ALASKA WORKERS' COMPENSATION BOARD

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

IRA EDWARDS, Employee, Claimant, v. STATE OF ALASKA, Self-Insured Employer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201019395 AWCB Decision No. 22-0027 Filed with AWCB Anchorage, Alaska on April 22, 2022

Ira Edwards' (Employee) September 1, 2020 claim was heard on March 30, 2022, in Anchorage, Alaska, a date selected on February 16, 2022. A January 5, 2022 hearing request gave rise to this hearing. Attorney J.C. Croft appeared and represented Employee, who appeared and testified. Attorney Evan Chyun appeared and represented State of Alaska (Employer). The record closed at the hearing's conclusion on March 30, 2022.

ISSUE

Employee contends the work injury was the substantial cause of his need for a modified truck in 2011. He contends Employer refused to pay for the truck in 2011 so he paid the full purchase price and Employer paid for modifications. Employee contends the work injury is the substantial cause of his current need for a new modified truck. He contends equitable principles should be invoked to prevent Employer from offsetting the cost of a new modified truck by the value of the truck it is replacing because Employer failed to pay for the increased cost associated with the 2011 modified truck and it failed to controvert benefits. Alternatively, Employee contends Employer

should pay for the increased cost of a new modified truck over the value of the truck he currently owns. He requests an order granting his claim for a 2021 Chevrolet Silverado 2500 HD LTZ.

Employer contends it should only be required to pay for the cost of modifications to a vehicle Employee purchases with his own funds because his need for transportation preexisted his injury and he is replacing his vehicle, which any driver would eventually need to do. Alternatively, it contends it should be required to pay for the difference between a "standard truck" and a Chevrolet Silverado 1500 LTD. Employer contends Employee has not demonstrated the model truck he sought is reasonable or necessary. It contends the expensive features are not reasonable or necessary, such as the 2500 HD model, LTZ trim, leather seats, backup camera, hands-free controls, diesel engine, sunroof, crew cab, convenience and technology packages, hand-buffed silicon sealant and window tinting. Employer contends it should be liable for a regular cab and WT trim. It contends it should not be required to pay for options that might be considered standard for vehicles in Alaska, such as four-wheel drive, an off-road package, engine block heater, auxiliary battery and additional alternators.

Is Employee entitled to a modified truck?

FINDINGS OF FACT

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

1) On November 19, 2010, Employee was injured while cutting down a tree when it descended in an unexpected way and fell on him as he was moving away, pinning him to the ground. (Report of Occupational Injury or Illness, November 19, 2010).

2) On January 21, 2011, Employee was prescribed left side mounted push/rock hand control, a steering knob and an adapt solutions XL seat to be installed on his "2010 Chevy Silverado 1500 extended cab 4x4." (Craig Hospital Prescription for Patient Equipment, January 21, 2011).

3) On February 8, 2011, Mike Scheppers, MS OTR/DRS, recommended Employee return to independent driving using adaptive equipment, including hand controls and a steering knob. (Scheppers letter, February 8, 2011).

4) On March 12, 2019, Jared Kirkham, M.D., wrote a letter stating Employee has T12 paraplegia with essentially no functional use of his lower extremities and requires the use of a wheelchair for transportation. (Kirkham letter, March 12, 2019).

5) On September 1, 2020, Employee sought, "A new truck outfitted with accessibility modifications as a replacement for his current accessible vehicle, with the Board determining the amount of any offset, if applicable, for the value of his current vehicle." He requested reimbursement of $32,147.36. (Claim for Workers' Compensation Benefits, September 1, 2020).

6) On September 8, 2020, Alaska Stairlift & Elevator, LLC, provided an estimate to install accessibility equipment in a 2021 Chevy Silverado 2500 crew cab totaling $35,340. (Alaska Stairlift & Elevator Estimate, September 6, 2020).

