuropathic symptoms and her distress and anxiety. Employee said the insurer had recently controverted her claim and was attempting to use preexisting psychiatric conditions as a justification for terminating her care. She said she "has many days that she thinks she would be able to hold a job, and then alternately experiences many days that she can't even get out of bed." Dr. McAnally told her while "CRPS definitely contains significant psychosocial components, to declare that her condition is due to preexisting psychiatric issues is in my opinion ridiculous." He opined there were "clearly ongoing orthopedic issues that may require operative intervention" and there was also a well-defined causalgia component. (McAnally report, May 31, 2017).

165) On June 1, 2017, Employee requested a second independent medical evaluation (SIME). (SIME form; Petition, June 1, 2017).

166) On June 23, 2017, Dr. McAnally diagnosed CRPS of the right lower extremity and right ankle posttraumatic arthritis. He opined work was the substantial cause of these diagnoses and they were no preexisting conditions the work aggravated. Dr. McAnally said Employee was not medically stable and deferred opinions about work restrictions to other physicians. In his opinion, prior treatment had been reasonable and necessary, and he recommended pulsed neuromodulation, PRP injections and distraction arthroplasty. (McAnally responses, June 23, 2017).

167) By July 27, 2017, Employee told Dr. McAnally her right lower extremity pain had improved including her causalgia, her foot was warm more than it was cold, and her allodynia [pain from stimuli which are not normally painful] was essentially gone. Employee was more aware of her foot not hurting and had fewer mild spastic episodes. She noticed right knee and hip discomfort, which she attributed to lower pain levels in her leg and foot. Employee was walking without an assistive device; her causalgia was in remission. She was disinclined, as Dr. McAnally said he would be, to pursue either fusion or distraction arthroplasty. (McAnally report, July 27, 2017).

168) On August 31, 2017, Dr. McAnally wrote former Employer attorney Vicki Paddock and deferred to his orthopedic colleagues including Dr. Youngblood, Dr. Chang "and any other orthopedists" regarding musculoskeletal pathology involving the foot and ankle. He defended his CRPS diagnosis and said, "I would advise against calling this patient's (or any others') reported symptoms into question." Dr. McAnally opined Dr. Youngblood's toenail polish finding vis-à-vis allodynia was "a bizarre conclusion." On multiple occasions he observed allodynia and hyperalgesia in Employee's case, both of which fall under the Budapest Criteria. Dr. McAnally had also observed and documented "profound temperature discordance" between Employee's lower extremities, and he had seen cyanosis. He noted pain is "a subjective phenomenon" and to imply Employee does not suffer pain as she claims to "would be the worst medical hubris." He opined Employee's CRPS was in remission. However, in his view this did not mean her condition was stable or at maximal improvement. Dr. McAnally opined Employee was still improving, which by definition was not a stable condition. He felt medically, legally, ethically and morally obligated "to defend her best interests along those lines, which include advocating for legitimate diagnosis and treatment." Dr. McAnally was not advocating for further surgery because it was outside his practice. He again said he spent another two hours preparing this letter on Employee's behalf and would not be billing anyone. (McAnally letter, August 31, 2017).

169) On September 5, 2017, Employer denied any medical bills received more than 180 days after the service date including those rendered at the Denali Family Health [ANP Sexson] on August 23, 2016. Employer cited AS 23.30.097(h) as support for its denial. (Controversion Notice, September 5, 2017).

170) On September 21, 2017, Employee reported no change in her condition. She discussed returning to work but did not feel capable of performing accounting work "due to concentration difficulties." (McAnally report, September 21, 2017).

171) On December 12, 2017, and January 18, 2018, Thomas Gritzka, MD, evaluated Employee for an SIME. He noted in a January 15, 2016 EME report, Dr. Youngblood "reversed or discounted" his July 11, 2015 opinion where he stated Employee's right knee medial meniscus tear was substantially caused by the work injury. Employee told Dr. Gritzka Employer fired her because it told her Dr. Youngblood's opinion trumped her providers' opinions and said she could return to normal employment. Her medications included Adderall for ADD and Viibryd for depression. Employee had still not stopped smoking. She had a bachelor's degree in accounting and had worked in that field. Employee said she previously had exquisite plantar pain when weight-bearing on the right that improved after Dr. McAnally's treatment and PT. Dr. Gritzka said Employee had a "complex constellation of conditions and findings." He opined the work injury was a significant injury and included a fracture dislocation. In Dr. Gritzka's opinion, this commonly results in residual post-traumatic osteoarthritis regardless of how well the initial surgery went. At his second surgery, Dr. Duddy treated the knee with microfracture technique; Employee told Dr. Gritzka that Dr. Duddy never treated her ankle with microfracture. Dr. Gritzka was familiar with Dr. Beaman and heard him discuss distraction procedures for "advanced posttraumatic arthritis of the ankle." He also stated, "A diagnosis of post-traumatic stress disorder" (PTSD) has "not arisen in the examinee's case" but Employee said her psychological treatment included "EMDR" and "enlivening." Dr. Gritzka further opined:

> The examinee has an underlying complicated risk factor for chronic pain -- that is, psychological factors including attention deficit disorder requiring Adderall and a background of depression requiring an antidepressant. . . .
> . . . .
>
> The examinee has signs at this time of a neurological dysfunction involving her right lower extremity. She does not meet the Budapest criteria for complex regional pain syndrome but she does have objective findings or features of complex regional pain syndrome at this time. Complex regional pain syndrome used to be considered an autonomic nerve dysfunction of the affected part but now it is realized that the cause for complex regional pain syndrome is complex and not well understood. What can be said at this time is that the examinee does have asymmetric coloring or modeling over lower extremities with a cutis momorata discoloration of her right greater than lower left extremities.
> . . . .
>
> The question of platelet rich plasma treatment to the examinee's right ankle has been raised. This issue was also discussed in [Orthopedic Knowledge Update 12

> (OKU 12), published by the American Academy of Orthopedic Surgeons in 2017]. The idea in the examinee's case would be to promote healing of the posttraumatic articular cartilage loss and a chronic ankle capsular sprain noted by MRI. OKU 12, however, states that the data is unclear and is not supportive of the use of platelet rich plasma generally at this time. (Gritzka report, January 18, 2018).

Dr. Gritzka opined the substantial cause of Employee's disability or need for medical treatment was her work injury against a "background including ADD, depression and Ehler's Danlos collagen disorder. . . ." In his opinion, if Employee had not had the work injury, she probably would not have the right ankle condition she has now. Dr. Gritzka further opined the preexisting Ehler's Danlos syndrome probably contributed to her current disability and combined with her injury to cause her current disability and need for treatment. However, in his view the work injury did not cause a permanent change in her collagen but probably inhibited to some extent her ability to recover from her injury. Dr. Gritzka said the work injury still caused her disability and she had objective signs for her complaints. Those included a distinct temperature difference between her lower extremities and diffuse discoloration "which is observed in individuals who are heavy smokers, and, in some instances, attributed to nicotine abuse." This discoloration, in Dr. Gritzka's view, also appears in rheumatologic conditions and may be associated with Reynaud's phenomenon; these issues had not been explored yet in Employee's case. If she were his patient, Dr. Gritzka would have these issues evaluated. Dr. Gritzka agreed with Dr. Youngblood that Employee was not a candidate "for any type of surgery." He agreed an ankle fusion would be a "terrible idea" because Employee "has significant preexistent risk factors some of which are psychological but some of which are probably metabolic." In his opinion as a non-psychologist, he recommended continued treatment including EMDR and havening. Dr. Gritzka suggested Employee be seen at a non-local tertiary care center. He suggested sending Dr. Beaman the "significant records" before sending her there so he could determine if distraction therapy would be helpful. Dr. Gritzka otherwise suggested referral to the Mayo Clinic or HSS, "because in addition to the structural . . . issues which the examinee sustained there appears to be an underlying psychological or metabolic derangement," which was "dormant until activated" by the work injury. He opined Employee's treatment was appropriate, reasonable and necessary and would help her recover from her injury, relieve chronic debilitating pain and promote her ability to return to work. Dr. Gritzka said it was "reasonable to conclude that her pain syndrome would keep her off task with regard to accounting -- at least for a portion of a work day -- but treatment directed

towards pain control would help the examinee return to work at least sedentary jobs." In his opinion, Employee was not able to work without limitations or restrictions. She was restricted to sedentary, non-weight-bearing activities. "If her psychological status would allow it," she could probably do sedentary work where she could stand, walk, move around and change positions as needed. Dr. Gritzka did not agree with Dr. Youngblood's opinion expressed in his March 10, 2017 report; specifically, he found signs consistent with neurological or autonomic dysfunction. He agreed she had no ratable impairment for her right knee or shoulder and agreed that PRP was not likely to help her. Dr. Gritzka did not think distraction arthroplasty would help or any invasive surgery would be appropriate "at this time" because it would likely aggravate her preexisting neurological condition. However, it would be worthwhile to send her to Dr. Beaman, but the next step would be to have her seen at a tertiary facility. A bone or PET scan to both lower extremities could be considered for diagnostic workup. Lastly, Employee's future physical capacity was indeterminate because her treatment was not completed. (Gritzka report, January 18, 2018).

172) On February 12, 2018, Employee's former counsel Croft filed a "bill ledger" from Northern Anesthesia & Pain Medicine [Dr. McAnally], which shows Employee paid $18 to Dr. McAnally while Northern Adjusters, and later Medicaid, paid the rest resulting in a zero balance. (Affidavit of Service, February 12, 2018).

173) On February 15, 2018, the parties mediated this case with an experienced hearing officer. Croft represented Employee during the mediation; it was ultimately unsuccessful. Parties often discover strengths and weaknesses in their positions during mediation and refine their positions as time goes by with non-confidential information gleaned from mediation. (Agency file; Judicial Tab; Mediation Details Tab; experience and observations).

174) On February 28, 2018, Employee petitioned for a protective order against releasing mental health records. (Petition, February 28, 2018 [dated February 28, 2017]).

175) On March 13, 2018, the parties discussed Employee's request for a protective order against mental health releases. The following colloquy took place between the designee and Employee's former attorney Croft:

> CHAIR: Well, and just one -- I just got a quick question, Eric. Are you actually requesting any benefits related to a mental health condition in relation to this injury at all?

> MR. CROFT: No, we have not filed for PTSD or other mental health impacts from her ankle break and don't have a present intent to do so.

The designee granted Employee's petition and asked the parties if they wanted to hold the merits hearing in abeyance until after the medical record release appeal was over. Employer opposed setting a merit hearing because the medical record release was an outstanding discovery issue. Employee said notwithstanding she too wanted more discovery, she was ready for a hearing on the merits set far enough in the future to allow additional issues to be resolved. The designee set another prehearing conference to set a hearing date on the merits. (Prehearing Conference transcript, March 13, 2018).

176) On March 16, 2018, Dr. Chang referred Employee to HSS to evaluate her right ankle post-traumatic arthritis and possible CRPS. The note states Dr. Mason previously referred her there in 2015 and recommended she see Dr. Demetracopoulos. (Chang referral, March 16, 2018).

177) On March 21, 2018, Dr. Youngblood referred Employee to Paul Craig, Ph.D., for a psychological or neuropsychological evaluation. (Youngblood referral, March 21, 2018).

178) On March 29, 2018, Employee reported "excellent and unprecedented relief of the right lower extremity pain" following a right lumbar sympathetic treatment Dr. McAnally did a week prior. She displayed full ankle motion and there was no discoloration, swelling, sweating or trophic changes; her legs were equal temperature bilaterally and there was no pain to light touch. (McAnally report, March 29, 2018).

179) On April 23, 2018, Employee was doing "85%" better following her radiofrequency ablation performed a month prior. She was no longer parking in handicapped spaces and had switched from ANP Sexson's practice to "Lemon Tree." Employee's station and gait were unremarkable, but she demonstrated "a little bit" of atrophy on the right lower extremity. There was no evidence of causalgia signs. (McAnally report, April 23, 2018).

180) On May 21, 2018, Laura Johnston, M.D., evaluated Employee to establish care, and for "multiple medical problems." She transferred from ANP Sexson who had moved out-of-state. Employee's history included ADD, anxiety, depression and PTSD. She said she had experienced numbness on the fourth and fifth fingers of her right hand since she slipped on the ice. Employee stated her PTSD was exacerbated by going "to court" for her ankle injury. (Johnston report, May 21, 2018).

181) Dr. Johnston's May 21, 2018 report was the first time diagnosed PTSD or a PTSD history was mentioned in any medical record in this case. (Observations).

182) On June 4, 2018, Employee's three-phase bone scan showed increased activity at all three phases in the right ankle, which the radiologist opined could represent acute inflammatory or infectious processes. (Bone scan report, June 4, 2018).

183) On June 5, 2018, Employee went to the emergency room stating her recent bone scan showed an increase in uptake in the ankle, and "she thought it was suggestive of a current infectious process and her ankle." The history included anxiety and depression but not PTSD. On examination, Employee's right foot revealed no warmth, redness or pain. The ankle was not swollen and she had no "worst pain from baseline." The examining physician did not recommend additional studies but referred her back to Dr. Chang and to an infectious disease specialist as needed. (Timothy Silbaugh, M.D., report, June 5, 2018).

184) On June 11, 2018, Employee reported 2.5 months of complete relief from CRPS symptoms following the March 2018 radiofrequency ablation. She reported increased right foot and ankle pain, decreased motion, slight swelling and increased cold sensation. Employee had been able to mow her lawn for the first time in a few years. She also reported a new symptom, painless numbness on the fourth and fifth digits on her right hand. Dr. McAnally suspected thoracic outlet syndrome caused her right upper extremity issues. (McAnally report, June 11, 2018).

185) On June 18, 2018, Dr. Gritzka testified he is a board-certified orthopedic surgeon since 1973; he stopped doing surgery in 1988, though he still had an active practice performing direct patient care. He spent about 7.5 hours speaking with and examining Employee for an SIME. She did not "technically" have CRPS under the Budapest Criteria. Employee lacked many signs; those she had included skin with a "marbled appearance" on both lower extremities consistent with nicotine addiction. Psychological issues are "more common" with CRPS diagnoses. Nevertheless, he considered she may have "at least a variant" of CRPS type I. Dr. Gritzka thought it was unlikely Dr. Beaman would take Employee's case for distraction therapy since it is used for "end-stage" arthritis, which she does not have. Dr. Gritzka said PRP, and stem cell therapy, were both still "experimental" according to the American Academy of Orthopedic Surgeons. If Employee has PTSD, it will not play a role in the "physical healing" of her condition; it will play a role in "her ability to cope with and adapt to the injury." The main feature in PTSD is "catastrophic thinking." Dr. Gritzka recommended a "tertiary care" center for her, which would include multiple disciplines

like psychiatrists, psychologists, neurologists, and pain management specialists "all in one tent." He doubted "that there's much physically to do for her ankle." It would be "mandatory" for a tertiary clinic to have all her old records back "to when she jumped off a lifeguard tower" and injured her knee at age 15. In Dr. Gritzka's opinion, her ankle pain would distract Employee from some cognitive-type work perhaps 20 to 30 percent of the time because she would be thinking about her pain. He would expect this to decrease as her pain resolved. Dr. Gritzka thought Employee could return to a sedentary job for at least four hours and probably on good days six hours, though a performance based FCE would better define this. In his view, mental health or psychological treatment could improve the time she could spend at work. In Dr. Gritzka's opinion, psychological treatment would be related to Employee's work injury. He agreed with Dr. Youngblood she could do sedentary work, at least part-time. One factor that would feature in her ability to return to work would be "motivation frankly." In his opinion, "I think that her ankle condition is not a sentence for inability to work full time ever." Dr. Gritzka reviewed Dr. Craig's résumé and agreed he was an appropriate psychologist to evaluate Employee. He would need her medical records "whatever can be obtained." Dr. Gritzka reviewed her ankle bone scan and said it confirmed there was still a painful problem in her ankle. "A history of psychological issues or problems" is a risk factor for CRPS. In his view, a person's psychological condition probably cannot become a substantial cause of CRPS, and it is not a substantial cause of Employee's "condition." When Dr. Gritzka measured Employee's range of motion, it was not as good as her reports from 2016. He did not think PT was going to do Employee much good and said:

> I think she is what she is physically and then the question is: How does she cope with it? I don't think there's anything -- I think she's -- her ankle is what it is until she's old enough to get a total ankle.

Employee has "an irreparable ankle injury." Dr. Gritzka sees the same problem with veterans who are "never going to get their leg back on right, but they're still out in the world and they've got to go on living." Meanwhile, for the next 15 or 20 years in Employee's situation, "there's nothing accepted by the FDA or that's entered mainstream orthopedic surgery to deal with the situation that she has in her ankle." The fact Employee "hasn't coped or adapted" leads Dr. Gritzka to believe she was having problems coping and adapting to her injury. For example:

> Well, I've seen people with similar injuries or joint derangements that were anatomically or pathologically similar and yet are not significantly handicapped or

> impaired. Now, that's a mystery that -- so taken as an isolated entity, her ankle, what you can say is, yes, it's a physical problem. There is impairment there. And so now what? She's got to somehow adapt to it, and that is really a psychological adaptation. . . .

Employee's right knee goes back to at least 2005. It degenerated since then and he "could argue" the work injury aggravated it. But on examination "her right knee was basically all normal." In Dr. Gritzka's opinion, Employee was never medically stable since her injury. He opined her prior right knee medial meniscus issue was the substantial cause of the findings at her post-injury arthroscopic knee surgery. A psychosocial issue or condition is related to this case, but he would defer to a psychiatrist or psychologist; he had difficulty obtaining a history from Employee because she "catastrophized." Dr. Gritzka has done at least 30,000 reports like this one, but Employee's was "exceptionally difficult to get through" because she wanted to comment on all her medical records and her "response was exceptional." How she responds to her ankle injury is "a psychological or psychosocial issue." Dr. Gritzka opined, "I think her response is a little atypical." (Deposition of Thomas Gritzka, M.D., June 18, 2018).

186) On June 19, 2018, Dr. Johnston referred Employee to Monarch Psychiatric for Adderall management and a refill of Clonazepam. (Johnston report, June 19, 2018).

187) On July 3, 2018, Dr. Craig stated it was beneficial for him to have medical records of Employee's history and stated, "Review of all records is an integral aspect of my eval":

> Note: Review of records informs me but does not bias me or cause me to interpret my results differently. I always review as many records as possible for an IME. (Dr. Craig responses July 3, 2018).

188) On July 7, 2018, Employee emailed Employer and asked for the contact information for Employer's "board members." (Employee email, July 7, 2018).

189) On July 10, 2018, Fanning asked Employee for context for her request about Employer's board members' personal contact information. (Fanning email, July 10, 2018).

190) On July 10, 2018, in response to Fanning's same-dated email, Employee said she wanted Employer's board members' contact information "to address all the problems and now more that have come to my attention that have not been addressed with 'your' processes." (Employee email, July 10, 2018).

191) On July 13, 2018, Fanning told Employee to direct her inquiries about her case to counsel. Employee responded and said, "What I have to say has absolutely nothing to do with current and ongoing litigation regarding myself. However, it has absolutely everything to do with compliance and the board needs to be made aware. I will write a letter to the individual I know on the board." (Fanning email; Employee email, July 13, 2018).

192) On July 17, 2018, Jan Kiele, M.D., psychiatrist with Monarch Psychiatric, saw Employee and found her to be a "moderately reliable historian" who demonstrated a tendency to "minimize symptoms." She entered mental health services around age eight and was diagnosed with ADD. Employee felt anxious "essentially full-time." Employee reported intrusive thoughts about her childhood trauma when she was called to testify in her work injury case. She cut her mother out of her life because of Employee's childhood trauma. Her family had abused and neglected her grandfather and wanted his money; she was able to protect him for a time. Employee reported not having used recreational drugs since her second year in college. She recounted two prior suicide attempts: in 1994 and 2001. Dr. Kiele diagnosed ADD; PTSD; and major depressive disorder. (Kiele report, July 17, 2018).

193) On July 24, 2018, the parties appeared for a hearing on Employer's appeal from the designee's March 13, 2018 decision granting Employee's protective order on the medical record releases. During her argument, Employee's former attorney Huna stated:

> At the same time she was seeking treatment, she had -- she was seeking treatment for mental health issues that she had that were ongoing, of course, sometimes and that mental health provider provided some of those records and requested payment from the employer. . . . Ms. Leigh filed a petition to exclude any medical records and did not file a claim for mental health treatment and continues not to file a claim for mental health treatment. . . . This is -- Ms. Leigh is not requesting mental health benefits. . . . If she's complain -- she's not claiming a mental health condition.

When asked what body parts she was claiming, Employee testified, "My ankle, my knee and my shoulder." (AWCB Administrative Appeal Hearing transcript, July 24, 2018).

194) On July 25, 2018, Dr. Kiele added to her diagnoses "nicotine dependence." The diagnoses remained the same throughout Dr. Kiel's treatment, except for nicotine dependence, which later changed. (Kiele report, July 25, 2018; observations).

195) On July 26, 2018, *Leigh v. Alaska Children's Services*, AWCB Dec. No 18-0074 (July 26, 2018) (*Leigh I*), determined Employer had a right to discover Employee's psychological,

psychiatric and mental health counseling records and ordered her to sign a release from 1999 to the present. It also made a factual finding, "Employee's claim does not mention any claim related to mental health issues." *Leigh I* found the designee granted her protective order request "based solely on Employee's statement that she was not claiming mental health benefits." (*Leigh I*).

196) On August 8, 2018, Employee reported high pain levels and physical limitations with activity. She considered harming herself but decided instead to help her grandfather. At this visit her gait was unsteady with a "severe limp." (Kiele report, August 8, 2018).

197) On August 15, 2018, Employee remained "very anxious." "She was able to testify in her grandfather's case, and in her own, recently. These events were anxiety-provoking." Employee appeared with an unsteady gait and a "severe limp." (Kiele report, August 15, 2018).

198) On August 21, 2018, Dr. McAnally performed another lumbar radiofrequency ablation. He assessed causalgia in the right lower limb and an anxiety disorder. His diagnosis was now CRPS II. (McAnally report, August 21, 2018).

199) On August 22, 2018, Dr. Craig performed an EME. Employee said during her fall, in addition to breaking her ankle, she injured her right knee and shoulder. She felt Dr. Youngblood would "like me to give up hope, but I refuse." Employee denied any other hospitalizations except for her 2005 knee injury and her work-related surgeries. She was on Medicaid and had difficulty finding a counselor or mental health provider who would treat her. However, Employee had seen psychiatrist Dr. Kiele for about two months. She said medical records contemporaneous with her work injury misrepresented her prescriptions at that time. Employee offered an early history of childhood trauma by a family friend and began counseling for this when she was about eight years old. She was psychiatrically hospitalized in 2001 in Arizona after she took Tylenol. Employee said she infrequently smoked marijuana and sometimes did it two or three times a week. She smoked 1.5 packs of cigarettes per day. Employee obtained a court-issued restraining order against her mother in 2017 associated with her grandfather's estate. Though she can drive, Employee said she cannot drive long distances due to pain. Employee continued working as an accountant for a court reporter at least through her third surgery; after that she and that employer mutually decided she was not able to do the job satisfactorily. Employee said she had applied for and was hired for an accounting job at a real estate firm but her CRPS kept her from being able to perform those duties. She also claimed to have not been employed since February 2016. She had also worked as a controller. Employee denied paranoia but remained "hyper vigilant" meaning "she keeps an

eye out for any abuse of power." She had not been swimming lately because access to pools was expensive in Anchorage. Employee asked Dr. Craig repeatedly what a psychological evaluation had to do with her ankle. After Dr. Craig explained this to her, Employee refused to participate in any objective psychological testing because he was not directly examining her ankle. Dr. Craig obtained no objective measures of psychological functioning. His opinion was based exclusively on his clinical interview and record review. Dr. Craig has extensive experience dealing with patients struggling with chronic pain. In his opinion, Employee has an unequivocal history of more than one psychiatric diagnosis, including "unspecified trauma and stress-related disorder"; "unspecified bipolar disorder"; and "psychological factors affecting other medical conditions (moderate to severe)." The "unspecified trauma disorder" and "unspecified bipolar diagnoses" predated the work injury. As for the psychological factors affecting other medical conditions diagnosis, those factors were undoubtedly extant prior to her work injury and she behaved in a more dependent manner after her work injury "than is typically expected." Dr. Craig referenced Employee's request for a larger pillow and personal care attendants while Dr. Duddy was treating her, as well as her angry response to his released to full-duty work. In Dr. Craig's opinion, this behavior is consistent with an underlying, long-standing psychiatric diagnosis of bipolar disorder and her poor psychological responses to her work injury could not have existed without the injury. The primary diagnoses involving childhood trauma and a bipolar disorder were not caused by the work injury. Once Employee was physically injured, her long-standing psychiatric issues contributed to her having a poor response to recovery from this injury. In Dr. Craig's opinion, psychosocial factors have played a "very significant" role in Employee's disability behavior since her work injury. Her trauma and court-room testimony-related experience as a child "could be characterized as [a] profound" psychosocial stressor. Post-injury, the trauma associated with Employee's grandfather's death and estate litigation continued to play an important role regarding her perception of pain and disability behaviors. In Dr. Craig's opinion, Employee's psychiatric issues are "at least moderate and probably severe," based upon her medications prescribed before she was injured and her self-reported psychosocial history. "The significance of Ms. Leigh's psychological issues is extremely high":

> If Ms. Leigh did not have the preexisting psychosocial stressors and did not have preexisting psychiatric symptoms for which she was treated with major psychotropic medications, her response to her orthopedic injury would have

> undoubtedly been consistent with the pattern of recovery enjoyed by other individuals who fracture an ankle and/or tear a meniscus. . . .
> . . . .
>
> Unfortunately, Ms. Leigh became acutely psychiatrically symptomatic once Dr. Duddy released her to return to work about four months after her injury. . . . In summary, Ms. Leigh's preexisting psychiatric condition has played a very significant role with regard to her persistent and increasing pain complaints and disability behaviors. . . .
> . . . .
>
> The persistence and extent of Ms. Leigh's perceived physical disability are thought to be directly related to her preexisting psychological diagnoses.

In Dr. Craig's opinion, June 24, 2015, the day Dr. Duddy released Employee to full duty, was the "precise date when the psychological factors became much more significant than the physical injury with regard to defining her disability behavior. Her increasing chronic pain complaints emerged thereafter." To treat her psychiatric conditions, Dr. Craig recommended life-long counseling and outpatient psychiatric care. However, Employee's "need for ongoing mental health treatment was not caused by the work injury during February 2015." In his opinion, additional invasive orthopedic treatments will not result in improvement regarding Employee's "disability behaviors." Dr. Craig noted ample research pointed toward a significant relationship between chronic nicotine addiction and chronic mental illness. He said:

> At this time, Ms. Leigh is so entrenched in her self-perception as a disabled individual that it is highly improbable that yet another orthopedic treatment will notably alter her rehabilitation potential.

Dr. Craig added that adapting to subtle long-term changes caused by injury is "a common situation for the normal adult" as they progress throughout adulthood. In his opinion, Employee's poor response to being released to work four months after her injury was "directly indicative of psychiatric impairment rather than a substantial orthopedic problem." In Dr. Craig's opinion, "however, the primary reason for her persistent disability behavior more than four months post-accident was related to her psychiatric status," which predated her work injury. (Craig report, August 22, 2018).

200) On August 28, 2018, Benjamin Westley, M.D., examined Employee for a possible right ankle infection. He had spoken to Dr. Chang who reported Employee had post-traumatic arthritis

and "by her description 'no cartilage"' and Dr. Chang had referred her for an ankle fusion, but she had declined. A recent ankle MRI had suggested a possible ankle infection. Employee reported her ankle pain was "getting better recently." Dr. Westley said, "She has a potentially contributing history of mental illness and receives multiple medications." Employee's reported medical history included ADD, anxiety, depression and PTSD. She showed a "slightly withdrawn or atypical affect." Employee ambulated "without apparent discomfort." Dr. Westley found no evidence of active infection in Employee's right ankle. (Westley report, August 28, 2018).

201) Dr. Wesley's report is the first time PTSD is mentioned in Employee's orthopedic-related medical records. (Observations).

202) On August 29, 2018, Employee was "hostile," and her gait was "characterized by a severe limp." (Kiele report, August 29, 2018).

203) On September 12, 2018, Employee appeared with an unsteady gait and "a severe limp." (Kiele report, September 12, 2018).

204) On September 20, 2018, Dr. McAnally saw Employee for right periscapular and shoulder pain. A prior injection relieved her symptoms but they had now come back with "such severity" that she was experiencing numbness down to her fingers and had lost some active shoulder motion. He performed another shoulder injection. (McAnally report, September 20, 2018).

205) On September 24, 2018, in response to Employee's inquiry, Fanning, now Employer's Director of Performance Improvement-Compliance Officer, told her Employer took fraud, waste, abuse and HIPAA concerns seriously and encouraged her to provide evidence supporting any allegations to facilitate Employer's investigation. (Fanning email, September 24, 2018).

206) On September 24, 2018, Employee responded to Fanning's same-dated email:

> I am far beyond that. I did my due diligence when I worked for AK child and family [sic] and was met with retaliation, harassment, and hostile work environment.
>
> I have my documentation with all the proof that I already presented to the agency leadership team; the agency had better have the proof that something was done and they were not complicit in the fraud or HIPAA violations.
>
> I don't make accusations lightly; before I ever met with the leadership team I had all the proof. Everyone I met with took notes and Anne Denis-Choi even asked me for a copy of my notes so it's interesting that you would even begin to claim that

> my notes can't be shared with me. My notes should most definitely be in my employee file.
>
> Do your own investigation. I gave that agency everything they ever needed and they choose [sic] to look the other way and harass and retaliate against me instead of insuring the safety of the children.
>
> The priorities are little skewed. Please don't contact me again. (Employee email, September 24, 2018).

207) On September 26, 2018, Employee reported "her claim was denied." She did not see any reason for Employer to request her psychiatric records and felt violated because, in her view, they had "no bearing on her physical injury." Employee had received a request from Employer about "a privacy violation that occurred during the course of her employment, when a fellow employee had someone filming clients for a rap video." Employer requested her notes, which she said she already provided, and she did not trust them with her own records "considering her belief that a major privacy violation occurred in this situation." (Kiele report, September 26, 2018).

208) On October 10, 2018, Employee called Dr. Chang's office and wondered if DeNovo was an option for her. (Chang message log, October 10, 2018).

209) On October 11, 2018, Dr. Chang responded to Employee's October 10, 2018 question and said, "No [DeNovo] is for small isolated lesions less than 1 cm." Dr. Chang's office called and told her that Dr. Chang "did not recommend DeNovo." (Chang message log, October 11, 2018).

210) On October 29, 2018, Employee said she read Dr. Craig's report and "interpreted it to mean that her problems did not stem from her ankle injury, but from childhood trauma, her obesity, and smoking (which she has discontinued)." She felt "punished" for what somebody else had done to her. Employee said she would send Dr. Craig's report to her attending psychiatrist. She presented on this occasion with an ongoing "severe limp from ankle disability, with pain especially while walking." (Kiele report, October 29, 2018).

211) On October 31, 2018, in response to Employee's telephone calls to his office, Dr. Chang said "she needs a fusion" for her ankle. (Chang message log, October 31, 2018).

212) On November 1, 2018, the parties attended a prehearing conference and Employee demanded a hearing on her merit claims. Employer objected noting it still had not been able to discover her mental health records and Employee had taken that issue to the Alaska Supreme Court on a petition for review. It also contended the Board had no jurisdiction because the material issue

affecting all past and ongoing benefits was pending before the Court. Employee's attorney revealed Employee had significant childhood trauma. The designee set a merit hearing for January 29 and 30, 2019, and a follow-up prehearing conference for December 2018, to add Employer's petition appealing the designee's decision to set the hearing, as an issue for the January hearing. (Prehearing Conference transcript, November 1, 2018).

213) On November 7, 2018, Dr. Chang said, "DeNovo does not work well on bigger lesions and he will not do it." (Chang message log, November 7, 2018).

214) On November 12, 2018, Employee reported she had been told it may be too late for the originally recommended treatment for her ankle because the insurer would not pay for it. (Kiele report, November 12, 2018).

215) On November 13, 2018, Dr. Chang's office spoke with Employee and told her "DeNovo is not an option" and Dr. Chang would not do it. Employee said "maybe just 'cutting it off'" is an acceptable option. (Chang message log, November 13, 2018).

216) On December 12, 2018, the parties attended a prehearing conference to discuss Employer's petition to continue the January 29 and 30, 2019 hearing. Employer attempted to get an earlier hearing on the petition to continue to avoid incurring unnecessary expenses in the event the Board continued the hearing. Employee stated, due to "very high expense too because we already have witnesses," she and her lawyer "really need to know if this hearing's going to move forward as well. . . ." (Prehearing Conference transcript, December 12, 2018).

217) On December 19, 2018, Byron Perkins, D.O., saw and treated Employee with osteopathic manipulation as a new patient for her right ankle pain. (Perkins report, December 19, 2018).

218) On December 28, 2018, Employee sent an email to Fanning:

> I'm assuming that per usual there is no communication, otherwise you would very much be aware that I've taken Alaska Children Services to the AK Supreme Court.
>
> I broke my ankle and suffered a great deal and continue to do so, and to add insult to injury you are demanding my psych records since I was a child. . . . You have just put the majority of the children in AK child's [sic] facility dependent on this Supreme Court decision. As always I will continue to look out for the children's best interest even if the agency fails to do so.
>
> The state of Arizona still to this day protects me and my identity even if at this moment the state of AK is failing a victim, I intend to change that. . . . I find it incredibly sad that I am defending myself against a mental health facility and that

> this mental health facility refuses to allow a hearing on the merits. . . . (Employee email, December 28, 2018).

219) On January 8, 2019, Employee reported feeling "persistently anxious," and her hearing had been canceled even though she had arranged for four doctors to testify. "She feels she's lost control of her life, and it is in the hands of attorneys." Employee wondered why "the opposing party wants her psychiatric records, which she refuses to release." (Kiele record, January 8, 2019).

220) On January 9, 2019, Employee told Dr. McAnally her CRPS symptoms were essentially resolved. He recommended aqua therapy. Dr. McAnally had spoken with Dr. Chang who said nothing short of a fusion would benefit her foot. He referred Employee to Select PT and would refer her to Dr. Thomas. (McAnally report, January 9, 2019).

221) On January 16, 2019, Dr. Perkins said:

> Pt indicates she underwent an independent medical exam and a battery of psychological test[s] [d]ue to a past history of trauma, and that it was implied that her CRPS sx are from her previous trauma, not from her fracture. Her history would suggest not. She developed the CRPS after a regional anesthesia block in her R thigh and leg, and had [e]xcruciating pain symptoms with sudomotor changes and body/skin temperature changes since that event. . . . I cannot connect her CRPS symptoms to a childhood trauma, when she has a much more recent and pertinent trauma including her [r]egional anesthesia as the more probable cause. She is also responding appropriately to treatment. (Perkins report, January 19, 2019).

222) On January 21, 2019, Employee presented for aquatic based rehabilitation at Select PT. Though she was not working, Employee was "excited about" her recent ability to ascend and descend stairs. Her ankle treatment with Dr. Perkins was "currently only providing short term relief." (PT report, January 21, 2019).

223) On February 1, 2019, *Leigh v. Alaska Children's Services*, AWCB Dec. No 19-0012 (February 1, 2019) (*Leigh II*), continued Employee's merit hearing until after the Alaska Supreme Court decided her petition for review on *Leigh I*. (*Leigh II*).

224) On February 5, 2019, Employee said she had been wanting to start a part-time job. She was disappointed that "the court" had ruled the Board "no longer has jurisdiction over her case," which was before the Court. On this occasion, Employee had an unsteady gait "with very severe limp" and signs of anxiety. (Kiele report, February 5, 2019).

225) On February 6, 2019, Employee denied any numbness, tingling, weakness, or loss of sensation and had no "recent history of anxiety, depression or psychiatric symptoms." She was

able to squat fully with return to standing without difficulty. Dr. Perkins diagnosed an ankle fracture, ankle pain, "somatic dysfunction of right lower extremity" and non-allopathic lesions on the lower extremities. He recommended and performed osteopathic manipulative treatment. (Perkins report, February 6, 2019).

226) On February 13, 2019, Dr. Perkins said Employee's ankle pain was "not due to CRPS." (Perkins report, February 13, 2019).

227) On February 15, 2019, Employee sought an order stating, "No decision shall be placed on the internet that mentions anything regarding mental health." (Petition, February 15, 2019).

228) On February 15, 2019, Employee asked for a protective order and an explanation for "what factual basis did the board have" for its alleged statement that "no harm" would come to her if it turned out her psychological records were irrelevant to her case. (Petition, February 15, 2019).

229) On February 15, 2019, Employee asked for reconsideration or modification of the December 29, 2018 prehearing conference order and asked, "Who attended hearing, why were my due process rights completely ignored?" (Petition, February 15, 2019).

230) On February 15, 2019, Employee requested reconsideration or modification of *Leigh II*. (Petition, February 15, 2019).

231) On February 15, 2019, Employee asked for an order compelling discovery, requesting from former adjuster Rush, "I would like all her notes, bills, correspondence w/previous employer to include formal complaints made by present/past employees with [N]orthern [A]djusters." (Petition, February 15, 2019).

232) On February 15, 2019, Employee sought an order compelling discovery alleging, "Alaska Child and Family through their attorneys continue to withhold discovery, i.e., investigational reports that should be in my employee file. In addition I would like previous employer to answer questions that have been avoided." (Petition, February 15, 2019).

233) On February 15, 2019, Employee asked for an order compelling discovery, stating, "Request Paddock file with the board the cost to defend this claim so far i.e. attorney fees, costs, adjusters cost, mediation, SIME, EIMEs." (Petition, February 15, 2019).

234) On February 15, 2019, Employee sought an order compelling discovery contending, "Ms. Paddock has asked for cross-examination of my doctors, yet she has not scheduled any depositions for them and she single-handedly took away my hearing on the merits. She should have to pay the cost of depositions now." (Petition, February 15, 2019).

235) On February 20, 2019, Employee reported to PT she was able to walk around the grocery store every day with mild symptoms. (PT report, January 21, 2019).

236) On February 21, 2019, *Leigh v. Alaska Children's Services*, AWCB Dec. No 19-0022 (February 21, 2019) (*Leigh III*), denied Employee's request to reconsider *Leigh II*. (*Leigh III*).

237) On April 4, 2019, Employee claimed approximately $2,000 and an "Immediate request for PRP treatment based on additional medical opinion (attached) quotes for treatment will be forthcoming. If immediate request is not granted, I request Dr. Youngblood (Employer EME) to answer interrogatories." (Claim for Workers' Compensation Benefits, April 4, 2019).

238) On April 19, 2019, Employer denied PRP treatments in reliance on Dr. Chang's January 13, 2017, Dr. Youngblood's March 10, 2017, and Dr. Gritzka's January 16, 2018 reports in which they opined PRP injections were not reasonable or necessary. (Controversion Notice, April 19, 2019).

239) On March 7, 2019, Employee's physical therapists recorded, "She continues to experience pain in anterior medial aspect" of her ankle joint "with most activities, but she expects that to be there forever." (PT report, March 7, 2019).

240) On March 8, 2019, Kenneth Thomas, M.D., saw Employee and charted:

> Over the past 6 months she has experienced progressive improvement in her right ankle symptoms. Dr. McAnally referred the patient to my office for a 2nd opinion regarding platelet-rich plasma injections as Dr. Chang reported to the insurance company that this would not improve her symptoms.

Employee denied recreational drug use. Dr. Thomas wanted to review her records and perform a full examination in about three weeks. (Thomas report, March 8, 2019).

241) On March 13, 2019, the parties told the Board's designee they had previously made a written stipulation that the Board would publish no references to Employee's childhood trauma. However, Employee stated her former attorney Huna never filed the stipulation with the Board because Employee did not agree with it; she thought it should say no mental health records should be referenced in the Board's decision. The designee advised the parties, "The Board's jurisdiction has been suspended as of the date that you filed with the Supreme Court for review. We've got -- as far as the Board's concerned, we've got to wait until that appeal has been ordered on before we can move forward on anything." Employee complained about delay in her case and the designee reiterated that once she filed for appellate review with the Supreme Court, the Board's jurisdiction was suspended. Employee replied, "Well, I had to file an appeal with the Supreme Court.

Otherwise -- I mean, there are certain things called victim's rights." Employer contended there was no basis for a hearing on the merits until the Court cases was resolved. Employee demanded her personnel file because she wanted "investigative reports" following "the complaint" she made. She said she had quit smoking. (Prehearing Conference transcript, March 13, 2019).

242) On March 14, 2019, Employer filed and served a spreadsheet beginning February 20, 2015 and ending March 5, 2019. The first three pages show the payees' names, a transaction description, the service start and end date, the check number, check issuance date and the amount paid for indemnity benefits. They show payments made only to Employee and to the State of Alaska Second Injury Fund totaling $63,500.32. Pages four through 14 itemize all medical costs during the respective dates totaling $200,448.97; included in medical costs are nurse case management and EME expenses. Page 15 shows costs for Employee's vocational rehabilitation eligibility evaluation totaling $4,970. Pages 16 through 19 itemize expenses including EME costs, photocopy charges, and adjusters' fees [which are not provided]; all itemized expenses for which amounts were given total $294,004.29. Attorney fees and costs are not included on the spreadsheet. (Claim Payments by Line Sent to Attorney, March 14, 2019).

243) On March 29, 2019, Dr. Thomas stated Employee's CRPS was "improving." She had been advised to either undergo an ankle fusion or replacement, "both of which the patient refuses." Employee had been referred to HSS for a juvenile cartilage procedure, but she said, "Workers' Compensation will not approve this." She had full ankle motion with cartilage damage on both sides and swelling up her tendons. Dr. Thomas opined she was a candidate for platelet-rich plasma therapy or juvenile cartilage and recommended HSS for this procedure. He further advised, based on his MRI review, there "is not a surgical procedure that would repair this." Dr. Thomas agreed Employee was too young for an ankle fusion or replacement. Employee said she no longer wanted ankle amputation because her CRPS symptoms were "improving." Dr. Thomas opined her symptoms would continue to improve. (Thomas report, March 29, 2019).

244) On April 2, 2019, Employee reported she had seen another orthopedist recently and was disappointed could not help her surgically, though she conceded this was not a surprise to her. (Kiele report, April 2, 2019).

245) On April 10, 2019, Jared Kirkham, M.D., saw Employee on referral from Dr. Thomas. He charted a history including anxiety, depression, PTSD and ADD. According to her report, "Overall, she has not had any significant improvement in her right ankle pain since the injury, but

she has had significant improvement in her CRPS related pain." Dr. Kirkham noted Employee had received only 20-30 percent relief from right ankle local anesthetic and steroid injections, so he was not confident her symptoms originated from the tibiotalar joint. Employee demonstrated "only very mild elements of CRPS" at his visit. He opined Employee had, "Significant psychosocial overlay including a history of anxiety, depression, PTSD," and a history of childhood trauma. Dr. Kirkham did not recommend ankle fusion or replacement because she had "actually quite good" ankle function. He discussed PRP and said there was no guarantee it would assist her condition and "has not been shown to regrow cartilage." Risks included potentially flaring her CRPS. Employee wanted to proceed and would submit the request to her insurer, but if they did not approve it then "she may pay with her own funds." In Dr. Kirkham's opinion, "overall, I think the best thing that the patient can do for her ongoing right ankle pain is continue to stay active." He did not recommend any restrictions but recommended "activities as tolerated" and suggested "she consider pursuing work as an accountant." In a separate, same-dated note, Dr. Kirkham's office said, "The cost for a PRP injection with Dr. Kirkham and Anchorage Fracture And Orthopedic Clinic is $950. . . ." (Kirkham reports, April 10, 2019).

246) By April 11, 2019, Employee had undergone three months of PT beginning January 21, 2019. During this she had no allodynia. (PT reports, January 21, 2019 through April 11, 2019).

247) Employee resumed PT from April 16, 2019 through October 4, 2019, totaling an additional 64 visits for aquatic and land-based therapy paid by Medicaid. The medical records for this PT are generally redundant but show Employee progressed to hopping and performing jumping jacks underwater for five minutes or more without symptoms. During these visits she had no allodynia. (PT reports, April 16, 2019 through October 4, 2019).