7) On September 21, 2020, Employer contended Employee's need for personal transportation preexisted his disability and it supplied Employee with modifications to his personal vehicle to accommodate his work-related disability. It contended his work-related disability does not require a specific type of vehicle to accommodate his medical apparatus and denied his disability requires Employer to provide a "new truck." Employer contended Employee did not present evidence demonstrating his current vehicle is incapable of providing transportation allowing him to accomplish basic and normal activities of daily living or obtaining medical treatment. (Answer, September 21, 2020).

8) On September 23, 2020, Employee filed two estimates for a new modified 2021 Chevrolet Silverado 2500 HD Crew Cab LTZ. The truck estimates include a diesel engine, engine block heater, dual alternators with a second battery, crew cab, sunroof, deep window tint and technology packages, which includes a backup camera and wireless phone system, and heated leather seats. Alaska Sales & Service estimated the truck would cost $68,874 and Alaska Stairlift & Elevators estimated the modifications would cost $35,340, with a total cost of $104,214. Dave Smith Motors estimated the truck would cost $60,515.60 and Goldenwest Mobility estimated the modifications would cost $24,824.84, with a total cost of $85,340.44. (Notice of Filing, September 23, 2020).

9) On March 18, 2021, Employee testified he has been in a wheelchair since the work injury. (Employee deposition at 16-17). He sold his 2005 Chevy Colorado, which had a manual transmission, for $12,000 or $15,000 in 2011 and purchased a 2010 Chevy Silverado 1500 truck for $37,825. (*Id*. at 28-29, 64-66). Employer paid for the hand controls and a crane with a covered shell. (*Id*. at 28-29). The covered shell was damaged three years ago and Employer did not replace

it. (*Id*. at 29). Employee's Silverado has over 150,000 miles and has safety issues, including an airbag out in the open. (*Id*. at 32). The crane modification does not work all the time so sometimes he has to store his wheelchair in the crew cab. (*Id*. at 32-33). Employee is looking to purchase a new truck because he has spent a few thousand dollars in repairs last year and he is unable to perform major repairs himself. (*Id*. at 33-34). He uses a truck instead of a van for his activities, including hunting, fishing and gardening and hauling wood to heat his home. (*Id*. at 34). Employee needs hands-free controls and Bluetooth for his phone due to his hand controls but that is not working anymore. (*Id*. at 35). His truck has been in the shop six or seven times in the last few months because the hydraulic lift and fiberglass shell topper, which opens-up like a clam shell and allows the crane to swing out for his wheelchair, has not been closing and was stuck in the open position. (*Id*. at 36). Employee parked in the parking garage at the Atwood Building in downtown Anchorage and he thought the topper had closed completely after he stored his wheelchair, but it had not as it was raised up three inches. (*Id*. at 37). He drove away and the topper struck the parking garage and was damaged. (*Id*.). Employer has not approved replacement of the topper. (*Id*.). When the crane is working, Employee puts a plastic bag over the seat cover to keep off road grime, but it still gets on the wheelchair and crane. (*Id*. at 38). As a result, he must replace the wheelchair bearings at least once a month, versus once every four or five years. (*Id*.). The crane has been in the shop a lot because it is not designed for exterior use and is supposed to be covered. (*Id*. at 38). When the crane is not working, Employee takes his wheelchair apart and places it in the crew cab. (*Id*. at 38-39). He purchased the 2010 Chevy Silverado because he needed a backup camera, as he could not look over his shoulder anymore, and leather seats, which allow him to slide in and out of the vehicle. (*Id*. at 67).

10) On June 30, 2021, Employee's attorney sent a letter to Dr. Kirkham stating:

> [Employee] currently drives a 2010 truck with 150,000 miles on it. The age and mileage of the truck means it is starting to have some mechanical difficulties [Employee] is unable to repair on his own. The truck is modified with hand controls so he can drive it. It also has a crane in the back to load his wheelchair, but the crane has not been working very well recently because it is exposed to the elements. It is exposed to the elements because the hydraulic-lift topper the truck had on it to protect his wheelchair and the crane broke in 2018. This has also led to deterioration of his wheelchair. In addition to these modifications, the truck is outfitted with handsfree controls in the cab that have been malfunctioning as of late.