248) On April 18, 2019, Dr. Perkins said, "We concur with a trial of PRP for ankle pain." (Perkins report, April 18, 2019).

249) On April 30, 2019, Employee said "she does not want any court precedent allowing the Workers' Compensation Board to demand mental health records." (Kiele report April 30, 2019).

250) On May 7, 2019, the Commission in *Leigh v. Alaska Children's Services*, AWCAC Dec. No.19-005 (May 7, 2019) denied her petition for review on *Leigh II* and *Leigh III*. (*Leigh IV*).

251) On May 8, 2019, Employee stated her [correct] understanding that suspended jurisdiction did not affect the parties' rights to have the Board address discovery matters. The designee

reiterated his [incorrect] understanding that the pending Court review stopped the Board from ruling on all discovery matters. (Prehearing Conference transcript, May 8, 2019).

252) On May 21, 2019, Employee reported "nothing new going on" and everything was the "same old." (Perkins report, May 21, 2019).

253) By June 7, 2019, Employee reported her pain was "mainly in her right thigh." She had been walking regularly and continued water aerobics. (Perkins report, June 7, 2019).

254) On June 24, 2019, Daniels wrote Dr. Thomas and asked how many PRP injections he would consider as part of his recommended trial. (Daniels letter, June 24, 2019).

255) On June 24, 2019, Employee requested a "stay" on releases. (Petition, June 24, 2019).

256) On July 9, 2019, former Division director Mitchell informed Employee how to subpoena a witness for a deposition. He also explained how a party can request cross-examination on a medical report author listed on medical summaries filed with the Board and the time limits for doing so. (Notice of Intent to Rely, May 4, 2020; Mitchell email, July 9, 2019).

257) On July 12, 2019, Employee emailed former director Grey Mitchell and Susan Daniels:

> Mrs. Daniels: are you going to be making Jessica Rush available when my case finally goes to hearing? . . . I hope you realize by now I will NEVER negotiate with [a] terrorist and that's exactly how I view you. I will never allow this precedent to stand (you must forget who your client is, and where ONE of the jobs I worked when I was injured, this precedent would directly affect the children I fought for when I worked for your client). DON'T EVER FORGET IT! (Employee email, July 12, 2019; emphasis in original).

258) On July 12, 2019, Employee emailed Mitchell and former Acting Chief of Adjudications Ron Ringel and complained about costs incurred by adjustors, insurers and attorneys:

> Please make sure and let the governor know about what I just said especially during these very difficult financial times for the state, in addition let them know that AK CHILD for good reason also should not be receiving Medicaid money under their current leadership. (Employee email, July 12, 2019).

259) On July 22, 2019, Employee admitted she knew why Paddock selected 1999 as the start date for the mental health record release, from the "second [Paddock] said it was from my deposition testimony" at the July 24, 2018 hearing. Employee understood the "going 2 years previous" discovery rule. (Employee email, July 22, 2019).

260) On July 23, 2019, Employee stated she had put her dog down that day, she was frustrated by the legal system and a doctor did not show up for his deposition. "She believes that the opposing attorney has committed perjury." (Kiele report, July 23, 2019).

261) On July 25, 2019, Employee said she has a degree in accounting but her "specialty is auditing." She had looked for work. (Employee email, July 25, 2019).

262) On August 1, 2019, Employee told Paddock:

> There was a very public suicide that happened in Alaska, that individual was treated at AK CHILD. AK CHILD knows that I will never agree with what they decided to do with that individual . . . or how about how staff found out about the suicide? I will always have more to say. . . . (Employee email, August 1, 2019; ellipses in original).

263) On August 2, 2019, Employee told Paddock:

> In case your clients don't keep records (or altered them; I very much have proof of the alterations of legal documents MADE by AK CHILD). Specifically, attorneys were even involved and AK CHILD gave their attorney altered documents regarding a protective order of an employee who has the original and is going to testify. . . . (Employee email, August 2, 2019; ellipses in original).

264) On August 6, 2019, Dr. McAnally referred Employee to occupational therapy and recommended she seek legal counsel to assist with her claim. (McAnally report, August 6, 2019).

265) On August 14, 2019, Paddock wrote Employee in response to her July 29, 2019 and August 12, 2019 email requests for production of correspondence. Paddock stated that on July 23, 2019, Daniels provided authorization to Dr. Kirkham's office for a PRP injection. Paddock stated, "You are able to schedule this PRP injection with Dr. Kirkham under the workers' compensation claim." She also included correspondence from the adjuster and her office to HSS and HSS physician Mark Drakos, M.D., asking if HSS and Dr. Drakos accepted workers' compensation insurance. Paddock explained that to date, neither HSS nor Dr. Drakos had responded. She further explained that on July 23, 2019, Daniels called HSS and was told that while HSS takes workers' compensation insurance, not all the physicians practicing there do. After further inquiry, Daniels learned HSS physicians do not take non-surgical patients; in other words, their in-patient programs are designed for surgical patients. HSS could not identify a physician at its facility who would see a non-surgical candidate who currently accepted workers' compensation insurance. Paddock concluded, "Without being able to identify a physician who practices at HSS and who accepts out-

of-state workers' compensation insurance, it is not possible for the carrier to authorize treatment at HSS." She suggested Employee or her treating physician attempt to identify an HSS physician who would accept out-of-state payment from the carrier and accept her as a patient and advised Employee in that event "the carrier will be able to give more consideration to treatment there." (Paddock letter, August 14, 2019).

266) On August 16, 2019, Employee acknowledged PRP treatment "comes with risks too." (Employee email, August 16, 2019).

267) On August 19, 2019, Employee expressed frustration with attorneys and alleged her physician "was bullied into releasing records" for which she had not signed a release. She reported "they [Employer] have authorized treatment." (Kiele report, August 19, 2019).

268) On August 27, 2019, Katherine Richardson, OT, saw Employee to provide occupational therapy. Employee presented with numerous complaints and objective signs. She had difficulties with weight-bearing and her driving was limited to less than 20 to 30 minutes per trip given her decreased reaction time, increased fatigue and static right foot and ankle positioning. Richardson stressed activity, daily activities and decreasing pain. (Richardson report, August 27, 2019).

269) On September 24, 2019, Employee said she had increased pain following a hike with friends, but her pain returned to baseline after one day. She attributed the pain to an ill-fitting ankle brace. (Richardson report, September 24, 2019).

270) On October 4 and 10, 2019, Employee obtained new ankle braces from Dr. Chang's office. (Chang report, October 4 and 10, 2019).

271) On October 8, 2019, Employee reported "persistent but manageable neuropathic symptoms" in her right lower extremity. The previous Friday, she was discharged from PT "due to great progress." Dr. McAnally's physician's assistant Scott Schafer said Employee appeared to be doing "very well at this time." (Schafer report, October 8, 2019).

272) On October 9, 2019, Employee reported her pain was better managed and she was ready to start planning for her future. She could stand longer with equal weight-bearing. (Richardson report, October 9, 2019).

273) On October 24, 2019, Employee said her right thigh and ankle pain was worsening. She was walking with a "slight limp." (Johnston report, October 24, 2019).

274) On November 19, 2019, Employee said she had turned down a settlement offer and, "I'm looking to go back to work." (Kiele report, November 19, 2019).

275) This marked the informal, unsuccessful conclusion of the parties' mediation efforts, which had begun on February 15, 2018. (Experience, judgment and inferences drawn from the above).

276) On November 27, 2019, Employee sought a protective order against a release Smith had sent on November 13, 2019, requesting right ankle records from 2007 to the present. She stated:

> 1. The board has no jurisdiction to hear any matter in the above reference[d] case.
> 2. Mr. Smith's clients had valid releases and did not complete their due diligence in obtaining records. Mr. Smith should have all the evidence he needs to support his client's controversions.
> 3. The continued unprecedented irregularities in this case make it impossible for the board to hear any matter until such time as the Supreme Court makes a ruling and jurisdiction has been restored to the board; so this protective order is a mere formality to reiterate that the Employer, [t]he adjuster, [t]he insurance company and their attorneys continue to waste time and resources. (Petition – protective order, November 27, 2019).

277) On December 11, 2019, the parties attended a prehearing conference. Employer withdrew its November 9, 2015, February 1, 2016 (only the part related to PRP injections), February 9, 2016 (only the part pertaining to Employee's right ankle), March 30, 2017, (only the part pertaining to disability benefits, medical treatment and related transportation expenses after September 13, 2016), and April 19, 2019 controversions. Smith stated in conjunction with these withdrawn denials, Employer would be sending Employee a check for TTD benefits covering from March 31, 2017, to the then-present and ongoing, which totaled $93,874.98, plus interest. Employee contended she was also entitled to TPD benefits from December 22, 2015, because she worked until February 11, 2016, after she obtained a ride to work from her co-worker and was then terminated. She contended Employer also owed her TTD benefits February 12, 2016, through her next ankle surgery on April 13, 2016. Smith agreed to go back and "look at that." Employee contended she never received Employer's offer of employment because "they sent it to the wrong address"; as soon as she received it, Employee contended "I did go to work the very next day." She also stated she had sent Smith an email stating "if HSS was pre-authorized, that I would sign a release and I -- I'm not taking that back." Employee also said, "I don't even have to sign any release at all." Employer noted it could not pay her medical bills unless she signed a medical record release. Nonetheless, it was willing to "send her a pre-authorization letter," which in its view, "typically is something that can only be board ordered but we're going to go ahead and take the step so that she can put it into her own hands and obtain that treatment." Smith further

explained "anything that Dr. Youngblood had given as an opinion on I am no longer maintaining a controversion based on his opinion." He further said "everything that had been denied based on his opinion now has been withdrawn. . . ." Smith contended, "Until you obtain that treatment, we won't know what your physical capacity is and what you can and can't do," therefore vocational reemployment issues were not ripe. Employee maintained she was ready to go to hearing on penalty and unfair or frivolous controversion issues. She implied she was asking for a compensation rate adjustment based on incorrect wage and earning information Employer provided to the adjuster. She also contended Daniels contacted her physician without her permission or a release. Smith contended once Daniels had pre-authorized the injections, Daniels "contacted the facility in order to obtain medical records or attempt to get medical records so that those bills could be paid based on the agreement" that Employee "could go forth and they were withdrawing that controversion concerning the injections." Employer contended its former attorney Paddock had a release when Daniels contacted this provider. Employer contended it did not owe Employee penalties for past benefits because it was voluntarily paying benefits and was not required to pay a penalty because it relied on Dr. Youngblood's EME report at the time it controverted benefits. Employee continued to demand Dr. Youngblood's deposition; Employer contended it was not relevant to remaining issues. Employer also asked Employee to submit any out-of-pocket expenses pertaining to her ankle and they would be processed for payment. (Prehearing Conference Transcript, December 11, 2019).

278) On December 11, 2019, Dr. Perkins included in his diagnoses "somatic dysfunction":

> The patient's visit today marks the one year anniversary of OMT treatment which started on 12/19/2018. When she started treatment, she could not walk, could not come up and down on her toes. She was referred by Dr. McNally [sic] to start OMT treatment and has continued OMT treatment. Since her first visit a year later, she is now able to walk, come up and down on her toes and has been able to continue treatment. (Perkins report, December 11, 2019).

279) On December 12, 2019, Croft and Employer agreed Employer had accepted part of Employee's claim, Croft had been her attorney, $11,020.24 was a reasonable and fair fee to compensate Croft for legal services he rendered to Employee and agreed to resolve all past disputes regarding Croft's attorney fees. Employer served this stipulation on Employee by first-class mail on December 13, 2019. (Stipulation Regarding Attorneys' Fees, December 12, 2019).

280) On December 13, 2019, Hearing Officer Jung Yeo found, based upon the parties' December 12, 2019 stipulation and the written record, that Croft previously represented Employee; the parties had a right to stipulate to his fees pursuant to 8 AAC 45.050(f), and given the nature and complexity of Croft's services, $11,020.24 was a reasonable fee for past work and ordered Employer to pay Croft that amount. The Division served this order on Employee by first-class mail on this date. (Order on Stipulation Regarding Attorneys' Fees, December 13, 2019).

281) It is unlikely Employee would have had time to object to Employer and Croft's attorney fee stipulation before the assigned hearing officer reviewed and approved it. (Experience, judgment, observations and inferences drawn from the above).

282) On December 16, 2019, Huna and Employer agreed Employer had accepted part of Employee's claim, Employer was paying attorney fees and costs associated with it, Huna had represented Employee, Huna filed a claim for fees and costs totaling $96,815.46, Huna had conceded $486.46 were costs Employee had paid to Huna, so Huna reduced her lien to $96,329, and the parties agreed $72,246.75 in fees and costs was a reasonable and fair amount to compensate Huna for legal services to Employee "including all appellate work." Employer served this on Employee by first-class mail on that date. (Stipulation Regarding Attorneys' Fees & Costs, December 16, 2019).

283) On December 17, 2019, hearing officer Yeo reviewed the stipulation and written record and found Huna had previously represented Employee, the parties could stipulate to an appropriate attorney fee for Huna under 8 AAC 45.050(f), and considered the nature and complexity of Huna's services and found $72,246.75 was a reasonable award for past fees and costs and ordered Employer to pay this to Huna. The Division served this order on Employee on this date. (Order on Stipulation Regarding Attorneys 'Fees & Costs, December 17, 2019).

284) It is unlikely Employee would have had time to object to Employer and Huna's attorney fee stipulation before the assigned hearing officer reviewed and approved it. (Experience, judgment, observations and inferences drawn from the above).

285) On December 17, 2019, Employee said she had been working with "vocational rehabilitation" for the prior two weeks and was optimistic about employability. She was considering secretarial, desk jobs or admin positions. (Richardson report, December 17, 2019).

286) On December 17, 2019, Employee said she had declined settlement and was focused on getting treatment for her injury. She reported, "At the court hearing, she was granted benefits and

back pay, but not everything she believes is fair." Employee said her case would "move on to arbitration." She had "scheduled with vocational rehabilitation." Employee continued to "deal with anxiety and frustration with the legal battle." (Kiele report, December 17, 2019).

287) On January 8, 2020, Employee said she was improving and was engaged with "DVR and looking at returning to the workforce." (McAnally report, January 8, 2020).

288) On January 21, 2020, Employee reported she was "not too bad" and had started vocational rehabilitation. She was distressed by having to repeat her past and was hopeful she can "do at least some kind of work." Employee stated, "It hurts to walk. . . . Every step." She reported daytime flashbacks as she reviewed her unpleasant experiences. (Kiele report, January 21, 2020).

289) On January 29, 2020, petitioned to, "Set a hearing date ASAP." (Petition, January 29, 2020).

290) On February 18, 2020, Employee said she had started a "vocational rehabilitation program." She had a third case before the Court regarding attorney fees. She was told "she cannot get financial coverage for her treatment for her injury, but 'they' won't let her have a hearing." She reported "ongoing legal maneuvering 'does stress [her] out.'" (Kiele report, February 18, 2020).

291) On February 28, 2020, Dr. McAnally testified he is an interventional pain specialist. Smith advised him Employer had withdrawn its controversion; he asked Dr. McAnally to re-bill treatment for Employee's injury to the adjuster, including any paid by Medicaid. Dr. McAnally referred Employee to Dr. Perkins for facial distortion therapy; he deferred to Dr. Perkins on whether she needed it. Dr. McAnally has experience diagnosing and treating CRPS. It is a clinical entity that "comprises more than just pain." It can wax and wane like any syndrome. CRPS frequently occurs after prolonged immobilization, such as casting or splinting, and after surgery. In Dr. McAnally's opinion, Employee's work injury led to CRPS in her right leg. He diagnosed her with CRPS I in April 2017. The difference between CRPS I and II is that in CRPS I physicians do not know if the complex is caused by an injury to a specific nerve, whereas in CRPS II, they do; both CRPS I and II present the same. In Dr. McAnally's view, it is irrelevant whether she has CRPS I or II because treatment is the same; however, he believes the injury was to the saphenous nerve but admitted, "It's speculation on my part." Dr. McAnally suggested continued care with Dr. Perkins, mobility, functional restoration programs, exercising, swimming, pharmacological (Lyrica, and low-dose naltrexone off-label) and alternative medicine strategies as well as occupational therapy with OT Richardson. In his opinion, his treatments were palliative, but they may modify the condition and permanently alleviate CRPS; however, he could not opine on how

long that would take. Dr. McAnally opined his treatments helped Employee's function with hope it may one day cure her, which is why he recommended it continue. He agreed with Dr. Kirkham's April 10, 2019 opinion that Employee at that time had only very mild CRPS elements. As of August 2019, Dr. McAnally found no obvious CRPS signs. After discussing "medical stability" under Alaska law, he opined Employee had been "fairly stable for the last couple years," and agreed from a CRPS standpoint she was medically stable effective April 10, 2019. Dr. McAnally reviewed the SCODDOT description for "Accountant" and opined Employee could do that job. He deferred referrals to HSS to his orthopedic colleagues. Psychosocial issues are not a diagnostic criteria for CRPS. Pain "is a human experience and a subjective one at that. . . ." Dr. McAnally added, "So there is a strong psychosocial component." He had no opinion on whether it was appropriate for Employer to seek Employee's psychological records for an ankle injury or CRPS. Dr. McAnally would not need to see her psychological records to diagnose CRPS. When Employee asked him if psychosocial issues have anything to do with a work injury, he said, "I do believe it is -- I believe this is part of you" just like it is for everyone else. (Deposition of Heath McAnally, M.D., February 28, 2020).

292) During Dr. McAnally's deposition, Employee repeatedly interrupted Smith's questioning, at one point admitting she never had PRP injections because Dr. Kirkham had "said that it has the possibility of making the symptoms worse and, as he noted at that time, my symptoms of CRPS were pretty much not waxing and waning at that time. And I didn't want to go backwards. And he said that that had the potential of going backwards. It's noted in his note." She also stated, "I have contacted HSS. There is [sic] two doctors at HSS that accept Alaska workmen's compensation insurance. Those two doctors can only perform a fusion, which is the same thing that Dr. Chang can perform here in Anchorage, Alaska, which he refuses to do because I have full range of motion." Dr. McAnally asked Employee, "If you are asking me if I'm perceiving a disproportionate focus on psychosocial issues -- is that what you are asking me at the heart of this?" Employee said, "Yes." Dr. McAnally responded, "I don't believe that it's disproportionate." He would not recommend Employee go to HSS for an ankle fusion. He is not requesting interest or a penalty for any previously controverted bills. (Deposition of Heath McAnally, M.D., February 28, 2020).

293) On March 3, 2020, Employee admitted she had been overpaid indemnity benefits: "You've overpaid. I'm fully aware that it's an overpayment." She demanded a hearing on her claim and

the designee noted her case was still pending before the Court. The designee nevertheless set a hearing and advised the hearing officer may have issues with the pending appeal "then that's something that the hearing officer would address." Employee agreed and said, "That's fine." She understood the order in which witnesses would be presented at hearing: "But my witness get to come first if I schedule them for this day?" Smith again asked Employee to provide a transportation log and evidence for any injury-related out-of-pocket medical expenses. He also stated Employer had sent her a Medicaid release so Employer could find out what treatment Medicaid had paid to date, but Employee had not signed it or filed for a protective order. Employee agreed he was correct, and she refused to sign it, not because the release did not apply to her, but because "[she] just refused to sign it." Employer stated based on this refusal it could controvert Employee's whole claim but was not going to. Employee responded, "Crutch. I wish you would." She still she wanted to go to HSS for treatment; Smith said Employer had pre-authorized the HSS treatment; Employee said that was "not sufficient." Employee said she needed a "board order" that would mandate Employer would pay HSS, because, in her view, the treatment was "experimental" and needed Board approval. In response to the adjuster obtaining Employee's medical records, allegedly without a release, Employer explained it had decided to pay for the injections Employee wanted, so the adjuster asked how many injections would be occurring and the frequency; in response, the medical provider sent medical records that outlined the recommendations. In response, Employee contended the adjuster "harassed the nurse" until she gave the records by stating "under the Act, they had authorization to receive these records." Employee contended she found out about this alleged illegality and then, and only then "that is when [Employer] authorized the treatment." Employee contended authorizing the treatment "was just a cover-up" for "illegally obtaining" her records. She conceded PRP injections were not FDA-approved when her doctors recommended it. (Prehearing Conference Transcript, March 3, 2020).

294) On March 3, 2020, Employee said her vocational rehabilitation plans had been put on hold until she decided whether to pursue ankle surgery at HSS. (Kiele report, March 3, 2020).

295) On March 5, 2020, Daniels wrote to Dr. Demetracopoulos at HSS and said, "We hereby pre-authorize medical treatment for Ms. Leigh's right ankle and CRPS for injuries sustained in the work incident of February 20, 2015." The letter explained payment would be in accordance with the fee schedule in the state in which the treatment was provided. Daniels required an itemized

invoice with CPT codes and medical records for any treatment or surgery. The pre-authorization "is valid until revoked in writing." (Daniel's letter, March 5, 2020).