> Because of the age of his truck and the failing modifications to it, [Employee] would like to get a new truck with modifications to make it drivable for him, including hand controls, hands-free capabilities in the cab, a crane to lift his wheelchair, and a hydraulic-lift topper to protect his wheelchair and the crane from the elements.
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> If you could answer the following question, we would greatly appreciate it. . . .
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> In your medical opinion, is a new truck modified with the features described a reasonable and necessary medical apparatus, the need for which is substantially caused by [Employee's] work injury? (Letter, June 30, 2021).

11) On August 21, 2021, Jared Kirkham, M.D., answered the question:

> [Employee] has lower extremity paraplegia. Despite his injury, he is very motivated and has continued to work, exercise, and participate in community activities. In my medical opinion a new truck with the above features is medically necessary to maximize his vocational and avocational pursuits. The substantial cause of the need for the new truck and above features is the work injury of 11/18/2020. (Kirkham answer, August 21, 2021).

12) On March 30, 2022, Employee testified the 2010 work injury caused him to become a paraplegic and he will be required to use a wheelchair for the rest of his life. Before the work injury, he ran, biked, hiked, hunted and fished. Employee owned a 1997 Toyota Tacoma before he bought a new 2005 Chevy Colorado, which is the vehicle he owned when he was injured. He planned to drive the 2005 Chevy Colorado until it broke down. Employee sold the 2005 Chevy Colorado in 2011 for about $12,000, and he purchased a new 2010 Chevy Silverado 1500 for about $37,000 after he got about of the hospital. His 2005 Chevy Colorado had a manual transmission which he could not drive after the work injury because he was unable to use his legs to operate the clutch, brake and accelerator. Hand controls can be added to an automatic transmission vehicle to operate the brake and accelerator. Employee purchased the 2010 Chevy Silverado 1500 because it was an automatic and had enough room to fit the hand controls in the cab and his 6'5" frame, which the 2005 Chevy Colorado did not. When looking at vehicles, he looked at vans, but he hit his head on the roof due to his height. Employer modified the 2010 Chevy Silverado 1500 to add the hand controls and the hydraulic lift and fiberglass shell topper to store his wheelchair. He asked the claims adjuster to pay for the 2010 Chevy Silverado, but the claims adjuster refused and told him he had to pay for a new vehicle. Employee believes a 2021 Chevy Silverado 2500 will

suit his needs better because it can tow more weight than his Silverado 1500. He still bikes, hunts and fishes but requires a boat, modified bikes and recreational vehicles to be able to participate in those activities. Employee uses the truck to tow the boat, modified bikes and recreational vehicles but he is unable to participate in those activities in some recreational areas because his Chevy Silverado 1500 cannot safely tow the weight, such as areas with steep hills. Prior to the work injury, Employee did not require a boat or recreational vehicles to participate in those activities because he drove close to the location and walked or hiked to the hunting, fishing or biking site. He selected the LTZ trim package because the dealer requires you to select a trim package, and it is the lowest-priced trim package that includes a backup camera and leather seats. Employee uses a back-up camera and the mirrors on his Chevy Silverado 1500 to safely backup. He needs a backup camera because the work injury injured his neck, and he cannot turn his neck to look over his shoulder. Employee must transfer from the wheelchair into the truck and a leather seat permits him to do so and fabric seats do not. He does not require a diesel engine in the truck but noted it got better mileage while towing. Employee needs a second alternator and battery to power and operate the modifications to the truck, specifically the hand controls and the lift and the clam shell topper which stores his wheelchair. He needs Bluetooth or hands-free controls in the truck because he must use both hands to drive because he uses one hand to operate a hand control to accelerate and brake and the other hand to operate the steering wheel. Employee selected the block heater, four-wheel drive and off-road package because he lives in Alaska, the temperature drops below 20 degrees, and he drives on unpaved roads to participate in recreational activities. He believes four-wheel drive and an off-road package is necessary because his work injuries limit his ability to remove his vehicle from the ditch should he slide off the road and because he often travels on non-paved roads. In 2018, the clam shell topper was damaged and had to be removed. Employee parked in the parking garage at work. When he left work, he got into his truck and loaded the wheelchair onto the crane. The hand controls he uses to operate the crane and clam shell topper in the cab indicated the clam shell topper closed. Employee looked in the mirrors and the camera and it appeared closed. However, the clam shell did not close and was open about three inches. When Employee left the parking garage, the clam shell impacted the clam shell topper, and it was damaged. The hydraulic lift is not designed for exterior use, and it does not always work because it gets covered in road grime. He has had to have the lift repaired several times. When the lift does not work, Employee takes his wheelchair apart and places it in the crew cab of his truck. The

2010 Chevy Silverado has suicide doors which make storing his wheelchair in the cab easier. The 2021 Chevy Silverado 2500 does not have suicide doors. Employee had to get another wheelchair because his previous wheelchair had more moveable parts and it would break all the time after getting exposed to the road grime while stored in the hydraulic lift in the back of the truck. His new wheelchair has fewer moveable parts and does not break down as small, making storing it in the cab more difficult because it is bigger. Employee works full-time for the federal government and uses his personal vehicle when he needs transportation for work activities because the federal government does not supply modified vehicles to its employees. (Employee).

PRINCIPLES OF LAW

> **AS 23.30.001. Legislative intent.** It is the intent of the legislature that
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> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

The board may base its decisions on not only direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

> **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. . . .

When the board reviews a claim for medical treatment made within two years of an undisputed work-related injury, its review is limited to whether the treatment sought is reasonable and necessary. *Philip Weidner & Associates, Inc. v. Hibdon*, 989 P.2d 727 (Alaska 1999). *Hibdon* addressed reasonable 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). (*Id*. at 732).

When reviewing a claim for continued treatment beyond two years from the date of injury, the Board has discretion to authorize "indicated" medical treatment "as the process of recovery may require." *Id*. With this discretion, the Board has latitude to choose from reasonable alternatives rather than limited review of the treatment sought. *Id*.

In *Bryce Warnke-Green v. Pro West Contractors, LLC*, AWCAC Decision No. 235 (June 26, 2017), the permanently and totally disabled worker filed a claim seeking a new modified van. The injured worker owned a Chevy Suburban at the time of the injury, which did not run. The Alaska Workers' Compensation Appeals Commission held any increased cost associated with the purchase of a modifiable motor van and any necessary modifications are encompassed in "apparatus" under AS 23.30.095(a) and are compensable medical benefits:

> There is no dispute that if an injured worker requires a wheelchair for mobility the employer must provide it. Just as an injured worker must be provided with a wheelchair for mobility, so does a quadriplegic worker require a modified van to provide mobility for accomplishing the basic activities of daily living. Non-injured workers utilize their earnings towards the purchase of transportation. So too, should the injured worker contribute towards the cost of transportation, but the employer is responsible for the increased costs necessitated by the work injury. (*Id*. at 15).

In *Warnke-Green*, the parties agreed it was reasonable for the injured worker to contribute the value of his vehicle. *Id*. at 16.

> **AS 23.30.097. Fees for medical treatment and services.**
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> (d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.
> . . . .

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

Under AS 23.30.120, benefits sought by an injured worker are presumed to be compensable, and the burden of producing substantial evidence to the contrary is placed on the employer. *Miller v. ITT Arctic Services*, 577 P.2d 1044 (Alaska 1978). The presumption of compensability applies to any claim for compensation under the Act. *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996). An employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion Hotel,* 813 P.2d 286 (Alaska 1991).