296) On March 17, 2020, Smith deposed Dr. Chang; Employee did not appear for this deposition so there was no cross-examination. He is an orthopedic surgeon who specializes in foot and ankle issues and has treated people with conditions like Employee's. Dr. Chang treated Employee and removed some hardware from a previous surgery and cleaned out cartilage damage. He also performed a microfracture procedure, which entailed drilling holes in the base of an ankle bone to help fill in fibrocartilage. At a September 20, 2016 follow-up visit, Dr. Chang noted Employee was still having pain but not much swelling and had good motion. That was significant because if her joint had been really swollen, this would have suggested inflammation coming from the joint. Dr. Chang opined it was a good sign she did not have much swelling. Employee was seeking medication for pain control, and Dr. Chang "didn't feel comfortable writing narcotics for her," so he referred her to Dr. McAnally to see if he had anything to offer. Employee did not want an ankle fusion and Dr. Chang agreed it was too aggressive given her age. In March 2017, he discussed other options with Employee, but she was "still really focused on other surgical options . . . anything that might kind of restore her cartilage." He mentioned distraction arthroplasty and a Portland physician Dr. Beaman to her for that procedure, which is a "time-intensive" way to possibly address ankle arthritis. However, Dr. Chang did not think she needed it because she has "focal arthritis," meaning she has just "a little quadrant" and not broader arthritis. Though he was not an expert in this procedure, in his 17 years Dr. Chang had never met anyone that had distraction arthroplasty and had long-standing benefit. In his opinion, it was not reasonable and necessary to pursue. Though the issue was controversial, Dr. Chang said if a person is missing cartilage in an ankle there is going to be additional stresses on adjacent cartilage. However, it was possible over time "and who knows how quickly" there would be more advanced arthritis in Employee's affected ankle than her other side; sequential MRIs could tell. According to September 2016 x-rays, Employee's angle looked "overall, very good." There was nothing to indicate that not going to see Dr. Beaman would cause an increase in cartilage damage. However, Dr. Chang saw Employee again on April 18, 2017, after an MRI and recorded that her ankle looked "some measure" better than before. He recommended no additional surgery. Dr. Chang has no experience doing either distraction arthroplasty or osteochondral repair using fetal tissue. In his opinion, these procedures are "very obscure, niche options" and it would be very typical for an orthopedic surgeon to not

have any experience doing either. Performing distraction arthroplasty or osteochondral repair using fetal tissue are not reasonable procedures and not considered mainstream medical treatment. In respect to his referral to HSS, Dr. Chang recalled Dr. Mason had referred her there, but she was having a hard time speaking with him and "she just needed a doctor to complete that order." So, Dr. Chang "just went ahead and just complied and just kind of fulfilled her wish." He had never previously referred anyone to HSS. He did not think any further surgeries she could pursue at HSS, short of an ankle fusion, would be "efficacious options for her." Dr. Chang reviewed the March 10, 2017 bone scan and stated nothing in it suggested need for surgery. Though the scans are sensitive, they are not specific. "And you can have a positive bone scan for years, of varying degree, even after feeling much more comfortable." PRP injections are derived from blood, spun into serum and injected into an injured area and "you just hope that it kind of triggers the human response." PRP injections would not be reasonable and necessary for Employee; Dr. Chang had personally not had very good experiences with it. In his opinion, physicians who feel positively about PRP is a "shrinking representation." However, an ankle fusion "might be in her future" though she also "may never need it. . . ." It remained Dr. Chang's opinion Employee was medically stable effective May 17, 2017. He reviewed Dr. Kirkham's April 10, 2019 report that said Employee had "very mild elements of CRPS," Dr. Kirkham did not recommend any restrictions, and recommended she return to work as an accountant and perform "activities as tolerated." Smith advised Dr. Chang that after reviewing Dr. Kirkham's April 10, 2019 report, Dr. McAnally opined Employee was medically stable effective April 10, 2019. Dr. Chang said, "I have no reason to disagree." He reviewed a SCODRDOT job description for "Accountant," and opined Employee could return to work as an accountant without restrictions. In Dr. Chang's opinion, unless and until Employee proceeds with some sort of surgical option, which in his view she did not need as of the last time he saw her, she would remain medically stable. Dr. Chang agreed Employee should have occupational therapy, swimming and active release. Smith asked Dr. Chang to re-bill Northern Adjusters for bills for Employee's work injury, including those paid by Medicaid, from March 10, 2017, ongoing. (Deposition of Eugene Chang, M.D., March 17, 2020).

297) On March 20, 2020, Employer denied TTD and TPD benefits from April 10, 2019, ongoing, and reemployment and PTD benefits. It relied on Dr. Chang's opinion Employee became medically stable on May 17, 2017, for her orthopedic problems, and Dr. McAnally's deposition statement she became medically stable on April 10, 2019, for CRPS. Employer further relied on

Dr. Kirkham's April 10, 2019 suggestion she pursue work as an accountant with no restrictions, as well as Drs. Chang and McAnally's deposition testimony she had the ability to return to work as an accountant. (Controversion Notice, March 20, 2020).

298) On March 24, 2020, Employee said she intended to rely on Dr. Craig's EME report "with recording." (Notice of Intent to Rely, March 24, 2020).

299) On April 8, 2020, Employee reported having started DVR "over the Internet." She was dealing with her "parents' hypocrisy." Employee reported having a "flashback during a hearing," and asked her psychiatrist about medication. She reported having had blows to the head from her mother without loss of consciousness, and loss of consciousness after a collision in a high school basketball game. (Kiele report, April 8, 2020).

300) On April 10, 2020, Employer filed and served an old style or "legacy" "Compensation Report," showing periods it paid her TTD, TPD, PPI benefits, interest and a penalty. Payments are shown for various periods from February 21, 2015 through March 19, 2020. It shows a weekly $665.78 TTD rate based on $1,070.68 gross weekly earnings. The report states benefits were terminated based upon medical stability and totaled $165,032.92 on April 6, 2020. Employer alleged a $9,320.92 overpayment based on an allegation Employee had been paid after medical stability dates and Employer had offer sedentary work on December 22, 2015, but she had declined it. (Notice of Intent to Rely, April 10, 2020, with attached Compensation Report, April 6, 2020).

301) On April 28, 2020, the Board designee attempted to explain filing deadlines and hearing procedures for the May 2020 hearing to Employee, who responded:

> MS. LEIGH: I know the dates -- I know all the dates. I know that the witness lists are due and this is even against my objections and I'm turning in my witness list on the 5th. No problem. Everything is ready on the 5th. Mr. Smith better be ready as well. I'm not messing around, we are going to hearing.
>
> CHAIR: Okay. So I'm explaining to you what the law is, what possible outcome might be --
>
> MS. LEIGH: I know the law. I don't need it explained to me.

Employee said the designee was trying to "spin" everything. She admitted she had not served all subpoenas for witnesses at the May 2020 hearing. The designee confirmed Employee was familiar with Civil Rule 45(c) and Administrative Rules 7 and 8. He also ensured she understood how to prove her claims; she replied, "No, I promise I do." She also knew how to provide evidence in

accordance with the presumption of compensability analysis. Smith asked Employee to clarify the dates for which she claimed indemnity benefits; Employee refused and referred Smith back to the previous prehearing conference summary and her claim. (Prehearing Conference Summary Transcript, April 28, 2020).

302) On April 29, 2020, Employee requested "to purchase a home in Anchorage immediately with the pool to comply with Doctors orders," medical costs to be determined and a compensation rate adjustment. (Claim for Workers' Compensation Benefits, April 29, 2020).

303) On May 11, 2020, Employer filed and served another "Compensation Report" containing information like the April 6, 2020 report. However, this report listed $162,883.13 in total indemnity payments to Employee. (Report, May 6, 2020; Notice of Intent to Rely, May 11, 2020).

304) On May 5, 2020, Dr. Youngblood testified he is a board-certified orthopedic surgeon, fellowship trained in orthopedic foot and ankle surgery. His deposition had been scheduled for April 15, 2020, but had to be rescheduled because, as an active naval officer, he was aboard the Mercy Hospital Ship in Los Angeles and had since returned. In addition to the medical records summarized in his reports, Dr. Youngblood had reviewed Drs. Craig and Gritzka's reports, and Drs. Gritzka, McAnally and Chang's depositions. He did not think he needed any additional records or information to make an opinion about Employee's condition, causation and treatment. Dr. Youngblood was asked if it was a correct statement to say Employee "now has no more cartilage in her ankle." He replied:

> So again, at the time of my evaluation, that would not be an accurate statement. Dr. Chang -- [Employee interjected, "You've seen the MRIs"] -- Dr. Chang, at the time of his arthroscopy, talked about a 10-by-15 mm area of cartilage damage, which is a -- I mean, it's larger than some, but it's still a minor part of the overall ankle. It is a focal cartilage injury. The rest of the cartilage is perhaps somewhat thinned, but it's still intact.
>
> And also looking at her x-rays, her x-rays show that she has [Employee interjected, "Those x-rays don't show cartilage"] minimal mild arthritis [Employee interjected, "Get out of here"] [Comment by Smith] [Employee interjected, "He is so outrageous. I can't even believe him"] [Comment by Smith]. Just that when I looked at the x-rays, that she had minimal to mild thinning of the joint space on her x-rays. So minimal to mild arthritis of the ankle. . . .

Dr. Youngblood agreed with Dr. Chang that PRP injections were not reasonable and necessary, because his experience and the medical literature show no evidence it benefits the foot or ankle.

He also agreed with Dr. Chang that distraction arthroplasty was not reasonable and necessary because studies show it does not work, it is not recommended for mild arthritis, and it was "investigational." Dr. Youngblood never heard of Ehlers-Danlos syndrome complicating recovery from an ankle or lower extremity fracture dislocation injury. He agreed with Dr. Chang that currently there no surgical procedures were reasonable and necessary for her work injury. He recommended activity modification, weight loss, tobacco cessation and anti-inflammatories or Tylenol. Dr. Youngblood said it was unnecessary and unreasonable for Employee to go to HSS because there was nothing there that Dr. Chang could not do here. He agreed with Dr. Mason's opinion she could return to work as a Psychiatric Technician, Accountant and Controller on an objective basis, based on SCODRDOT job descriptions he reviewed for each occupation. He did not believe Employee had CRPS because she did not meet the criteria. Dr. Youngblood opined she is not permanently and totally disabled. He did not believe it was reasonable or necessary to prescribe a home with a swimming pool for her work injury. Dr. Youngblood had "no interest in seeing psychiatric records." He agreed although he did not mention running in his release to return to work report, if Employee could not carry more than 50 pounds, "it stands to reason that you probably shouldn't run." Dr. Youngblood did not appear for his deposition in 2019, because Paddock told him he was not subpoenaed. On November 20, 2015, the measured lesion in Employee's ankle was 10-by-5 and Dr. Chang later measured it as 10-by-15. Dr. Youngblood agreed the lesion could have been larger, but Employee had always said her pain was in the back of her ankle and the osteochondral lesion is in the front as documented by all her MRIs and surgeries with Dr. Chang. Thus, in his view, patients typically have pain directly located over the lesion so "that doesn't make any sense in terms of the pain" coming from the back ankle. Dr. Mason gave Employee an injection on September 10, 2015, which provided minimal pain relief even though he injected an anesthetic into the joint; Employee should have had no pain whatsoever. Dr. Youngblood opined Employee could work 80 hours a week as an accountant. (Telephonic Deposition of Scot Youngblood, M.D., May 5, 2020).

305) During Dr. Youngblood's deposition, Employee interrupted Smith's questioning repeatedly. She provided her job description reportedly from Employer's website for Dr. Youngblood's review and stated the SCODRDOT job description did not matter. Employee stated she did not want an osteochondral allograft. (Telephonic Deposition of Scot Youngblood, M.D., May 5, 2020).

306) On May 18, 2020, Employee petitioned for the Board to accept a late witness list. (Petition, May 18, 2020).

307) On May 20, 2020, the State of Alaska, Department of Health & Social Services, released its lien for medical assistance it provided for Employee's work injury. (Release of Lien, May 20, 2020; Notice of Intent to Rely, June 4, 2020).

308) On May 21, 2020, the parties appeared for a prehearing conference. Employer contended two prior Board orders held a merit hearing in Employee's case in abeyance until after the Court issued a decision on Employee's petition for review. Employee said she had been insisting on a hearing since 2017, and why she had not gotten one "is beyond [her]." She contended she need not file a witness list since she filed subpoenas for those she intended to call as witnesses at the May 2020 hearing. (Prehearing Conference Transcript, May 21, 2020).

309) On May 26, 2020, Employer wrote the Board to modify the May 21, 2020 prehearing conference summary. The letter stated Employer addressed three preliminary issues for the May 27 and 28, 2020 hearing but these were not addressed in the summary. Employer contended Employee's emails demonstrated she knew about these issues. Moreover, Employer contended it was inappropriate to go forward with the hearing prior to the Court issuing its decision on Employee's Petition for Review; if the Board determined a hearing should go forth, Employer contended Employee intentionally withheld her witness list and intentionally disregarded the prehearing order to file it by May 7, 2020. Lastly, if the Board determined the hearing would go forward on the merits, Employer wanted the physicians' depositions and SCODRDOT job descriptions submitted to Dr. Gritzka, because his conclusions were not premised on current medical evidence. (Smith letter, May 26, 2020).

310) On May 29, 2020, *Leigh v. Alaska Children's Services*, AWCB Dec. No 20-0037 (May 29, 2020) (*Leigh V*), again held Employee's merit claim could not be heard until the Court ruled on her pending petition. She would not be given more time to file a witness list because the hearing was continued thus rendering this issue moot, and *Leigh V* held the Board's designee did not abuse his discretion by refusing to allow Employee to discover Employer's attorney fees and costs from Employer, because they were not relevant to her claim. It also noted the Board's designee on March 3, 2020 advised her how to file a witness list; *Leigh V* reiterated that advice and warned her that failure to follow the witness list regulation may result in an order excluding her witnesses from testifying at future hearings, pursuant to 8 AAC 45.112. (*Leigh V*).

311) On June 3, 2020, Employee sought an order "compelling discovery" and the "IMMEDIATE RETURN AND RELEASE OF ANY AND ALL RECORDS RECEIVED FROM NOT ONLY MEDICAID BUT ANYONE. A LIST OF ALL EX PARTE COMMUNICATIONS THAT HAS OCCURRED WITHOUT MY KNOWLEDGE." (Petition, June 2, 2020; emphasis in original).

312) On June 11, 2020, Employee filed a notice stating she would not be filing a reply brief in Alaska Supreme Court Case S-17247, because: (1) she is strong enough to endure and overcome "what the defense is doing" and noted someone else might not be as strong and she hoped "at the very least be a voice for them"; (2) she knows her life so she knows Employer had no defense in her medical records; (3) Employer wanted to go through 30 years of her records because she had childhood trauma; (4) she wanted Employer's full name to be used in the Court's decision, Alaska Children's Services D/B/A AK Child & Family; (5) Employer wanted the world to know she had childhood trauma and they would not even agree to use a pseudonym for her name because HIPAA did not apply in workers' compensation cases; (6) she noticed the Court it had issued contradictory orders because "Mrs. Paddock committed perjury"; (7) she informed the Court that without her deposition transcript the Court would not be able to make a determination as to where Employer obtained the year 1999; (8) Employee stated Paddock said she needed her records since she was a child; (9) the Court would not be able to find any factual basis to request her 1999 records and argued the record should begin even earlier; (10) Paddock was aware she was seeking Employee's childhood trauma records; and (11) she objected to "being forced to relive the trauma throughout her life" for no reason at all. Nevertheless, Employee also mused "sometimes in life you have to do things for the greater good." She also wrote about Dr. Youngblood not appearing for his deposition and her "not being able to get ankle treatment" since 2015. (Notice: No Reply Brief to Be Filed Contradictory Orders Issued, (June 11, 2020)).

313) On June 16, 2020, Employee reported walking with low heels helped her because the instability helped her focus better. (Johnston report, June 16, 2020).

314) On June 17, 2020, Employee reported she continued to "receive Vocational Rehab." She had "revoked ROI [release of information] related to her court case." Employee reported increased shoulder pain possibly associated with prolonged sitting while completing a vocational rehabilitation assessment and searching for jobs online. She was working with "state vocational rehabilitation" to explore options and set up internships. Employee had completed a FCE and was awaiting results. She was near "completion of her Vocational Rehab program." Employee

reported diminishing disability levels. She would require ergonomic workplace assessment and recommendations for reasonable accommodations to prevent pain from impacting her job performance. Her "Rehab Potential" was "Good." (Richardson report, June 17, 2020).

315) On June 23, 2020, Dr. Perkins saw Employee for the first time in nine weeks. She was currently in vocational rehabilitation. Among other things, he diagnosed CRPS II and "somatic dysfunction." (Perkins report, June 23, 2020).

316) On July 2, 2020, Employee emailed Smith and Fanning and said, "Jeannie: Mrs. Kuipers is with Medicaid . . . maybe you would like to explain what AK CHILD doesn't report to Medicaid!" (Employee email, July 2, 2020).

317) On July 6, 2020, the parties attended a prehearing conference. Employee conceded she knew Employer used 1999 as a starting point for its mental health records releases based on her deposition testimony, in which she testified she was hospitalized in 2001. She understood the discovery concept that Employer gets to "go two -- back two years prior, that's 1999. That's why they are asking for the year 1999." (Prehearing Conference Transcript, July 6, 2020).

318) On July 10, 2020, because of Employee's petition for review on her mental health record release, the Alaska Supreme Court in *Leigh v. Alaska Children's Services*, 467 P.3d 222 (Alaska 2020) made new law and stated for the first time:

> We hold that the statute permits an employer to access the mental health records of employees when it is relevant to the claim, even if the employee does not make a claim related to a mental health condition.

Consequently, Employee had to sign a mental health record release even though she had not sought medical benefits related to mental health issues affected by her work injury with Employer. The Court also correctly cited facts from the record presented to it:

> In November 2015 Alaska Children's Services controverted continuing . . . [TTD benefits] on the basis that Leigh was medically stable. The next month it controverted any disability benefits, stating that Leigh had turned down an offer of modified work.

The Court did not reverse the Board's decision; rather, it vacated and remanded it for further proceedings consistent with its opinion and for the Board to consider limitations on the mental health medical record release Employee had to sign. (*Leigh VI*).

319) On July 10, 2020, the Court also awarded, "costs and full reasonable attorney's fees" to Employee and directed her to serve and file with the Court a fee affidavit and itemized cost bill. (Order Regarding Fees and Costs, July 10, 2020).

320) On July 16, 2020, Hearing Officer Setzer reviewed Employee's July 15, 2020 email request for subpoenas, and Employer's objections. Setzer reviewed the issues for hearing on August 6, 2020, and denied 15 requested subpoenas, and found the witnesses were either not relevant to the issues set for hearing or were privileged. (Setzer letter, July 16, 2020).

321) On July 21, 2020, Employee reported she had been working with raspberries and had planted flowers. (Kiele report, July 21, 2020).

322) On July 28, 2020, Employee said she had been more active and had recently walked five miles with pain in her ankle. (Perkins report, July 28, 2020).

323) On August 18, 2020, *Leigh v. Alaska Children's Services*, AWCB Dec. No 20-0071 (August 18, 2020) (*Leigh VII*): disallowed Employee's merit claim as an issue for hearing because it was not scheduled as an issue; disallowed her witnesses because she filed a non-compliant witness list and her witnesses were irrelevant to the issues set for hearing; addressed the Court's questions on remand and ordered Employee to sign a mental health records release from 2007 forward; denied Employee's request to keep her decisions "confidential" because there was no authority to make such order; ruled on or reviewed the designee's rulings on numerous discovery petitions; denied Employee's request for an order requiring Employer to pay for Employee to present her medical witnesses; denied Employee's request for an order preventing Employer from withdrawing a petition to quash a subpoena and deposition notice; and denied Employer's request to dismiss Employee's claim for failure to provide a medical record release as ordered. (*Leigh VII*).

324) On August 19, 2020, Setzer denied Employee's request for deposition subpoenas for Employer's payroll custodian and for Daniels and found there were no deposition notices on file for these persons. Further, Setzer determined Employee gave inadequate notice for the depositions because she had provided less than seven days' notice and the Board had previously held seven days was not adequate notice. (Setzer letter, August 19, 2020).

325) On August 31, 2020, Anne Dennis-Choi testified she is the Chief Executive Officer for Employer. Employee asked Dennis-Choi in detail about Employer's procedures for responding to complaints about alleged employee harassment, retaliation or Medicaid fraud. Dennis-Choi had no knowledge of retaliation or harassment by Morris; she further explained she was not in her

current position when that allegation was made, and it was handled by someone else. Employee repeatedly interrupted Dennis-Choi as she tried to respond to subsequent questions about this issue. When Dennis-Choi stated, "I didn't finish answering the last question," Employee said, "It doesn't matter because it doesn't matter what you say, honestly." Dennis-Choi explained "overtime" is anything over 40 hours a week or anything more than eight hours per day unless someone has signed a flex four-ten plan. If a person worked from 2:00 PM until midnight and again from midnight till 8:00 AM the next day that would be a "double shift." In that event, the second shift would be overtime; she further explained it would only be overtime if the same worker appeared on the same day at 6:00 PM, for example, because "the day" "resets at midnight." Employee contended Dennis-Choi was aware Employer was paid for services for another worker when Dennis-Choi knew the worker was sleeping, and still billed Medicaid. Dennis-Choi had not read the Court's opinion in Employee's case, after which Employee asked and stated, "You did not read the Supreme Court opinion, the very opinion that you are going to use to exploit the records of the children that you serve?" Dennis-Choi reviewed Employee's timesheets and found that on December 23, 2015, she worked from 10:00 AM and clocked out at 4:19 PM. Employee argued with Dennis-Choi about whether Dennis-Choi was present when Employee was terminated; Dennis-Choi said she was not, and Employee contended she was. Employee recalled the conversation as including, "They said I could go to MANDT and that I was approved to go to MANDT. . . ." Her personnel records attached to Dennis-Choi's deposition state she was terminated on February 18, 2016, because "Did not return to work." The circumstances under which Employee did not return to work included Morris' February 10, 2016 letter directing her to attend two-day Mandt certification "in preparation for return" to her PTC duties in conformance with Dr. Youngblood's report, and her failure to attend that training and to return to work between February 15 and 18, 2016. Morris treated her absence as "resignation without notice" and terminated her employment with Employer effective February 18, 2016. (Deposition of Anne Dennis-Choi, August 31, 2020).

326) On August 31, 2020, Daniels testified she contacted Dr. Chang's office by letter on June 24, 2019, but "did not request" Employee's records. She contacted his office because she had received emails from Employee asking for PRP injections; she attempted to find out what Employee was asking for. Daniels contacted his office by phone on July 15, 2019, and said, "I authorized the PRP. I simply called to find out what I was authorizing." Upon calling, she was forwarded to the

nurse's voicemail because the reception desk thought the nurse could answer "how many and how much" for PRP injections. Daniels did not do EDI reporting in this case. "The carrier does their EDI reporting." She could not identify that person by name. When asked why she allegedly "maintained" the December 22, 2015 controversion stating Employee did not return to work, Daniels said "benefits have been paid after the controversion, Ms. Leigh." After December 2019, a decision was made to pay her past benefits. Those included past TTD benefits, and a check was issued for those. Payment was also made to pay past medical benefits paid by Medicaid. Daniels sent letters to Employee's known providers at the time requesting they send her any bills they had for Employee's case that were outstanding. The only unpaid bills or benefits related to controversions that remained in place were for unrelated issues such as Employee's gallbladder or her leg. Daniels paid all bills for Employee's ankle and CRPS condition as far as they had been submitted. She also submitted a letter preauthorizing ankle and CRPS treatment for Employee at HSS. (Videoconference Deposition of Susan Daniels, August 31, 2020).

327) On September 1, 2020, the parties attended a prehearing conference regarding subpoenas and petitions. From the onset, Employee interrupted the designee and Smith repeatedly. When asked to state her position on the issues before the designee, Employee refused to provide relevant evidence or arguments, and stated she would take it up with the Court. (Prehearing Conference Transcript, September 1, 2020).

328) On September 1, 2020, Employee attempted to depose Rush. Smith asked Employee if she had evidence that she had served Rush with a subpoena more than just four days prior to the scheduled deposition; Employee refused to respond. Smith advised Employee that Rush was undergoing a medical procedure that day and he had previously advised Employee that she and other witnesses were not available on the scheduled deposition dates. (Statement of Counsel in Lieu of Videoconference Deposition of Jessica Rush, September 1, 2020).

329) On September 2, 2020, Employee attempted to depose Morris. She stated:

> This deposition testimony was supposed to be of Mr. Robert Morris. He was under subpoena, and he was properly served. It was scheduled for September 2 at 9:00 AM.
>
> Mr. Smith was invited to attend this deposition, and Mr. Morris was supposed to appear and testify regarding the retaliation and harassment of Ms. Leigh. Mr. Morris did not show up, and neither did Mr. Smith. (Statement of Employee In Lieu of Videoconference Deposition of Robert Morris, September 2, 2020).

330) On September 2, 2020, Employee attempted to depose Fanning. She stated:

> This deposition is for Jeannie Fanning with Alaska Child & Family. She's the chief compliance officer. She was served.
>
> Please note that this will be filed with the Supreme Court.
>
> Thank you. That's it. (Statement of Employee in Lieu of Videoconference Deposition of Jeannie Fanning, September 2, 2020).

331) On September 2, 2020, Employee reported "no substantive change in her condition." (McAnally report, September 2, 2020).

332) On September 2, 2020, Employee requested, "Formal explanation of how attorney's fees are paid and what attorney will be charged with a misdemeanor for getting paid before I received benefits?" (Petition, undated but filed September 2, 2020).

333) On September 2, 2020, Employee requested a protective order and contended Employer's "release does not conform to law." (Petition, September 2, 2020).

334) On September 2, 2020, Employee requested "claims history," and "complete claims history file -- with all contact information." (Petition, September 2, 2020).

335) On September 2, 2020, Employee asked for an explanation of all "EDI reports filed." She stated, "Ms. Daniels already had her deposition and she is unable to state who even files the EDI reports . . . so she wasn't even able to answer questions regarding EDI reports." (Petition, September 2, 2020).

336) On September 8, 2020, Employer formally withdrew its December 22, 2015 controversion. (Withdrawn Controversion Notice, September 8, 2020).

337) On September 17, 2020, Employer filed and served an old style "Compensation Report." This report said Employer had paid Employee TTD, TPD or PPI benefits beginning February 21, 2015, and continuing with no gaps until October 18, 2015. It states it then paid her the balance of her three percent PPI rating totaling $3,978.44. The report further said it began paying TTD or TPD benefits again on November 30, 2015, continuing through April 12, 2015; there is a gap in benefit payments until April 13, 2016, and TTD benefits thereafter continued until December 12, 2018, at which time they ended. This report represents Employer paid Employee $845.23 on benefits from February 23, 2015, through February 16, 2016, $1,307.80 on benefits from February 17, 2016, through April 12, 2016, and $17,595.61, all as penalties on benefits from March 31,

2017, through April 9, 2018. Employer also contended it paid her $6,467.76 in interest. It contended it overpaid Employee $9,320.92. (Compensation Report, September 15, 2020; Notice of Intent to Rely, September 17, 2020).

338) On September 18, 2020, Employee through her non-attorney representative Barbara Williams, reiterated Employee "was not seeking mental health treatment relating to her work injury." (Prehearing Brief for Discovery Issues and Release of Information Petition to Quash Subpoena/Petition to Dismiss, September 18, 2020).

339) On September 24, 2020, Dir. Collins responded to Employee's request for Americans With Disabilities Act (ADA) accommodations. Employee asked for no accommodations related to high blood pressure or heart issues. (Collins letter, September 24, 2020).

340) On September 25, 2020, *Leigh v. Alaska Children's Services*, AWCB Dec. No. 20-0082 (September 25, 2020) (*Leigh VIII*), determined the Board's designee did not abuse her discretion when she quashed inappropriate, irrelevant or improperly scheduled depositions; did not abuse her discretion by finding Employer's request to stay subpoenas for deposition dates that already passed was moot; and did not abuse her discretion by quashing subpoenas for Morris and Fanning because Employee failed to prove she properly served them with both a deposition notice and a subpoena, with reasonable notice. (*Leigh VIII*).

341) On October 20, 2020, Employee said her CRPS symptoms had worsened; she attributed this to self-directed discontinuation of Dr. Perkins' osteopathic treatment "on account of her records issue that has upset her." Dr. McAnally "gently" asked her to reconvene with Dr. Perkins, but she remained "highly recalcitrant." He again recommended she seek legal counsel for her work injury case. (McAnally report, October 20, 2020).

342) On October 27, 2020, the parties attended a prehearing conference. Employee repeatedly interrupted the designee, and Smith as he was trying to explain his position on a medical release. On several occasions, Employee told Smith to, "Shut up." When the designee told Employee her behavior was inappropriate, Employee replied, "You are inappropriate." Employee took issue with Smith stating his release included Providence Hospital because she was institutionalized there in 2001. After Employee contended that she had never been hospitalized at Providence Hospital, Smith acknowledged he was not sure what hospital she had been admitted to for her 2001 event. When the designee asked Employee to calm down, Employee replied, "Shut up." Smith later acknowledged and corrected his Providence Hospital statement and agreed Employee was not

institutionalized there in 2001 or 2002. After Smith apologized for his misstatement, Employee told him to, "Shut up." (Prehearing Conference Transcript, October 27, 2020).

343) On November 21, 2020, Employee advised the Division and Smith of her "additional address" in Buckeye, Arizona for service. She intended this email "to suffice" as her request to add this address to her "address of my record." Employee stated both would be used until the business she had in Arizona was completed. "I'm assuming you all can keep both addresses for a couple months?" (Employee email, November 21, 2020).

344) On January 8, 2021, Employer controverted all benefits for Employee's failure to follow *Leigh VII*, which ordered her to sign a medical release. (Controversion Notice, January 8, 2021).

345) On February 8, 2021, Employee told Dr. Kiele she was unhappy with her legal processes and said, "I am not a willing participant in this. . . ." (Kiele report, February 8, 2021).

346) On February 25, 2021, Employee told Dr. Kiele she was leaving for Arizona that weekend for an unknown period. Dr. Kiele's diagnoses remained: ADD; PTSD; major depressive disorder; and nicotine dependence. (Kiele report, February 25, 2021).

347) On April 7, 2021, Employee told Dr. McAnally she was staying in Arizona and her right lower extremity pain was "markedly better" than when she was in Alaska; she attributed this to decreased activity and weight-bearing as well as decreased stress. Employee also had access to a pool and was swimming nearly daily. Dr. McAnally diagnosed causalgia of the right lower limb and post-traumatic right ankle arthritis. He again advised her to seek legal counsel related to her work injury issues. (McAnally report, April 7, 2021).

348) On May 28, 2021, the Commission in *Leigh v. Alaska Children's Services*, AWCAC Dec. No. 287 (May 28, 2021) affirmed *Leigh VII* and *Leigh VIII*. (*Leigh IX*)

349) On October 1, 2021, Setzer advised the parties a prehearing conference had been scheduled to address Employee's subpoena requests for the November 2, 2021 hearing and invited them to submit written arguments in support or opposition to the subpoenas, which would be considered at that prehearing conference. (Setzer letter, October 1, 2021).

350) On October 5, 2021, Setzer advised the parties the October 12, 2021 prehearing conference had been canceled because the parties were unavailable. Because Employee stated she was not available at any time prior to November 2, 2021 to reschedule the prehearing conference, it was not rescheduled. Setzer reminded the parties pursuant to the September 1, 2021 prehearing conference summary order, Board affirmed in *Leigh VIII* and Commission affirmed in *Leigh IX*,

Employee's subpoenas would not be signed without a prehearing conference and consequently, her subpoena request was denied. (Setzer letter, October 5, 2021).

351) On October 5, 2021, Employee signed Employer's medical record release for, among other things, "psychological, psychiatric" and "mental health/counseling records." (Medical record release, October 5, 2021).

352) On October 5, 2021, Employee sought to add medical benefits to her pending claim and requested an order quashing Employer's petition to dismiss her claim, since she had signed the requested release. (Petition, October 5, 2021).

353) On October 6, 2021, Employer formally withdrew its January 8, 2021 controversion because Employee signed the subject medical record release on October 5, 2021. (Withdrawn Controversion Notice, October 6, 2021; observations and inferences drawn from the above).

354) On October 20, 2021, Employee emailed Alaska Attorney General Treg Taylor and Daniels:

> Treg: Do you know there is a medical board meeting on the 28th? You gonna be there to write the summary of what I have to say regarding Susan Daniels?
> . . . .
>
> Please note: this is no threat!!! This woman refuses to follow the law and has been stealing from the state, taxpayers [and] destroying people's lives.
> . . . .
>
> She picked the wrong victim to pick on.
> . . . .
>
> Clearly not. I will not stop until I have you out of business. (Employee emails, October 20, 2021; notice of intent to rely, October 22, 2021).

355) On October 21, 2021, Employee sought a protective order and asked to continue or cancel her November 2, 2021 hearing. Her grounds included:

> 1. Ms. Leigh is out of state and the division failed to provide her file to her
> 2. Subpoenas weren't granted or issued
> 3. Medical was not added
> 4. No prehearing was held to add medical nor was the prehearing conference changed
> 5. The Release was signed
> 6. Ms. Leigh has not received a copy of the evidence he has obtained
> 7. EDI reports have not been explained by the division

8. Only 1 month was given to prepare when pro se litigant has been asking for hearing for years while she was in state.
9. Pro se litigant is unaware what hearing is supposed to be about
10. In the prehearing pro se litigant emailed Mr. Jung Yeo who had her blocked so no issues Leigh wanted addressed were even considered
11. A protective order must be issued to stop Smith from re-disclosing records w/out first informing Ms. Leigh
12. A protective order needs to be issued to stop Smith from tampering with Ms. Leigh's witnesses
13. The hearing isn't long enough anyways. This needs to be a 2 day hearing set w/the amount of witnesses Ms. Leigh intends to call

Regarding the agency's file, Employee said, "The file is important to ensure Ms. Leigh that the division has the evidence that Ms. Leigh intends to rely on. According to the director the file was requested on 9.14.21 the division allegedly mailed it w/No tracking (confidential documents) not until 9.30.21. Ms. Leigh has yet to receive it." (Petition, October 21, 2021).

356) On October 22, 2021, Employee emailed Attorney General Taylor:

> Treg: Did you investigate the PPP loan that was forgiven to Northern Adjusters. Another place to look [eyeball emoji] and get this scum out of business. (Employee email, October 22, 2021; Notice of Intent to Rely, October 22, 2021).

357) On October 28, 2021, non-attorney former representative Heather Johnson on Employee's behalf sought an order compelling discovery and continuing or canceling the November 2, 2021 hearing. Johnson contended she had just entered as Employee's representative and needed "time to retrieve and review the evidence, subpoena witnesses, go through the board file" and submit records that "may have been left out of employer's medical summaries." There was no specific request for an order compelling anything. (Petition, October 28, 2021).

358) On October 28, 2021, Employee filed and served an email to which was attached Dr. Kiele's October 28, 2021 progress note. He had reviewed his records at Employee's request to "correct an error." She advised him she had quit smoking on December 10, 2018, and his "nicotine dependence" diagnosis was inadvertently carried forward, but was now deleted, as it was not an active condition. (Kiele progress note, October 28, 2021).

359) On October 29, 2021, Employer denied distraction arthroplasty treatment with Dr. Beaman. It relied on Dr. Chang's March 17, 2020 deposition opinion stating this treatment would not be reasonable and necessary and she did not need it, and Dr. Youngblood's May 5, 2020 testimony stating it was not reasonable and necessary. (Controversion Notice, October 29, 2021).

360) On November 9, 2021, Daniels wrote to the Steadman Clinic in Vail, Colorado, and pre-authorized medical treatment for Employee's right ankle and CRPS. The letter explained how payment would be made, the information required for payment and asked if the clinic wanted Employee's full medical records. (Daniels letter, November 9, 2021).

361) On November 22, 2021, *Leigh v. Alaska Children's Services*, AWCB Dec. No 21-0105 (November 22, 2021) (*Leigh X*), denied Employee's request to disqualify Board member Faulkner from Employee's hearing panel; denied Employer's request to dismiss Employee's claim for willfully contacting represented parties; and granted Employee's request to continue the November 2, 2021 hearing. (*Leigh X*).

362) On December 7, 2021, the parties appeared at a prehearing conference at which the designee scheduled a two-day hearing for March 22 and 23, 2022, to address the merits of Employee's claims, as amended. (Prehearing Conference Summary, December 7, 2021).

363) On December 10, 2021, the Division served the summary from the December 7, 2021 prehearing conference on Employee at her Anchorage and Buckeye, Arizona addresses; the post office did not return these to the Division. (Agency file).

364) On December 14, 2021, the Division served on Employee at both her addresses an amended December 7, 2021 prehearing conference summary reiterating the March 22 and 23, 2022 hearing dates; the post office did not return these. (Agency file).

365) On December 20, 2021, the Division received returned mail from the post office, which was a certified mailing from the Division to Employee on October 21, 2021. It was sent back because it was "unclaimed." (Agency file; Injury Tab; Communications Tab, December 20, 2021).

366) On December 28, 2021, Employer timely filed and served a request to cross-examine "Laurie Miller-Roberts" on Employee's December 27, 2021 email entitled "Notice of Intent to Rely." The reason given was to cross-examine Miller-Roberts to verify the authenticity of this email, determine time frames referenced therein and examine Miller-Roberts' medical qualifications. (Request for Cross-Examination, December 28, 2021).

367) Employee's December 27, 2021 email is not seen in Employee's agency file. (Agency file).

368) On December 30, 2021, after responding to Employee's emailed questions, the Division advised her effective January 1, 2022, it would be sending United States mail to her "last known address of record" in Buckeye, Arizona, pursuant to 8 AAC 45.060(f) and would no longer be serving at her former Anchorage address. (Sargent email, December 30, 2021).

369) On January 3, 2022, the Division gave Employee notice by certified mail at her Buckeye, Arizona address of the March 22 and 23, 2022 hearing. The Division never received the green return receipt card from Employee, but the post office also never returned the hearing notice. (Hearing Notice, January 3, 2022; agency file).

370) On January 3, 2022, Employee emailed Alaska Assistant Attorneys General Stacie Kraly and Kevin Higgins and accused Daniels of inflicting harm in her life and not paying her litigation and other costs. (Employee emails, January 3, 2022; Notice of Intent to Rely January 4, 2022).

371) On January 15, 2022, Employee emailed Alex Romero with the State of Alaska and accused Daniels of being a "fraudster" that belonged locked up in jail for life. (Employee email January 15, 2022; Notice of Intent to Rely, January 18, 2022).

372) On February 11, 2022, to assist Employee in presenting her case, the designated chair sent her and Smith a two-page letter outlining the issues identified for her March 22 and 23, 2022 hearing and the evidence the Board would need from Employee to support her claims. The letter also reiterated advice given to Employee in previous documents explaining subpoenas, witness fees, and due dates for witness lists and briefing. (Soule letter, February 11, 2022).

373) On February 22, 2022, the Division mailed the parties an *ex parte* communication notice and sent Employee's to her Buckeye, Arizona address. (*Ex parte* notice, February 22, 2022).

374) On February 24, 2022, Department Commissioner Tamika Ledbetter authorized transfer of Southeast Panel Board members to hear Anchorage cases on March 23 and 24, 2022, pursuant to AS 23.30.005(e), because no Southcentral Panel members were available those days for a two-day hearing. (Commissioner's Memorandum, February 24, 2022).

375) On February 27, 2022, Employee, having discovered Daniels had some financial involvement with Rabbit Creek Church, emailed the church and requested its financial information. She stated Daniels was committing "fraud" and causing suffering of "countless individuals" and costing the State of Alaska "millions." (Employee email, February 27, 2022).

376) On February 28, 2022, Employee emailed various people and accused Employer of "committing fraud" and putting children in "harm's way." (Employee email, February 28, 2022).

377) On February 28, 2022, Employee twice emailed various people including a pastor at Rabbit Creek Church and disparaged Daniels and Employee's mother. Employee intended to be spokesperson for all people Daniels "killed" or "exploited." (Employee email, February 28, 2022).

378) On March 8, 2022, the Division received returned mail from the post office, the Division's February 22, 2022 *ex parte* notice. The postal service labels on the returned mail said the item was "NOT DELIVERABLE AS ADDRESSED" and "UNABLE TO FORWARD." (Agency file; Injury Tab; Communications Tab; Returned Mail Tab, March 8, 2022).

379) The mail returned to the Division on March 8, 2022, would not have alerted staff that Employee no longer resided at her Buckeye, Arizona address, and it provided no forwarding address. (Experience, judgment, and observations).

380) Other than her email adding her Buckeye, Arizona address for service, Employee has not given the Division or Smith a current mailing address. (Agency file).

381) On March 21, 2022, Division director Collins asked the Buckeye, Arizona police to do a welfare check on Employee because her March 21, 2022 email mused about suicide and what might happen to an injured worker's benefits in that event, and because Employee had a significant mental health history. (Sargent email March 22, 2022; Employee email, March 21, 2022).

382) On March 22, 2022, Employee did not appear for the scheduled Zoom hearing at 9:00 AM. After waiting 11 minutes, the designated chair asked her contact person, Workers' Compensation Officer Mike Sargent, if he had heard from her. Sargent was in email contact with Employee throughout the morning, both before the hearing was to begin and after the hearing. The following are their March 22, 2022 email communications, which Employee sent to 14 other people who were not parties and were not connected to her case:

- 8:42 AM:

  "I'm waiting for the name of the person at the [Department of Labor] that contacted the police on me.

  In addition, why did you contact the [Buckeye Police] when the [AK Department of Labor] knew I didn't live there? Were you just trying to find out if I was lying? Why weren't those [same] efforts put into see why [Susan] Daniels [and] her attorney were lying about me not going back to work in December [2015]. You know full well I lost ALL my healthcare insurance when I was illegally fired in February 2016."

- 9:11 AM:

  "Good morning Ms. Leigh-

  Are you able to access the Zoom meeting with the link provided? Do you need us to resend the link? Your hearing is scheduled for 0900 ADT today.

Mike"

- 9:14 AM:

  "Mr. Sargent: I specifically asked you who contacted the police on me at the [Department of Labor]? As previously stated I have no phone so I am awaiting for a phone to become available to borrow.

  In the meantime, who [c]ontacted the police on me yesterday?"

- 9:17 AM:

  "Good morning Ms. Leigh-

  Attending the Zoom meeting does not require the use of a telephone - you can access the hearing on your PC/tablet with the provided link.

  Regards-

  Mike

- 9:19 AM

  Mr. Sargent:

  You are assuming I have a [PC] or tablet? How did you come to that factual conclusion?

  I will ask again. . . . Who contacted the police on me yesterday?

- 9:22 AM:

  Good morning Ms. Leigh-

  The hearing officer has advised that the hearing in this matter is adjourned pending your contact with the Division.

  Regards-

  Mike"

- 9:24 AM:

  "Mr. Sargent:

  I will ask again. . . . Who contacted the police on me yesterday?"

- 9:43 AM:

  "I have Laurie who is going to testify regarding dropping me off at work at a modified position due to my ankle that needed treatment that I have still not received, and being harassed by Robert Morris who is asking to testify. So the hearing officer won't hear her testimony without me present?

  Who at the Alaska [D]epartment of [L]abor contacted the police on me?"

- 9:52 AM:

  "Good morning Ms. Leigh-

  In response to your inquiry, I have been advised that the Workers' Compensation director Charles Collins contacted the police to conduct a welfare check.

  The hearing in your case has been rescheduled for 10:00 AM today; in the event you are unable to attend, please request a continuance.

  Regards-

  Mike"

- 10:00 AM:

  "Mr. Sargent:

  How did Charles Collins get my email? I didn't send it to him . . . and he was able to call the police when I have sent him multiple emails that he has completely ignored?

  I don't need a continuance [I] need the law to be followed not to be tortured repeatedly especially when everyone knows I don't have my medication (not even my blood pressure, so if I die of a heart attack because you all want to torture me [then] who is liable?) I want [M]r. Smith ordered to the [D]ivision of [I]nsurance]. . . . That can't happen without torturing me knowing I have [PTSD] from court proceedings from testifying as a child against the [person who caused her trauma]? The hearing officer had no problems asking me questions under oath that he [thinks] it's acceptable to allow [M]r. Smith to torture me? This is torture."

- 10:10 AM:

  "I'm [r]equesting [ADA] accommodations. Any questions the hearing officer needs to ask me can ask me through email.

  The hearing officer can contact Stacy Kraly to verify I don't have my medication as well."

- 3:58 PM:

  “Mr. Donley

  I need any and all insurance information that the [S]tate of Alaska holds on [C]harles Collins[;] there are now police reports from multiple police departments stating he’s harassing me.”

- 4:26 PM:

  “Excuse me. I had people that tried calling today and they said they couldn’t get through. . . . They were only needed if [M]r. [S]mith lied.

  1. [One] if [Mr.] Smith continues to say I didn’t go back to work.
  2. One was to testify regarding [Mr. Smith] bribing [Barb Williams].

  Can you explain why they were not allowed to testify? (Employee emails; Division emails, March 22, 2022).”

Employee’s March 22, 2022 emails were cogent, focused and articulate. (Judgment, observations).