A three-step analysis is used to determine the compensability of a worker's claim. At the first step, the claimant need only adduce "some minimal" relevant evidence establishing a "preliminary link" between the injury claimed and employment. *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011); *Smith v. Univ. of Alaska, Fairbanks*, 172 P.3d 782, 788 (Alaska 2007); *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). The evidence necessary to attach the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Witness credibility is not weighed at this step in the analysis. *Resler v. Universal Services Inc.*, 778 P.2d 1146, 1148-49 (Alaska 1989).

At the second step, once the preliminary link is established, the employer has the burden to overcome the presumption with substantial evidence. *Kramer*. To rebut the presumption, an employer must present substantial evidence that either (1) something other than work was the substantial cause of the disability or need for medical treatment or (2) work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 611-612 (Alaska 1999). At the second step of the analysis, the employer's evidence is viewed in isolation, without regard to the claimant's evidence. Issues of credibility and evidentiary weight are deferred until after it

is determined the employer has produced substantial evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994).

If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). If the employer successfully rebuts the presumption, it drops out, and the employee must prove all elements of her case by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379. At this last step of the analysis, evidence is weighed, and credibility considered. To prevail, the claimant must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

In *Wausau Insurance Companies v. Van Biene*, 847 P.2d 584, 588 (Alaska 1993), the Alaska Supreme Court held the Alaska Workers' Compensation Board possesses authority to invoke equitable principles to prevent an employer from asserting statutory rights. It said equitable estoppel elements include "assertion of a position by word or conduct, reasonable reliance thereon by another party, and resulting prejudice." *Id*. The court concluded, "a finder of fact could not reasonably find that a person in the position of Van Biene could reasonably interpret Wausau's conduct as amounting to an implied communication that no social security offset would be required. At best, such conduct subsequent to Gerke's conversation and letter indicates only neglect or an internal mistake." The court relied significantly on the fact Wausau apprised Van Biene both orally and in writing that workers' compensation benefits would be offset in the event she received social security survivor's benefits, and no representations were made by Wausau to Van Biene that it would not seek to offset social security survivor's benefits if she received such payments. *Id*. at 589.

> **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. To controvert a claim, the employer must file a notice, in a format prescribed by the director. . . .
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> (d) If the employer controverts the right to compensation, the employer shall file with the division, in a format prescribed by the director, a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the division, in a format prescribed by the director, a notice of controversion not later than the date an installment of compensation payable without an award is due.
> . . . .

In *Burke v. Raven Electric, Inc.*, 420 P.3d 1196 (2018), the board dismissed a claim seeking death benefits and damages filed by the mother of a worker killed on the job. The Commission affirmed and ordered the mother to pay the employer's attorney fees and costs, and the mother appealed. The Court affirmed the dismissal of the claim and held the exclusive remedy of the Act did not violate the mother's right to due process and equal protection. It noted:

> The workers' compensation system consists of a trade-off, sometimes called the "grand bargain," in which workers give up their right to sue in tort for damages for a work-related injury or death in exchange for limited but certain benefits, and employers agree to pay the limited benefits regardless of their own fault in causing the injury or death. This system has been in place in the United States for over a century and has withstood constitutional challenge. New York's workers' compensation statute was found constitutional under the United States Constitution in 1917. New York's compensation law became the model for the federal Longshore and Harbor Workers' Compensation Act, which in turn served as the model for Alaska's Act.
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> As *Larson's Workers' Compensation Law* observes, workers' compensation in the United States is similar to "social insurance" because "the right to benefits and amount of benefits are based largely on a social theory of providing support and preventing destitution, rather than settling accounts between two individuals according to their personal deserts or blame," even though the funding mechanism for the system is "unilateral employer liability." *Larson's* observes that "[a] compensation system, unlike a tort recovery, does not pretend to restore to the claimant what he or she has lost." Instead, the goal of workers' compensation is to "give[ ] claimant a sum which, added to his or her remaining earning ability, if any,

> will presumably enable claimant to exist without being a burden to others." (Citations omitted). *Id*. at 1202-03.

ANALYSIS

Is Employee entitled to a modified truck?