383) On March 22, 2022, the hearing reconvened at approximately 10:20 AM. The designated chair summarized the morning emails, above, on the record. Employer stated the hearing should proceed without Employee because she had adequate notice and Employer had witnesses ready to testify. The panel deliberated on this preliminary issue and decided to proceed in Employee’s absence, finding she had adequate notice and did not state in her morning emails sent on the hearing date any reason why she could not attend the hearing by using the Zoom link on whatever device she was using to communicate with the Division, or for any other reason. (Record).

384) On March 22, 2022, at approximately 2:17 PM, a person identifying herself as Laurie Ellis called the Division and said she had just received “a text” from Employee with Zoom information so she could be Employee’s witness for “tomorrow’s hearing.” The caller said she received this message and link from Employee through “[redacted] @Icloud.com.” She wanted to know what time she should start the Zoom link on March 23, 2022, to coordinate her testimony with a work break. Staff advised the caller the hearing started at 9:00 AM on March 22, 2022, and was delayed until 10:00AM so Employee could participate, but she did not. Staff further advised the caller the hearing had proceeded without Employee, was completed by about 11:30 AM, and the March 23, 2022 second hearing day was canceled as unnecessary because the hearing was completed on March 22, 2022. (Agency file; Communications tab; Phone Call Tab, March 22, 2022).

385) On March 29, 2022, seven days after the hearing was over, the Division received returned, "undeliverable" mail from the post office -- the designated chair's February 11, 2022 letter to the parties. (Agency file; Injury Tab; Communications Tab; Returned Mail Tab, March 29, 2022).

386) To date, Employee has never claimed medical benefits for mental health issues attributable to her work injury and has never disputed the related factual finding from *Leigh I*, which expressly found she was not claiming work-related mental health medical treatment. (Observations).

387) Employers are aware attorneys have incurred attorney fees when they previously represented an injured worker and then withdrew. Resolving withdrawn attorneys' fees is beneficial to both sides because it removes an issue and eliminates something that might dissuade a new attorney from accepting an injured worker's case. (Experience, judgment and observations).

388) No physician recommended Employee undergo PRP treatment within the first two years of her February 20, 2015 work injury. On October 17, 2016, Dr. McAnally "suggested" she "consider discussing" PRP treatment with Dr. Chang. On January 30, 2017, Dr. Chang said "no" PRP would not be helpful for her. Although Dr. Mason referred Employee to HSS on December 7, 2015, at her request, he did not describe the treatment she was to receive there. On March 7, 2017 Employer, who had just received Dr. Mason's December 7, 2015 referral, asked him what HSS would provide, and he said, "I suspect definitive management of her ankle pain (right ankle)." (Medical records, February 20, 2015 through February 20, 2017).

389) The Board since statehood has followed the example used in trials and hearings throughout the United States: the plaintiff presents her case first, followed by the defendant presenting its case, with both sides having an opportunity to rebut the other parties' evidence. (Experience).

390) In workers' compensation petitions for review or appeals, the Commission and the Alaska Supreme Court generally treat an injured worker who obtains a remand a "prevailing party" for attorney fee purposes. (Experience, judgment and observations).

391) This decision takes official notice from the Alaska Appellate Courts Case Management System online that the Court did not serve its July 10, 2020 order awarding Employee "costs and full reasonable attorney's fees" on Huna, and Huna did not file a motion with the Court for attorney fees or costs. (Alaska appellate courts case management system, Case S-17247).

392) Employee has not filed any requests for cross-examination. (Agency file).

393) Since 2016, Employee has sent the Division over 1,000 emails; some predate her 2015 injury. Most contain second and third-level hearsay; they are too numerous to include in this

decision and order. Some have been cited because they contain Employee's relevant admissions; they show revenge motivates her litigation against Employer and its insurer and attorneys. None contain sworn testimony. (Agency file; observations).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . ;
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court said:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the Court addressed this same issue and said:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation (footnote omitted). We have not considered the extent of the board's duty to advise claimants. . . .
> . . . .
>
> The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants (footnote omitted).

> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

The Board may base its decision on not only direct testimony, medical findings, and other tangible evidence, but also on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). "Neither the Appeals Commission nor the Board has jurisdiction to hear any action outside of a worker' compensation claim." *Alaska Public Interest Research Group* (*AKPIRG*) v. State, 1267 P.3d 27 (Alaska 2007).

> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
> . . . .
>
> (e) A member of one panel may serve on another panel when the commissioner considers it necessary for the prompt administration of this chapter. Transfers shall be allowed only if a labor or management representative replaces a counterpart on the other panel. . . .

> **AS 23.30.041. Rehabilitation and reemployment of injured workers**. . . .
>
> (d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. . . . Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. . . .

Carlson v. Doyon Universal-Ogden Services, 995 P.2d 224 (Alaska 2000), said if an injured worker presented evidence showing she repeatedly attempted to reinitiate the reemployment process while she pursued other benefits, or showed her employer had used tactics delaying reemployment benefits, a retroactive reemployment benefit award might be appropriate. *Carter v. B&B Construction, Inc*., 199 P.3d 1150 (Alaska 2008), said an injured worker must "actively pursue reemployment benefits" to be entitled to reemployment benefits.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years

> from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

Phillip Weidner & Assocs., Inc. v. Hibdon, 989 P.2d 727, 732 (Alaska 1999), addressed "reasonableness" of medical treatment:

> The question of reasonableness is "a complex fact judgment involving a multitude of variables." However, where the claimant presents credible, competent evidence from his or her treating physician that the treatment undergone or sought is reasonably effective and necessary for the process of recovery, and the evidence is corroborated by other medical experts, and the treatment falls within the realm of medically accepted options, it is generally considered reasonable (citations omitted).

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.** . . .
>
> (c) . . . If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. . . . The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

> **AS 23.30.110. Procedure on claims**. . . .
>
> (c) . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . .

> **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
>
> (1) the claim comes within the provisions of this chapter; . . .

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp.*, 914 P.2d 1276 (Alaska 1996). The presumption's application involves a three-step analysis. To attach the presumption, and without regard to credibility, an injured employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once

the presumption attaches, and without regard to credibility, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Id*. This means the employee must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn and credibility is considered. *Huit*. An injured worker is entitled to a presumption of continued work-related disability. *Kodiak Oilfield Haulers v. Adams*, 777 P.2d 1145 (Alaska 1989).

> **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 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). When doctors' opinions disagree, the Board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision. No. 087 at 11 (August 25, 2008).

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions . . . the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

> **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. . . .

> **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. . . .

> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. . . .
> . . . .
>
> (d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. . . .
>
> (e) If any installment of compensation payable without an award is not paid within seven days after 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. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the time period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
> . . . .
>
> (o) The director shall promptly notify the division of insurance if the board determines that the employee's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate . . . in effect on the date the compensation is due. . . .

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice 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*. Evidence the employer possessed "at the time of controversion" is the relevant evidence to review. *Id*. *Vue v. Walmart Associates, Inc*., 475 P.3d 270, 289-90 (Alaska 2020) held though it is proper for a reviewing body to consider evidence an employer had when it filed a controversion, "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 or face a possible penalty or referral to the Division of Insurance." *Vue* requires a review to see if a controversion remains appropriate as a matter of law.

> **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. . . .

J.B. Warrack Company v. Roan, 418 P.2d 986, 988 (Alaska 1966), described PTD and stated:

> For workmen's compensation purposes total disability does not necessarily mean a state of abject helplessness. It means the inability because of injuries to perform services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist. . . . As the Supreme Court of Nebraska has pointed out, the 'odd job' man is a nondescript in the labor market, with whom industry has little patience and rarely hires. Work, if appellee could find any that he could do, would most likely be casual and intermittent. . . . (footnotes omitted).

Meek, 914 P.2d at 1278 (Alaska 1996), a PTD case explained:

> The concept of total disability includes an education component (citations omitted). 'Factors to be considered in making [a finding that a person's earning capacity was decreased due to a work-related injury] include not only the extent of the injury, but also age, education, employment available in the area for persons with the capabilities in question, and intentions as to employment in the future.' Thus, a person's lack of education, as much as his physical injury, may be the 'handicap' preventing him from obtaining all but 'odd-lot' jobs (citation omitted). . . .

Carlson, 995 P.2d at 229 (Alaska 2000), 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 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 for the employee given her physical and educational limitations. *Id*.

Mitchell v. United Parcel Service, 498 P.3d 1029, 1041 (Alaska 2021) said:

> To rebut the presumption that an employee is disabled as of a certain date, an employer's evidence must demonstrate not only that the employee has the physical capacities to do some work at the onset of the disability period but also that regular and continuously available work then exists in the relevant labor market that is within the employee's specific physical capacities and training.

> **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.

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides**. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . . The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041. . . .

Stonebridge Hospitality Associates, LLC v. Settje, AWCAC Decision No. 153 (June 14, 2011), held when a PPI claim is ripe for adjudication, and not merely hypothetical, the claimant is required to obtain a rating and present it at hearing if she wants a PPI benefits award.

> **AS 23.30.200. Temporary partial disability**. (a) In case of temporary partial disability resulting in decreased of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability. . . .

> **AS 23.30.260. Penalty for receiving unapproved fees and soliciting.** (a) A person is guilty of a misdemeanor and, upon conviction, is punishable for each offense by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, if the person
>
> > (1) receives a fee, other consideration, or a gratuity on account of any services rendered for representation or advice with respect to a claim, unless the consideration or gratuity is approved by the board or the court. . . .

> **AS 23.30.395. Definitions**. In this chapter,
>
> . . . .

(28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence. . . .

8 AAC 45.050. Pleadings. . . .
. . . .

(f) **Stipulations**.

. . . .
(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.
(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. . . .
(4) The board will, in its discretion, base its findings upon the facts as they appear from the evidence, or cause further evidence or testimony to be taken, or order an investigation into the matter as prescribed by the Act, any stipulation to the contrary notwithstanding.

8 AAC 45.065. Prehearings. . . .

(h) Notwithstanding the provisions of (d) of this section, a party may appeal a discovery order entered by a board designee under AS 23.30.108 by filing with the board a petition in accordance . . . that sets out the grounds for the appeal. Unless a petition is filed under this subsection no later than 10 days after service of a board designee's discovery order, a board designee's discovery order is final.

8 AAC 45.070. Hearings. . . .
. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

(1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the claim or petition;
(2) dismiss the claim or petition without prejudice; or
(3) adjourn, postpone, or continue the hearing.

8 AAC 45.074. Continuances and cancellations. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;
(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;
(C) a party, a representative of a party, or a material witness becomes ill or dies;
(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

8 AAC 45.082. Medical treatment. . . .
. . . .

(d) Medical bills for an employee's treatment are due and payable no later than 30 days after the date the employer received the medical provider's bill . . . and a completed report in accordance with 8 AAC 45.086(a) . . . and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. . . .

8 AAC 45.084. Medical travel expenses. (a) This section applies to expenses to be paid by the employer to an employee who is receiving or has received medical treatment.

(b) Transportation expenses include

(1) a mileage rate, for the use of a private automobile, equal to the rate the state reimburses its supervisory employees for travel on the given date if the usage is reasonably related to the medical examination or treatment;
(2) the actual fare for public transportation if reasonably incident to the medical examination or treatment; and
. . . .

(d) Transportation expenses, in the form of reimbursement for mileage, which are incurred in the course of treatment or examination are payable when 100 miles or more have accumulated, or upon completion of medical care, whichever occurs first.

(e) A reasonable amount for meals and lodging purchased when obtaining necessary medical treatment must be paid by the employer if substantiated by receipts submitted

by the employee. Reimbursable expenses may not exceed the per diem amount paid by the state to its supervisory employees while traveling.

8 AAC 45.112. Witness list. A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider

(1) the testimony of a party, and
(2) deposition testimony completed, though not necessarily transcribed, before the time for filing a witness list.

Lajiness v. H.C. Price Co., 811 P.2d 1068 (Alaska 1991), held the Board did not abuse its discretion in rejecting the claimant's attempt "to have a previously unlisted witness" testify on his behalf. The Court stated, "the Board had discretion to exercise reasonable control over its proceedings to ensure the orderly administration of justice." (*Id*. at 1069 at n. 2).

Landry v. Trinion Quality Care Services, Inc., AWCAC Dec. No. 137 (August 26, 2010), determined an amended witness list with a new name was not timely because it was not filed five days before the hearing even though it was filed five days before a previously continued hearing. It further held the newly added witness was not a "rebuttal" witness. *Landry* said the standard for determining whether a rebuttal witness should be allowed to testify when the witness's name was not timely identified is 'dependent on whether the testimony sought to be rebutted could reasonably have been anticipated prior to trial.'" *Landry* concluded "the board acted within its discretion in excluding Green's testimony because the need for her testimony could reasonably have been anticipated before hearing." (*Landry* at 11).

In *Leigh IX*, the Commission noted 8 AAC 45.112 requires information on a witness list, so the opposing party has some idea of what to expect from the witness' testimony. *Leigh IX* determined "the Board correctly did not admit any testimony."

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. . . .
. . . .

(e) . . . Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege applied to the semi extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052. . . .

8 AAC 45.142. Interest. (a) If compensation is not paid when due, interest must be paid. . . .

(b) The employer shall pay the interest
. . . .

(3) on late-paid medical benefits to

(A) the employee . . . if the employee has paid the provider or the medical benefits; . . .

8 AAC 45.180. Costs and attorney's fees. . . .
. . . .

(f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed, and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim. The following costs will, in the board's discretion, be awarded to an applicant:

(1) costs incurred in making a witness available for cross-examination;
(2) court reporter fees and costs of obtaining deposition transcripts;. . . .
(3) costs of obtaining medical reports;

(4) costs of taking the deposition of a medical expert, provided all parties to the deposition have the opportunity to obtain and review the medical records before scheduling the deposition;
. . . .

(7) costs incurred in securing the services and testimony, if necessary, of vocational rehabilitation experts;
(8) costs incurred in obtaining the in-person testimony of physicians at a scheduled hearing;
(9) expert witness fees, if the board finds the expert's testimony to be relevant to the claim;
. . . .

(12) reasonable costs incurred in serving subpoenas issued by the board, if the board finds the subpoenas to be necessary;
(13) reasonable travel costs incurred by an applicant to attend a hearing, if the board finds that the applicant's attendance is necessary;
. . . .

(17) other costs as determined by the board. . . .

Civil Rule 46. Conduct of trials. **(a) Statement of the Case**. Before the introduction of any evidence, the plaintiff shall state briefly the claim for relief and the issues to be tried. The defendant shall then state the defense or counterclaim.

(b) Introduction of Evidence. Unless otherwise ordered by the court, which may regulate the order of proof in the exercise of sound discretion, the plaintiff shall then introduce evidence, and when the plaintiff has concluded the defendant shall do the same.

(c) Rebutting Evidence. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason and in the furtherance of justice, permits them to introduce other evidence.
. . . .

(g) Argument of Counsel. When the evidence is concluded . . . the plaintiff shall open with the plaintiff's argument; the defendant shall follow the defendant's argument and the plaintiff may conclude the argument. . . .

ANALYSIS

As a preface to this analysis, the panel notes Employee has filed well over 1,000 emails, some from before her February 20, 2015 work injury. Factual findings and conclusions are drawn from several because they contain Employee's relevant admissions. Leading up to the March 22, 2022

hearing, Employee was preparing to present her case; she had planned on calling over a dozen witnesses to support her positions. However, she did not participate in the hearing and other than her deposition and limited preliminary hearing testimony, Employee has not provided sworn testimony on the major elements in her claims. Witnesses "shall testify under oath or affirmation." 8 AAC 45.120(a). Most statements made in Employee's emails are not relevant and are first or second level hearsay and though admissible, are not reliable because responsible persons would not rely on them in the conduct of serious affairs. 8 AAC 45.120(e). Thus, statements in Employee's emails are "arguments," and with exception of her admissions, are not her "testimony" because they were not made under oath. 8 AAC 45.120(a).

1) Was the oral order to proceed with the hearing without Employee, correct?

A panel typically analyzes its decision to proceed with a hearing in an employee's absence when an injured worker fails to appear or offers an inadequate cause for a continuance request. But this is not a case where Employee wanted to participate in her long-awaited merit hearing. Rather, this analysis is provided in the event Employee appeals and contends for the first time on appeal that she was deprived of her due process right to participate at the hearing. AS 23.30.001(1), (2), (4).

The Division gives each party to a claim at least 10 days' hearing notice. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone or continue the hearing except for "good cause." AS 23.30.110(c). Continuances or cancellations are not favored and will not be routinely granted except for good cause. There are 14 reasons considered "good cause" to continue or cancel a hearing. The last four require the parties to appear to make the request. 8 AAC 45.074(b)(1)(A)-(N). If a party was served with hearing notice and is not present, the panel will in its discretion will choose from a prioritized list: (1) proceed in the party's absence, take evidence and decide the issues in the claim; (2) dismiss the claim without prejudice; or (3) adjourn, postpone or continue the hearing. 8 AAC 45.070(f)(1)-(3).

Employee has demanded a merit hearing repeatedly since 2017. On December 7, 2021, the parties appeared at a prehearing conference at which the designee scheduled a two-day hearing for March 22 and 23, 2022, to address Employee's claims, as amended. On December 10, 2021, the Division served the summary from that conference on Employee at both her addresses; the post office did

not return this. On December 14, 2021, the Division served on Employee at both her addresses an amended prehearing conference summary reiterating the March 22 and 23, 2022 hearing dates; the post office did not return this either. On December 30, 2021, the Division notified Employee by email it would no longer serve her at two addresses but would only serve her at her Buckeye, Arizona address. Employee did not object, state she did not live at the Buckeye address any longer or provide the Division with a new mailing address. On January 3, 2022, the Division served Employee with a hearing notice by certified mail at her Buckeye, Arizona address. The Division never received the green return receipt, but the post office did not return this notice.

Employee was in nearly daily email contact with the Division in the months prior to the March 22, 2022 hearing. For example, on February 7, 2022, Employee emailed the Division and asked, "Is the March hearing going to be on the merits?" On February 8, 2022, the Division responded "Yes." On February 11, 2022, the Division emailed Employee the designated chair's three-page letter detailing the issues and evidence necessary for her "March 22 and 23, 2022 hearing." *Richard*; *Bohlman*. In early March, Employee sent numerous emails to the Division inquiring if certain evidence was in her agency file. On March 6, 2022, she emailed the Division asking if Huna and Croft knew Employee was going to "drag them through the mud in a couple of weeks." Additional March 2022 Division emails to her identified the panel members for her March 22 and 23, 2022 hearing and advised her when the panel members changed. There is no doubt Employee had notice of the March 22 and 23, 2022 hearing, and appeared to be preparing for it. *Rogers & Babler*.

Employee was in direct email contact with the Division on March 22, 2022, prior to her hearing. At 8:42 AM, she demanded to know who at the Department of Labor contacted the Buckeye police to perform a "welfare check" on her in response to concerning emails she had sent the Division on March 21, 2022, discussing suicide. At 9:11 AM, when Employee failed to appear by Zoom link for her 9:00 AM hearing, Workers' Compensation Officer Sargent emailed her and asked if she was able to access the Zoom meeting with the link provided, or if she needed him to resend it. He also told her the hearing was scheduled for 9:00 AM. At 9:14 AM, Employee again twice asked who had contacted the police about her and told Sargent, "As previously stated I have no phone so I am waiting for a phone to become available to borrow." At 9:17 AM, Sargent told Employee the Zoom meeting did not require a telephone and advised, "You can access the hearing on your

PC/tablet with the provided link." On 9:19 AM, Employee responded, "You are assuming I have a PC or tablet? How did you come to that factual conclusion?" She again asked who contacted the police the day prior. On 9:22 AM, Sargent told Employee the hearing was adjourned pending her contact with the Division. On 9:24 AM, Employee reiterated her request to know who had contacted the police. At 9:43 AM, Employee emailed she had "Laurie" who was going to testify and asked if the panel would hear her testimony without Employee present. She again asked who had called the police.

When it appeared Employee might not participate in the hearing unless and until she got an answer to her police question, at 9:52 AM Sargent told her Division Director Collins had contacted the police to conduct a welfare check. Sargent also advised the hearing had been rescheduled for 10:00 AM. He added, "in the event you are unable to attend, please request a continuance." At 10:00 AM, Employee said, "I don't need a continuance I need the law to be followed and not to be tortured repeatedly especially when everyone knows I don't have my medication (not even my blood pressure, so if I die of a heart attack because you all want to torture me then who is liable?)." At 10:10 AM, Employee said she was requesting ADA accommodations and any questions the panel had it could ask her "through email." There was no further contact with Employee until 3:58 PM, long after the hearing had ended. Employee sent the above emails to 18 people, most of whom were not related to her case.

Other than questioning her through emails, Employee did not specify what ADA accommodations she was requesting on March 22, 2022. In his September 24, 2020 letter to Employee's former, non-attorney representative Barbara Williams, director Collins addressed her previous ADA accommodation requests. None mentioned medication, high blood pressure or heart issues. In her eight emails Employee sent to the Division immediately prior to hearing on March 22, 2022, she never said she was unable to participate in the hearing for *any* reason. Moreover, she did not say she was unavailable, had an unintended and unavoidable court appearance, was ill, and could not participate telephonically or by Zoom. 8 AAC 45.074(b)(1)(A)-(D). Though directed primarily to discovering who had called the Buckeye police to perform a welfare check, Employee's emails were focused, attentive, calm and goal-oriented; nothing in them implied she was physically ill or having a mental issue. *Rogers & Babler*.

For some time, Employee has stated she has no telephone; on March 22, 2022, she said in an email she was waiting for one to become available to borrow. Though she has never stated under oath she has no phone, accepting this contention as true, it is inconceivable Employee would clamor for years for a merit hearing, have months' notice of her March 22 and 23, 2022 hearing and not make prior arrangements to have a telephone available so she could participate. Similarly, though Employee presented no evidence or sworn testimony stating she has blood pressure or heart issues, it is unlikely she would not have asked for a continuance, gone to the emergency room, or make prior arrangements to obtain necessary medication if she was having these problems on March 22, 2022. Employee filed a claim against Employer. She did not explain how giving testimony or answering questions about the claim she filed would constitute "torture." As Drs. Gritzka and McAnally observed, Employee "catastrophizes." To the extent Employee was implying on March 22, 2022 that she could not attend the hearing, she was not credible. AS 23.30.122; *Smith*.