An employer is required to provide a modified vehicle to an employee whose work injury is the substantial cause of the need to use a modified vehicle to accomplish the basic activities of daily living as it is considered an "apparatus" under the Act. AS 23.30.095(a); *Warnke-Green*. The employer is liable for the "increased costs associated" with the purchase of a modifiable vehicle and the employee should contribute towards the cost of the modified vehicle. *Id*.

The parties agree the work injury is the substantial cause of Employee's paraplegia and his need to use a wheelchair and a modified vehicle and Employer did not dispute the compensability of the hand controls, XL seat and the hydraulic lift with clam shell topper and crane. Dr. Kirkham prescribed a modified truck to enable Employee to participate in vocational and avocational activities on August 21, 2021. Employee's vehicle must be appropriately modified as necessitated by the work injury to accommodate his wheelchair and his physical abilities. *Warnke-Green*. The parties dispute which additional modifications are medically necessary and which truck model and trim package is necessary and reasonable. The presumption of compensability applies to these issues. AS 23.30.120(a)(1); *Miller*; *Meek*; *Sokolowski*.

Employee raised the presumption the work injury necessitated the leather seats, hands-free controls, a backup camera, auxiliary battery and alternators and a crew cab with his testimony and Dr. Kirkham's August 21, 2021 opinion stating the hands-free controls were necessitated by the work injury. *McGahuey*; *Cheeks*; *Wolfer*; *Resler*. Employee continues to require a larger more expensive truck due to the work injury because the driver's seat area of his previous truck, the Chevrolet Colorado, was not large enough to fit the hand controls necessitated by the work injury and his 6'5" frame and he requires a higher towing capacity to tow his boat, modified bikes and recreational vehicles which are necessitated by the work injury. *Id*. Employee also needs a crew cab, four-wheel drive, an engine block heater and an off-road package because the work injury requires him to place his belongings in the crew cab, limits his ability to remove his vehicle from

the ditch should he slide off the road and he drives on unpaved roads to participate in recreational activities; he selected the block heater because the temperature drops below 20 degrees. *Id*.

Employer failed to rebut the presumption of compensability regarding the leather seats, hands-free controls, a backup camera, and auxiliary battery and alternators as it failed to prove something other than work was the substantial cause of the need for those modifications and that work could not have caused the need for those modifications. *Williams*.

Had Employer rebutted the presumption, Employee would prove by a preponderance of the evidence the work injury necessitated the leather seats, hands-free controls, a backup camera, and auxiliary battery and alternators. *Koons*; *Saxton*. Employee credibly testified he requires a leather seat to transfer himself into the truck, hands-free controls because driving always requires both hands, a backup camera since he cannot turn his neck to look over his shoulder and an auxiliary alternators and battery to power the hand controls and hydraulic lift and clam shell topper with crane. AS 23.30.122; *Smith*. As these modifications are necessitated by the work injury, Employer will be ordered to pay for them.

Employer rebutted the presumption Employee would need the new truck with a crew cab, four-wheel drive, an off-road package and engine block heater regardless of his work injury, because he lives in Alaska, he drove a truck before the work injury, and his current truck has over 150,000 miles and he would have been required to replace truck with another in better shape regardless of the work injury. This shifts the burden back to Employee on these points. *Huit*; *Tolbert*; *Norcon*; *Wolfer*.

While Employee is entitled to a modified vehicle to accomplish the basic activities of daily living, the Act was not designed to "restore to the claimant what he or she has lost." *Burke*. Instead, the goal of workers' compensation is to "enable claimant to exist without being a burden to others." *Id*. Employer is liable for the necessary and reasonable "increased costs associated" with the purchase of a modifiable vehicle. AS 23.30.095(a); AS 23.30.001(1); *Hibdon*; *Warnke-Green*. No physician prescribes an engine block heater as a modification necessitated by the work injury. The fact that temperatures drop below 20 degrees is not proof the work injury necessitates an

engine block heater. Employee used his truck to transport himself to work and for recreational activities both before and after the work injury and his current truck has four-wheel drive. His need for a truck preexisted his work injury, as he drove a 2005 Chevrolet Colorado when he was injured, and he would eventually been required to purchase a new or previously owned vehicle in better shape than his own to transport himself to work or avocational or recreational activities regardless of whether he was injured.