Further, although Employee claims she has no telephone, she has regularly participated in various Zoom meetings, spoken and, based on her innumerable emails, has access to an electronic device able to send and receive emails including pictures and documents. She was able to contact a potential witness on March 22, 2022, through iCloud.com and send her the hearing Zoom link so that witness could testify. Whether Employee is in Alaska, Arizona, or elsewhere, has a phone, PC, tablet or an Internet accessible electronic device, or has heart problems or high blood pressure is all irrelevant. She simply gave no reason why she could not participate in the hearing.

To the contrary, on March 22, 2022, Employee specifically stated, "I don't need a continuance. . . ." Had she requested a continuance and provided good cause, her request may have been granted as it was previously. She did not. Employee apparently decided her testimony under oath was unnecessary. Holding an "email hearing," if that is what Employee was contemplating, would fundamentally alter the way the Division handles administrative hearings and would have been untenable because the panel members and Employer could effectively spend hours typing lengthy questions to Employee; similarly, it would take too long for Employee to type questions to Employer's witnesses. Her suggestion would have adversely affected the "orderly administration of justice." *Lajiness*. If Employee thought she could present her case-in-chief after Employer presented its evidence, she was mistaken. Standard practice in American jurisprudence in all

jurisdictions is for the plaintive to go first presenting evidence, followed by the defendant, unless the tribunal for good reason alters the standard procedure. Each party can present rebuttal evidence after the opposing party has presented its case-in-chief. Civil Rule 46. Though Civil Rule 46 does not apply to workers' compensation cases, it gives good guidance, and administrative hearings historically follow that format. The decision to proceed with the hearing in Employee's absence was correct. AS 23.30.110(c); 8 AAC 45.070(f)(1)-(3); 8 AAC 45.074(b); Civil Rule 46.

In the event Employee appeals because her one and only witness who called the Division on March 22, 2022 did not testify, the record shows notwithstanding numerous prior warnings, Employee again failed to file a witness list. Consequently, even had her witness called to participate *before* the hearing was over, the witness' testimony would have been excluded under 8 AAC 45.112. *Lajiness*; *Landry*; *Leigh IX*. Apparently, on December 27, 2021, Employee emailed something to Smith containing a statement from her one potential witness. The email and statement are not seen in Employee's agency file. Even if the witness' hearsay statement was properly filed and served on December 27, 2021, it cannot be considered because Employer timely requested cross-examination of her on December 28, 2021.

2) Did the designee abuse his discretion in denying Employee's discovery request?

On December 7, 2021, the parties appeared before the designee for a prehearing conference. The parties set numerous issues for hearing and discussed discovery. Employee demanded Employer produce "EDI report calculations" and "all" discovery in its possession. Employer contended it had produced all discovery. The designee attempted to assist Employee in identifying specific discovery she wanted. After several attempts, the designee was unable to identify what Employee was trying to discover and found her requests "ambiguous." He found her request for "all discovery" neither identified information she sought nor provided any basis to determine whether the information was discoverable. The designee denied her requests and, presuming she would appeal his decision, added an appeal as an issue for the March 22 and 23, 2022 hearing.

If a discovery dispute comes up on appeal, the panel may not consider any evidence or argument not presented to the designee at the prehearing conference; the issue must be determined solely on the written record. AS 23.30.108(c). The December 7, 2021 transcript shows Employee presented

neither evidence nor argument to support her discovery demand. Following the statute, Employee's appeal will be denied. Had she participated in the March 22, 2022 hearing, following the law she would not have been able to present any evidence or argument because discovery appeals must be addressed on the written record unless the parties agree otherwise.

Moreover, *Leigh V*, *Leigh VII*, *Leigh VIII* and *Leigh X* addressed discovery matters. Employee at the December 7, 2021 prehearing conference focused again on "EDI reports." The designee noted the designated chair in his September 10, 2021 email explained EDI reports. The designee also noted Employer had filed and served a legacy "Compensation Report," which showed dates and types of benefits paid to her. Employee denied Employer produced any compensation report; the record shows otherwise. Employer provided four legacy Compensation Reports, including one Daniels explained at the March 22, 2022 hearing. All four legacy Compensation Reports are found in Employee's agency file and were served on her, on April 9, 2020, May 8, 2020, September 17, 2020, and attached to Employer's hearing brief served on March 15, 2022, respectively. Because she gave no evidence or argument supporting her request before the designee, because her discovery requests had already been addressed, and because her December 7, 2021 request was vague and ambiguous, the designee did not abuse his discretion by denying her blanket discovery request. AS 23.30.108(c). Her appeal will be denied.

3) Is Employee entitled to relief regarding attorney fees Employer paid Croft and Huna?

On September 2, 2020, Employee filed a petition regarding attorney fees. She requested a "formal explanation" of how these were paid and wanted to know, which attorney would be charged with a misdemeanor. She also contends Croft and Huna, who had withdrawn from representing her, were paid attorney fees for legal services rendered in her case, before she received any benefits. Employee did not file a hearing brief, did not appear or testify at hearing, and has not clarified the relief she seeks on this issue, other than a "formal explanation."

AS 23.30.145(a) requires attorney fees in these cases to be approved "by the board." If a person receives a fee that is not "approved by the board or the court," that person upon conviction is guilty of a misdemeanor. AS 23.30.260(a)(1). Parties may stipulate in writing to facts or procedures.

Such stipulations are binding upon the parties "to the stipulation" and have "the effect of an order" unless for "good cause" a party is relieved from the terms of the stipulation. 8 AAC 45.050(f).

Employers are aware attorneys have incurred attorney fees when they previously represented an injured worker and then withdrew. *Rogers & Babler*. Croft never filed a claim or a formal "lien" for his attorney fees; Huna filed a claim for hers. Regardless of whether a formal attorney fee lien or claim has been filed in a case, attorney fees for claimant's lawyers, including those who have withdrawn, are routinely resolved through stipulations. 8 AAC 45.050(f). Resolving withdrawn attorneys' fees is beneficial to both sides because it removes an issue and eliminates something that might dissuade a new attorney from accepting an injured worker's case. *Rogers & Babler*.

Employee's contention she received "no benefits" is wrong. On November 19, 2019, Employee told Dr. Kiele she had turned down a settlement offer. She was clearly not referring to something that happened on February 15, 2018. Her comment to Dr. Kiele marked the informal, unsuccessful conclusion of the parties' prolonged mediation efforts begun on February 15, 2018. Not long after Employee made this statement, on December 11, 2019, the parties met for a prehearing conference. Smith said Employer would pre-authorize medical treatment Employee requested for her ankle even though he had ample evidence to continue to controvert it. He advised Employee she would be receiving a check for $93,874.98 to compensate her for past TTD benefits from March 31, 2017, through the present, and accrued interest. Employer agreed to continue paying Employee TTD benefits until she became medically stable. It withdrew, partially withdrew or maintained various controversions. Employee has never under oath denied receiving a $93,874.98 check in or around December 2019. The agency file does not show who received their check first -- Employee, Croft or Huna. As shown below, it does show Croft and Huna's efforts contributed to Employee receiving a large check for retroactive benefits, and pre-authorized medical treatment.

Croft represented Employee in a February 2018 mediation, and Huna later represented her at her first hearing and before the Commission and the Alaska Supreme Court on the mental health medical release issue. Parties often discover strengths and weaknesses in their cases through mediation. *Rogers & Babler*. Although mediation was ultimately unsuccessful, it played a role in Employer's decision to pay Employee $93,874.98 in December 2019. Croft's efforts on

Employee's behalf also assisted her case preparation. *Rogers & Babler*. Language in Employer and Croft's attorney fee stipulation supports these inferences. Huna represented Employee from the first hearing through the appellate process on the mental health record release issue and since it was possible Huna could succeed in her representation, this also factored into Employer's decision to pay Employee $93,874.98 in December 2019. *Rogers & Babler*. Statements in Employer and Huna's attorney fee stipulation also support this inference.

On December 12, 2019, Employer and Croft stipulated Employer accepted some of Employee's claim and was paying associated attorney fees. They stipulated to an amount they considered fair and reasonable to compensate Croft for his legal services to Employee. 8 AAC 45.050(f). On December 13, 2019, hearing officer Yeo reviewed the case and approved the parties' stipulation, making it an order. On December 16, 2019, Employer and Huna stipulated to a fair and reasonable attorney fee to compensate Huna for her legal services to Employee. "This includes any and all appellate work." 8 AAC 45.050(f). On December 17, 2019, Yeo again reviewed the case and approved these parties' stipulation, making it too an order. These attorney fee awards were approved "by the board." AS 23.30.145(a); AS 23.30.260(a)(1). On December 13 and 16, 2019, the Division served the fee orders on Employee at her correct mailing addresses. There is no evidence in the agency file suggesting Employer did not timely pay these attorney fees.

Employee received these orders because, on December 19, 2019, she emailed Smith complaining about "these outrageous stipulations" and said she would seek "reconsideration." On December 21, 2019, Employee reiterated in an email, "I will be filing a petition for reconsideration on both stipulations; I will be filing it with the commission and not the board." Her agency file shows Employee did not seek reconsideration from Yeo on these two approved stipulations and orders.

On July 10, 2020, the Court issued *Leigh VI*. Employee did not prevail on her main issue before the Court, which was her attempt to prevent Employer from discovering her mental health records. However, Huna succeeded in obtaining a vacation and remand of *Leigh I* so the factfinders could consider appropriate limitations on the release Employee had to sign to release her mental health records to Employer. The Court considers a claimant who obtains a remand in a workers' compensation petition for review or appeal a "successful party" for attorney fee purposes. *Rogers*

& Babler. Thus, on the same date, the Court awarded Employee "full reasonable attorney's fees" and directed her to serve and file an affidavit of services on appeal and a cost bill. Huna's fees were approved "by . . . the court." AS 23.30.260(a)(1). By this time, Huna no longer represented Employee and the Employer-Croft and Employer-Huna stipulations had already been approved and the attorney fees and costs paid to Employee's former attorneys.

This decision takes official notice from the Alaska Appellate Courts Case Management System online that sense Huna had withdrawn, the Court did not serve its July 10, 2020 order on her. This decision takes official notice from the Court's website that Huna did not file a request for attorney fees and costs with the Court. Even had she known about the Court's order, Huna would have had no reason to file for attorney fees and costs with the Court because she had already resolved her claim for attorney fees for all work she performed for Employee, "including appellate work."

The above analysis provides the explanation Employee seeks. This panel has no jurisdiction to charge a person with a crime; it only has the authority granted it by the Act. *AKPIRG*. Although this decision can make factual findings related to an allegation, since Croft and Huna's attorney fees have been approved, this decision finds nothing suggesting any statute in the Act has been violated. For these reasons, the second part of her request will be denied.

Further, at the October 27, 2020 prehearing conference, the designee treated Employee's September 2, 2020 attorney fee petition as one for discovery. AS 23.30.108(c). The designee noted prior decisions already addressed the attorney fee issue; the designee denied Employee's September 2, 2020 petition and held her associated hearing request was "moot." The Division served the prehearing conference summary on Employee at her correct address on October 30, 2020. Adding three days for mail service, she had until November 12, 2022 to appeal the order. Employee did not appeal. "Unless a petition is filed under this subsection no later than 10 days after service of a . . . discovery order, the . . . discovery order is final." 8 AAC 45.065(h). Therefore, the designee's October 27, 2020 order was final and resolved this issue. If Employee thought she had standing or another legal basis to be heard on or to oppose the attorney fee stipulations, she could have and should have appealed the designee's discovery order and included those contentions in an appeal petition under 8 AAC 45.065(h). But she did not.

There being no discernible factual or legal basis for Employee's request regarding the Croft and Huna attorney fee stipulations and orders, and based on the above analysis and "explanation," her unspecified remedy will be denied.

4) Can this decision order Huna to return Employee's file and pay her transportation and mediation costs?

Employee seeks an order requiring her former attorney Huna to return her file materials and reimburse Employee for her transportation and mediation costs. Although Employee has repeatedly made accusations against Huna in respect to her file and unreimbursed expenses, she provided no sworn testimony on which this decision could make any factual findings. Even had she done so, Employee provided no statutory basis for this decision to intervene in a potential dispute between her and her former attorney. The panel has limited jurisdiction and this request does not fall within its purview. *AKPIRG*. Employee's request for an order requiring Huna to return her file, if in fact she has it, and to give her funds, if in fact she has them, will be denied.

5) Is Employee entitled to additional TTD benefits?

Employee contends she is entitled to unspecified TTD benefits. AS 23.30.185. Employer contends it paid her TTD or TPD benefits from February 21, 2015 through April 9, 2019, and in fact has overpaid her; Employee conceded she had been overpaid. This issue raises factual disputes to which the presumption of compensability analysis applies. AS 23.30.120(a)(1); *Meek*.

On February 11, 2022, the Division emailed Employee a three-page letter from the designated chair that explained each issue set for hearing on March 22, 2022, and the evidence necessary to prove Employee's claims. *Richard*; *Bohlman*. Since Employee did not testify under oath on this TTD benefit issue, it is doubtful she can raise the presumption especially where she has agreed Employer has overpaid TTD benefits; otherwise, her arguments and unsworn statements in emails and otherwise are not "evidence." *Tolbert*. Nonetheless, assuming Employee has raised the presumption, Employer rebuts it by demonstrating it paid Employee disability benefits as recorded in its most recent March 15, 2022 legacy Compensation Report and through Daniels' hearing testimony. *Huit*. The Compensation Report and Daniels' testimony state Employer paid Employee disability benefits from the injury date through April 9, 2019, the date on which her

attending physicians stated she was medically stable from her work injury. This shifts the burden back to Employee who must prove by a preponderance of evidence that she is entitled to additional TTD benefits. *Id.*

At the December 7, 2021 prehearing conference, the designee attempted to elicit specific dates to which Employee contended she was entitled to TTD benefits. She refused to specify. It is not known the dates for which she claims TTD benefits, but this decision presumes her claim begins April 10, 2019, the day after the last day Employer paid her TTD benefits and continues to the present. She cannot receive TTD benefits for any date after the date she reached medical stability. AS 23.30.185; AS 23.30.395(28). Medical stability dates in this case vary widely as follows: attending physician Dr. Mason -- October 1, 2015, November 19, 2015, but she was no longer medically stable effective December 14, 2015; EME Dr. Youngblood -- June 24, 2015 and January 15, 2016; attending physician Dr. Chang -- May 17, 2017 for her orthopedic issues and April 10, 2019 for CRPS; EME Dr. Kirkham -- April 10, 2019; attending physician Dr. McAnally -- April 10, 2019 for CRPS; and SIME Dr. Gritzka -- not medically stable effective February 6, 2018.

Greater weight is given to physicians who gave their opinions most recently after Employee had completed significant additional treatment. *Moore*. This includes Drs. Youngblood, Chang and McAnally who gave their medical stability opinions in recent depositions. AS 23.30.122; *Smith*. They opined both medical conditions attributable to Employee's work injury were medically stable by April 10, 2019. Less weight is given to Dr. Gritzka's opinion because it was offered on February 6, 2018 prior to considerable additional medical care Employee received. Based on this evidence, Employee failed to prove she was not medically unstable on or after April 10, 2019. *Adams*; *Saxton*. She failed to produce evidence Employer did not pay her benefits for the periods it says it did. Employee would know if there was a missing disability check. Because she was medically stable on April 10, 2019, as a matter of law she is not entitled to additional TTD benefits. AS 23.30.185; AS 23.30.395(28). Her claim for additional TTD benefits will be denied.

6) Is Employee entitled to additional TPD benefits?

Employee contends she is entitled to unspecified additional TPD benefits. AS 23.30.200. Employer contends it paid her TTD or TPD benefits from February 21, 2015 through April 9,

2019, has overpaid her and Employee conceded she has been overpaid. This issue raises factual disputes to which the presumption of compensability analysis applies. The presumption analysis from the TTD section above is incorporated here by reference to save space. *Meek*; *Tolbert*; *Huit*. Assuming the presumption has attached, and been rebutted, Employee failed to specify the dates during which she claims entitlement to additional TPD benefits. Because she was medically stable effective April 10, 2019, Employee cannot receive TPD benefits after the date of medical stability and failed to demonstrate Employer did not pay her as it said it did, her claim for additional TPD benefits will be denied. AS 23.30.200(a); AS 23.30.395(28).

7) Is Employee entitled to additional PPI benefits?

Employee contends she is entitled to additional PPI benefits. AS 23.30.190. Employer contends it paid benefits on the only work-related PPI rating it received. This creates factual disputes to which the presumption analysis applies. The presumption analysis from the TTD section above is incorporated here by reference. *Meek*; *Tolbert*; *Huit*. Assuming the presumption has attached, and been rebutted, Employee did not file a hearing brief and did not participate in the hearing, so it is unclear what the basis is for her PPI benefit claim. Her PPI claim was raised, ripe and not hypothetical. Therefore, she had the responsibility to present evidence of a higher PPI rating than what Employer already paid her. *Settje*. According to Employer's March 15, 2022 Compensation Report and Daniels' testimony, Employer paid Employee $5,310 in PPI benefits based on a three percent PPI rating. She failed to produce any evidence of a higher PPI rating and her request for additional PPI benefits will be denied.

8) Did Employee timely appeal the RBA-designee's finding Employee was not eligible for vocational reemployment benefits?

Because Employee did not file a hearing brief or participate at hearing, it is unclear what relief she seeks from her January 11, 2017 claim in which she raised for the first time an issue regarding reemployment benefits. This decision presumes she disagrees with the RBA-designee finding her not eligible for reemployment benefits.

On August 13, 2015, the RBA-designee sent Employee a letter telling her she was "not eligible" for reemployment benefits based on the July 29, 2015 eligibility evaluation report from specialist

Cranston. Cranston based her recommendation report on attending physician Dr. Duddy's prediction Employee would have permanent physical capacities to perform physical demands of her job at the time of her injury as described in the appropriate SCODRDOT job description for Psychiatric Technician. The RBA-designee advised Employee if she disagreed with her decision, she had 10 days to petition for an appeal or the decision was "final." AS 23.30.041(d).

Employee did not file a petition appealing the RBA-designee's decision within 10 days, nor did she file a claim requesting review within 10 days. Moreover, Employee did not file a petition seeking modification of the RBA-designee's decision within one year, even though she continued to have issues with her ankle that required additional medical treatment. At the latest, Employee had to file a petition seeking modification of the RBA-designee's decision due to changed condition in her ankle, for example, by no later than August 14, 2016, one year after the service date of the RBA-designee's letter, under AS 23.30.130(a). She filed no petitions in 2016.

There is no evidence Employee timely tried to reinstitute reemployment employment benefits or that Employer delayed the reemployment process. *Carlson*. There is no evidence she actively pursued it. *Carter*. For these reasons Employee would not be entitled to a reemployment benefits award. Moreover, on January 11, 2017, Employee filed her first claim and in the "Other" section wrote "re visit retraining program." Assuming her request could be considered an "appeal," Employee's claim filed some 17 months after the RBA-designee told her she was not eligible was untimely and her request to "revisit" reemployment benefits, treated as an "appeal," will be denied.

9) Is Employee entitled to PTD benefits?

Employee claims entitlement to PTD benefits. AS 23.30.180. Employer contends she is not entitled to these benefits. Employee did not disclose the factual or legal basis for this claim and admitted that when she filed the PTD claim she was not certain what she was requesting. This claim presents factual disputes to which the presumption analysis applies. *Meek*; *Tolbert*; *Huit*. The same presumption analysis from above is incorporated here by reference to save space.

Employee provided no evidence, including her own testimony, suggesting she was PTD status at any time since her work injury. Therefore, she cannot raise a presumption that she is PTD status.

Tolbert. Assuming Employee somehow raised the presumption, it was rebutted by Cranston's hearing testimony read in conjunction with Employee's medical records and depositions. *Meek*; *Huit*. Cranston was the reemployment specialist assigned to Employee's case who performed her initial eligibility evaluation. She did a labor market survey recently for Psychiatric Technician, Accountant and Controller and found jobs openings for psychiatric technicians in Alaska and Arizona (190 in Alaska and 254 in Arizona). Cranston opined Employee qualifies for these jobs, which now pay more than they did when Employee was working for Employer in 2014. She also found accounting jobs and expected 2,053 job openings in the next few years in Alaska and 1.514 million openings within the United States. There were 200 average openings in Alaska for accountants earning significantly more than Employee earned working for Employer. Cranston also found 263 controller job openings in Alaska and 59,400 in the United States. These jobs also paid considerably higher than wages Employer paid Employee. Cranston opined Employee has ample training and experience to work in these fields and stated "there is a lot she could do" including being an executive director. Her testimony was credible and there was no contradictory evidence. AS 23.30.122; *Smith*; *Roan*; *Mitchell*.

No medical evidence suggests Employee is "odd-lot" or cannot hold down a full-time job even at the sedentary level. *Roan*. By contrast, Drs. Mason, McAnally, Duddy, Kirkham, Chang and Youngblood all stated she can return to work as a psychiatric technician, accountant and controller. As even Dr. Gritzka stated, Employee's "ankle condition is not a sentence for the inability to work full-time ever." These three occupations were all available in 2016, when Cranston did her initial eligibility evaluation and are available now according to Cranston's hearing testimony. Further, detailed factual findings and conclusions above from Employee's medical records show a resolution of her CRPS symptoms and steady improvement in her right ankle symptoms.

Notably, in her 2019 and 2020 emails, Employee referred to working with "DVR" and participating in "vocational rehabilitation." There is no evidence in the agency file stating what kind of vocational rehabilitation she received and what, if anything, Employee has been retrained to do. However, her emails indicated she was applying for jobs and was excited to return to work. It is unknown if she has done so. Nevertheless, based on the evidence analyzed in this section, Employee failed to prove that there is no full-time, consistent and readily available work that she

can do given her age, education, training, experience and physical limitations. *Roan*; *Mitchell*. Employer proved with comprehensive substantial medical evidence that physically Employee could work full-time at sedentary positions, for which she was fully trained, and vocationally many jobs were available in the labor market that she could perform without any special accommodations. *Mitchell*. Therefore, her claim for PTD benefits will be denied.

10) Is Employee entitled to a compensation rate adjustment?

It is unclear what Employee intended when she claimed a "compensation rate adjustment." Assuming she is making a claim that she should have been paid more than $665.78 per week during periods of total disability, Employer disputes that. This creates a factual dispute to which the presumption analysis applies. The presumption analysis from the TTD section above is again incorporated here by reference to save space. *Meek*; *Tolbert*; *Huit*.

Assuming Employee raised the presumption, Employer rebutted it with its Compensation Report showing it calculated Employee's weekly TTD rate based on $53,533.94 in gross earnings. *Meek*; *Huit*. The burden shifts to Employee who must prove her compensation rate adjustment claim by a preponderance of the evidence. *Id*. When Employee deposed Denis-Choi on August 19, 2020, her questions addressed "overtime" and how pay was calculated on shiftwork. This is the only evidence adduced that could have a bearing on compensation rate, but it sounds more like Employee was trying to develop evidence for a wage and hour claim than for a compensation rate adjustment claim under the Act. Employee did not present any evidence or argument demonstrating Employer used an incorrect method to calculate her $665.78 weekly rate, based on gross earnings of $53,533.94. She failed to provide factual or legal bases to support a compensation rate adjustment claim and it will be denied. *Saxton*.

11) Is Employee entitled to any past or future medical care and related transportation costs for her work-related orthopedic injuries?

Employee has never requested medical treatment for mental health conditions whether they were caused by the work injury or were pre-existing and aggravated or accelerated by the work injury or combined with it. She has repeatedly, expressly disavowed such a claim. Thus, the fact she

continues to receive mental health treatment from ANP Davis and perhaps other mental health providers, is not at issue in this case.

Employee contends she is entitled to past and future orthopedic medical care and treatment and related transportation costs. AS 23.30.095(a). Employer contends she is not. This results in factual disputes to which the presumption analysis applies. Employee previously testified she wanted and needed additional treatment for her right ankle; SIME Dr. Gritzka said she needed additional treatment. This raises the presumption and causes it to attach. *Meek*. Employer rebuts the presumption with testimony from Dr. Youngblood who said she needed no further medical treatment. *Tolbert*. The burden shifts back to Employee who must prove her claim for additional medical treatment by preponderance of the evidence. *Huit*.

Employee provided no new evidence of unpaid past work-related medical bills. Employer resolved Medicaid's lien to the state's satisfaction. Employee has not referred to any evidence in the agency file regarding transportation or out-of-pocket expenses for medical care. Daniels has not received any such requests that remain unpaid. Her testimony was credible. AS 23.30.122; *Smith*. Employee previously admitted she failed to present receipts or unpaid bills or send a transportation log for reimbursement. 8 AAC 45.082(d); 8 AAC 45.084(b)(1)-(2), (d), (e). When Croft represented Employee, he filed evidence from Dr. McAnally showing Employee paid $18 from her own pocket for a work-related medical expense. If Employer has not reimbursed her for this out-of-pocket expense, it will be directed to do so. Otherwise, Employee's claim for past medical expenses for her work-related injuries will be denied for lack of proof.

If Employee currently receives medical care for her work injury, her records for that treatment are not in her agency file; her medical treatment since last fall is unknown to this panel. The last medical record in her agency file for her work injury is April 7, 2021, when Dr. McAnally performed a telemedicine appointment noting Employee was living in Arizona; he prescribed nerve medicine. Mental health care provider ANP Davis in September 2021, stated Employee was off her medication and not interested in seeing providers in Arizona. Her medical records state Employee's CRPS has mostly resolved. Dr. Youngblood said she needs no further medical treatment and Drs. Chang, Gritzka and Mason opined Employee may or may not need a fusion in

the future, but no current treatment is reasonable or necessary. Drs. Youngblood and Chang concurred a referral to HSS is no longer reasonable and necessary.

No physician prescribed PRP within the first two years post-injury; consequently, this decision decides if PRP is reasonable and necessary. *Hibdon*. On October 17, 2016, Dr. McAnally "suggested" Employee "consider" "discussing" PRP with Dr. Chang. On January 30, 2017, Dr. Chang said PRP would not help her. Drs. Gritzka, Youngblood and Mason later agreed. The most weight and credibility are given to Drs. Chang, Gritzka, Youngblood and Mason. AS 23.30.122; *Smith*. Employee's claim for PRP treatment will be denied.

As for treatment at HSS, Dr. Mason referred her there on December 7, 2015, presumably to evaluate her for DeNovo juvenile cartilage. But the adjuster did not obtain Dr. Mason's referral until February 21, 2017, when Employee produced it. On March 7, 2017, when the adjuster asked Dr. Mason what the referral was for, he "suspected" it would have something to do with managing Employee's ankle pain. The records within the first two years post-injury show only Dr. Mason referred Employee to HSS within the *Hibdon* timeframe and his referral was made at Employee's request; again, this decision decides if treatment at HSS is reasonable and necessary. *Hibdon*.

By contrast, Drs. Chang, Gritzka, Youngblood and even Dr. Mason ultimately opined Employee needed no further treatment except for a possible fusion or ankle replacement. The most weight and credibility are given to Drs. Chang, Gritzka, Youngblood and Mason. AS 23.30.122; *Smith*. Employee's claim for HSS treatment will be denied. Dr. Mason's uncertain initial referral to HSS, at Employee's urging, was not "credible, competent evidence" to support the referral. *Hibdon*. Dr. McAnally testified his treatment could cure Employee's CRPS ending the need for that treatment. Given subsequent reports from ANP Davis, Dr. McAnally's prediction was correct as Employee's CRPS has "mostly resolved." In the past Employee requested or suggested various treatments such as a foot amputation, and then subsequently said she no longer wanted them.

Employer specifically preauthorized treatment at HSS and Employee never obtained it. It is not clear what, if any, remedy Employee wants regarding preauthorized treatment at HSS. Physicians at that facility do not take workers' compensation insurance or only take it in specified

circumstances, which do not apply in Employee's case. While this decision could order Employer to pay for the treatment Employee wanted at HSS, it cannot force HSS or its physicians to provide that treatment any more than it could stop Employee from contacting Smith's clients directly. It is likely HSS, and its physicians, would ignore an order requiring them to provide treatment to Employee paid for by Employer's workers' compensation insurance. Given the above analysis, the HSS issue is moot because the most current medical opinions state a referral to HSS for whatever treatment they may have to offer is no longer reasonable and necessary. Therefore, Employee's claim for ongoing medical benefits will be denied. If her orthopedic condition changes and she obtains medical opinions for new or additional medical care or treatment for her right ankle, she retains her right to file a new claim; Employer retains its right to raise all appropriate defenses. AS 23.30.095.

Similarly, Employee's request for past transportation or out-of-pocket medical expenses other than the $18 expense discussed above, will be denied in accordance with this analysis. She retains her right to file and serve a transportation log for future work-related medical treatment, and to send receipts for future work-related medical expenses she pays out-of-pocket. Employer retains its right to raise all appropriate defenses.

Though Employee may contend on appeal that the only reason her physicians no longer recommend treatment at HSS is because Employer improperly delayed her ability to get this treatment. That is incorrect. Dr. Youngblood in July 2015 said Employee needed no additional formal treatment for her work injury. On December 7, 2015, Dr. Mason referred her to HSS. But Employee never filed a claim for any benefits until January 13, 2017. In June 2017, Employee asked for an SIME, which resulted in Dr. Gritzka's report, which resulted in Employer's request for a mental health release. Employee chose to exercise her due process rights to object to the release and to take her dispute to the Alaska Supreme Court.

12) Did Employer frivolously or unfairly controvert benefits due?

Employee contends Employer frivolously or unfairly controverted benefits due. AS 23.30.155(a), (d), (o). Employer did not address this issue in its brief but denied it had frivolously or unfairly

controverted benefits due in its February 6, 2017 answer to Employee’s claim. It is not clear which controversion Employee contends was frivolous or unfair.

On June 26, 2015, Employer controverted all benefits related to mental health counseling. Since Employee never requested mental health benefits for her work injury, she would have no dispute with this controversion. On November 6, 2015, Employer controverted TTD and TPD benefits based on medical stability opinions from her attending physician Dr. Mason. Based on the *Harp* factual criteria, if this was the only evidence viewed in isolation on November 6, 2015, Employee would not have been entitled to any additional benefits. Based on the *Vue* legal criteria once the facts changed, Gabbert verbally withdrew this notice and Employer began paying benefits.

On November 6, 2015, Employer controverted TTD and TPD benefits based on Dr. Mason’s October 1, 2015 report stating she was medically stable and physically capable of working full time at her normal job and job she held in the past. This would pass the *Harp* test. It would also pass the *Vue* test because once the facts changed Employer began paying disability benefits again.

On December 22, 2015, former adjuster Rush entered a log note in Employee’s claim adjusting file stating Employer had offered Employee a sedentary position at a rate paying higher than what she earned at the time she was injured. The note states, “she has refused to return to work in this position.” The note states Employee was told the carrier was not responsible for transportation to and from her employment, but Employee continued to say she could not drive herself to her job. Rush noted there was no medical authorization stating Employee could not drive herself and nothing said she had to wear her AFO while she drove. Based on this information, on December 22, 2015, Employer also controverted all disability benefits contending it had offered Employee modified duty work at the same rate earned at the time of her injury, but she failed to accept this employment. Employee never filed a request for cross-examination on this adjusting file note, it is the type of evidence upon which a reasonable person to rely in conducting serious affairs. And it is admissible evidence. 8 AAC 45.120(e).

On December 22, 2015, Employer had not yet received ANP Sexon’s December 18, 2015 note stating Employee could not drive with her foot and ankle in an AFO. This is shown by Rush’s

December 22, 2015 note stating she was going to check with ANP Sexson about Employee's ability to drive, and the February 29, 2016 medical summary, on which Sexson's December 22, 2015 note appeared for the first time. If Employer had the report the adjuster would not have to ask ANP Sexson to confirm Employee's statements, and the adjuster would have put the note on her medical summary. Employee presented no evidence showing Employer had the December 18, 2015 note before February 29, 2016. Thus, under the *Harp* standard Employer's December 22, 2015 controversion would not be frivolous or unfair if the only evidence viewed in isolation was Rush's December 22, 2015 note.

The next question is whether the December 22, 2015 controversion survives scrutiny as a matter of law. *Vue*. When asked in her deposition why she allegedly "maintained" the December 22, 2015 controversion, Daniels testified benefits were paid after the controversion, implying it had been withdrawn. According to Employer's March 15, 2022 compensation report, the $98,876.39 it paid in December 2019 was for benefits from March 31, 2019 through December 12, 2019. It did not include benefits going back to 2015. Employee presented no testimony or evidence proving Employer failed to pay TPD or TTD benefits timely after she eventually returned to work following the December 22, 2015 controversion. At the December 11, 2019 prehearing conference, Employee admitted she did not initially return to work because, she alleged, Employer sent its job offer to the wrong address but as soon as she got it, she immediately returned to work. Thus, by Employee's admission she failed to return to work for at least one day. Given these facts, it does not appear that as a matter of law Employer "maintained" the December 22, 2015 controversion because TPD and TTD payments made to Employee thereafter resulted in a *de facto* withdrawal of that controversion notwithstanding Employer's later "formal" withdrawal. *Vue*.

On February 9, 2016, Employer controverted benefits again based on Dr. Youngblood's January 15, 2016 EME stating she was medically stable effective November 7, 2015. Based on the *Harp* analysis, viewed in isolation Dr. Youngblood's EME would support this controversion and Employee would not have been entitled to additional benefits. Likewise, Employee was medically stable and legally entitled to no additional TPD or TTD benefits. Employee failed to demonstrate Employer subsequently failed to resume TPD or TTD benefits at any point thereafter under *Vue*. AS 23.30.185; AS 23.30.200; AS 23.30.395(28).

Employer's February 24, 2016 controversion on medical costs for internal medicine issues including renal colic, kidney stones, urinary calculi and pulmonary nodules would not have troubled Employee because she presented no medical evidence suggesting these conditions were work-related and she never made a claim for these conditions. Likewise, Employer's August 19, 2016 controversion for abdominal pain, chest pain and gallstones and its November 7, 2016 controversion of asthma-related treatment could not form the basis for a frivolous or unfair controversion for the same reasons. *Harp*; *Vue*.

On February 1, 2017, Employer controverted PRP injections based on Dr. Chang's opinion stating these were not reasonable or necessary treatment for Employee's work injury. Viewed in isolation, Dr. Chang's report would have resulted in Employee not being entitled to this benefit, satisfying the *Harp* criteria. Employee presented no evidence Dr. Chang ever changed his opinion about PRP injections. Therefore, this controversion also passes the *Vue* standard. The fact Employer later verbally withdrew this controversion is irrelevant; Employer may decide for any reason to voluntarily authorize treatment even though medical evidence supports a controversion.

On February 6, 2017, Employer controverted Employee's claim for PTD, PPI exceeding three percent, reemployment benefits, penalties, interest, and an unfair frivolous controversion finding. It based this on the RBA-designee's decision from two years prior finding Employee not eligible for reemployment benefits, which she failed to timely appeal. That was adequate under *Vue*. Under *Harp*, the controversion was proper based on Dr. Youngblood's January 15, 2016 EME report stating Employee was medically stable. The notice also stated once Employee needed additional surgery, Employer *de facto* withdrew the controversion and resumed benefits on April 13, 2016, when Employee had surgery. Employee has never presented evidence showing she is permanently and totally disabled and was not even sure why she requested that benefit. Thus, the PTD controversion was appropriate under *Harp* and *Vue*. Since Employee demonstrated no right to any additional benefits, the penalties, interest and request for an unfair frivolous controversion finding were also supportable, not frivolous and not unfair.

On March 30, 2017, Employer controverted disability benefits after September 13, 2016, PPI benefits greater than three percent, reemployment benefits, and medical benefits after March 10,

2017. This was based on Dr. Youngblood's March 10, 2017 EME report. Read in isolation, this report would have resulted in Employee receiving no benefits if it was the only evidence considered at the time the controversion notice was filed. *Harp*. Employee has not explained why this controversion notice would be inappropriate as a matter of law. *Vue*.

On September 5, 2017, Employer controverted any medical bill received more than 180 days after the service date including a specific bill. As a matter of fact, and law, Employer stated it had received a bill from a provider over a year after the services were provided. It cited the applicable statute stating a medical provider may receive payment for medical treatment only if the bill for services received by the employer within 180 days. *Harp*; *Vue*. Employee failed to explain why this controversion was frivolous or unfair.

On April 19, 2019, Employer again controverted PRP treatments based on Drs. Chang and Youngblood's January 13, 2017 and March 10, 2017 reports, respectively, where they opined PRP injections were not reasonable or necessary. It also relied on Dr. Gritzka's January 16, 2018 report agreeing PRP injections were not appropriate. In isolation, these reports meet the *Harp* standard. Employee did not explain how it violated the *Vue* analysis. Employer in December 2019 withdrew this controversion and said it would pay for PRP injections. This voluntary position change did not make the original controversion frivolous or unfair.

On March 20, 2020, Employer controverted TTD and TPD benefits from April 10, 2019 forward, PTD benefits, and reemployment benefits. It based this on Dr. Chang's May 17, 2017 medical stability opinion; Dr. McAnally's February 28, 2020 deposition opinion stating Employee's CRPS became medically stable on April 10, 2019; Dr. Kirkham's April 10, 2019 opinion Employee could return to work as an accountant without restrictions along with Drs. McAnally and Chang's similar deposition testimony; the RBA-designee's finding Employee ineligible for reemployment benefits and the lack of any evidence stating she was permanently and totally disabled. This medical evidence supporting this controversion clearly met the *Harp* analysis. Employee has not demonstrated why it would not also be correct as a matter of law. *Vue*.

On January 8, 2021, Employer controverted all benefits based on Employee's undisputed refusal to sign a medical record release. Once Employee signed a release on October 5, 2021, Employer withdrew this controversion. Nothing suggests this notice violated *Harp* or *Vue*.

On October 29, 2021, Employer controverted distraction arthroplasty with Dr. Beeman. It based this on Dr. Chang's March 17, 2020 deposition testimony stating this procedure is not reasonable or necessary and she does not need it, and on Dr. Youngblood's May 5, 2020 agreement. Ample evidence supported this controversion under *Harp* and Employee has not explained how it violates *Vue*. These are all the controversion notices filed in this case. Based on the above analysis, Employee failed to demonstrate any controversion notice filed in this case was frivolous or unfair in violation of *Harp* or *Vue*. Her request for an associated finding will be denied.

13) Is Employee entitled to a penalty?

Employee did not specify under what section of the Act she seeks a penalty. The only applicable section would be AS 23.30.155(e), which provides for a penalty in the event any compensation installment payable without an award is not paid within seven days after it becomes due. Employee never explained what benefits she contends were not paid within seven days after they became due, nor did she explain when such benefits were due but not paid. Nevertheless, as shown in Employer's March 15, 2022 Compensation Report, it voluntarily paid $19,749.64 in penalties for benefits paid beginning December 23, 2015 through April 12, 2016 and from March 31, 2017 through April 9, 2019. Employee does not dispute these payments. She may believe this penalty payment demonstrates Employer knew it owed the penalty. However, there is no evidence suggesting Employer paid the penalty for this reason. It could have paid after mediation was informally concluded in December 2019, based on insights obtained during mediation. It may have paid simply as a litigation tactic to resolve any potential issues Employee could raise at her merit hearing, or to simply avoid having to deal with her any further. Regardless of the reason why Employer paid the penalty, it has been paid and Employee has presented no evidence or argument suggesting the payment was inadequate under AS 23.30.155(e), based on whatever unspecified legal theory that she did not share with Employer or this panel. Therefore, her claim for an unspecified penalty on unspecified benefits will be denied.

14) Should this decision ask the Workers' Compensation Division Director to refer Employer to the Division of Insurance?

If this decision had determined Employer "frivolously or unfairly controvert compensation due" under this Act, it could ask the Director to properly notify the Division of Insurance and after receiving notice from the Director, the Division of Insurance "shall determine if the insurer has committed an unfair claim settlement practice. . . ." AS 23.30.155(o). As discussed above in detail, Employee has not presented testimony, evidence or argument supporting this request. The panel's analysis does not support any basis for this request. Employee's request for an order asking the Division director to refer Employer to the Division of Insurance will be denied.

15) Is Employee entitled to interest?

Employee claims interest. AS 23.30.155(o). She Employee did not specify the benefits to which she believes interest applies. Employer previously paid interest voluntarily. This decision awards no benefits to Employee other than possibly $18 in out-of-pocket medical expenses. If Employer has not paid this out-of-pocket expense, it will be directed to also pay interest to Employee on this amount. 8 AAC 45.142(b)(3)(A). Otherwise, Employee's request for interest will be denied.

16) Is Employee entitled to litigation costs?

Employee did not specify the litigation costs to which she is entitled. She did not present evidence showing she filed and served on Employer litigation costs in the form required by 8 AAC 45.180(f). Moreover, Employee has not prevailed at hearing on any claims, other than possibly $18 plus interest on that amount, which is a prerequisite to a cost award. Whatever litigation costs Employee seeks, it is unclear how they would pertain to the only benefit she potentially won in this hearing, $18 in out-of-pocket medical expenses. Without evidence, the panel cannot determine if unspecified litigation costs resulted in this potential benefit. 8 AAC 45.180(f)(1)-(17). Therefore, her request for unspecified litigation costs will be denied.

CONCLUSIONS OF LAW

1) The oral order to proceed with the hearing without Employee was correct.
2) The designee did not abuse his discretion in denying Employee's discovery request.

3) Employee is not entitled to relief regarding attorney fees Employer paid Croft and Huna.

4) This decision cannot order Huna to return Employee’s file and pay her transportation and mediation costs.

5) Employee is not entitled to additional TTD benefits.

6) Employee is not entitled to additional TPD benefits.

7) Employee is not entitled to additional PPI benefits.

8) Employee did not timely appeal the RBA-designee’s finding Employee was not eligible for vocational reemployment benefits.

9) Employee is not entitled to PTD benefits.

10) Employee is not entitled to a compensation rate adjustment.

11) Employee is not entitled to any past or future medical care and related transportation costs for her work-related orthopedic injuries, with possible exception of one out-of-pocket expense.

12) Employer did not frivolously or unfairly controvert benefits due.

13) Employee is not entitled to a penalty.

14) This decision will not ask the Workers’ Compensation Division Director to refer Employer to the Division of Insurance.

15) Employee is not entitled to interest.

16) Employee is not entitled to litigation costs.

ORDER

1) Employee’s request for relief regarding attorney fees Employer paid Croft and Huna is denied.

2) Employee’s request for an order requiring Huna to return her file and pay for transportation and mediation costs is denied.

3) Employee’s request for TTD benefits is denied.

4) Employee’s request for TPD benefits is denied.

5) Employee’s request for PPI benefits is denied.

6) Employee’s request to “re visit” her right to reemployment benefits is denied.

7) Employee’s claim for PTD benefits is denied.

8) Employee’s claim for a compensation rate adjustment is denied.

9) Employee’s claim to past medical benefits, and related transportation expenses, except for $18 if Employer has not already paid this, is denied. Employer is ordered to reimburse Employee $18

for an out-of-pocket payment she made to Dr. McAnally if it has not already done so. Employee's claim for a home in Anchorage with a swimming pool is denied.

10) Employee's current claim for future medical care is denied. She retains her right to seek work-related orthopedic care a physician may recommend and related transportation expenses in the future in accordance with the Act and applicable regulations. Employer retains its right to address any future work-related medical care and related transportation expenses in accordance with the Act and applicable regulations.

11) Employer did not frivolously or unfairly controvert benefits due and Employee's request for an associated order is denied.

12) Employee's request for an unspecified penalty is denied.

13) Employee's request for an order asking the Division Director to refer Employer to the Division of Insurance under AS 23.30.155(o) is denied.

14) Employee's request for unspecified interest is denied.

15) Employee's request for unspecified litigation costs is denied.

Dated in Anchorage, Alaska on April 21, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Christina Gilbert, Member

/s/
Brad Austin, Member

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

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

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Allison Leigh, employee / claimant v. Alaska Children's Service, employer; Republic Indemnity Co. of America, insurer / defendants; Case No. 201503591; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on April 21, 2022.

/s/
Mike Sargent, Workers' Compensation Officer 2