Unlike *Warnke-Green*, Employee is requesting a modified truck, not a van. Employee is also not permanently and totally disabled as was the case in *Warnke-Green* and has returned to full-time work. Because he would eventually be required to purchase another vehicle in better shape than his own to transport himself to work or for avocational or recreational activities regardless of whether he was injured, there is no increased cost associated with purchasing a new truck necessitated by the work injury. The costs for additional features such as a crew cab, four-wheel drive and off-road package are not necessitated by the work injury as they are needed due to the fact Employee lives in Alaska. Employee failed to prove by a preponderance of the evidence that the work injury necessitates an increased costs for a new truck and the crew cab, engine block heater, four-wheel drive and off-road package. *Koons*; *Saxton*. Employer will not be ordered to pay for a new truck or the crew cab, engine block heater, four-wheel drive and off-road package.

Employee contended he is replacing the 2011 modifiable truck with another, and equitable principles should be invoked to increase Employer's liability for the cost of the new modified truck and reimburse him for the 2010 Chevrolet Silverado 1500 he purchased in 2011. He referenced *Van Biene* to contend equitable principles should be invoked to require Employer to pay for the full cost of a new modified truck. Equitable estoppel requires Employee to prove "assertion of a position by word or conduct, reasonable reliance thereon by another party, and resulting prejudice." Employer continuously asserted it would not pay for a new modified truck and that Employee should contribute to its cost. It made no representation it would not expect Employee to contribute to a new modified vehicle cost. Employee has failed to prove equitable estoppel.

Employee also contended it was not fair for the claims adjuster to fail to formally controvert the cost of the 2010 Chevrolet Silverado 1500 because the controversion notice would have informed

him of his right to pursue a claim for the cost. He testified the claims adjuster refused to pay for the truck he purchased in 2011 when he verbally asked the claims adjuster to pay for it. Unlike most medical costs, the supplier of the modified truck is not a medical provider, it is a dealership, which would entail Employee obtaining the bill for the modified truck and supplying it to Employer. An employer must pay a bill for medical treatment within 30 days after it receives the bill or a completed medical report, whichever is later. AS 23.30.097(d). An employer must either pay compensation or formally controvert benefits no later than the date an installment of compensation without an award is due. AS 23.30.155(a), (d). Employee provided no evidence as to when or if Employer received the bill for the 2010 Chevrolet Silverado 1500 and the only medical report that prescribed a truck is Dr. Kirkham's August 21, 2021 report. The other medical record prescribed modifications to Employee's truck but did not state the work injury was the substantial cause of Employee's need for a new truck. Therefore, the Act did not require Employer to either pay or formally controvert the 2010 Chevrolet Silverado 1500 in 2011. It was not inequitable for Employer to fail to formally controvert Employee's verbal request for Employer to pay for a new truck in 2011. The facts do not support a departure from the rule set out in *Warnke-Green*. Equitable principles will not be invoked to reduce Employee's contribution and increase Employer's cost for a modified truck.

Employer will be ordered to pay for the increased costs associated the following modifications for a truck Employee purchases with his own funds: leather seats, hands-free controls, a backup camera, the hand controls for the accelerator and brakes, an XL seat, the hydraulic lift with clam shell topper and crane, and auxiliary battery and alternator. If a trim package including leather seats, hands-free controls and a backup camera is less expensive than adding those options individually, Employer will be ordered to pay for the trim package. Employee will be ordered to pay the full cost of any truck he selects, and he may sell or trade-in his current truck to off-set his cost.

CONCLUSION OF LAW

Employee is entitled to a modified truck.

ORDER

1) Employee's September 1, 2020 claim is granted in part.

2) Employer is ordered to pay for the increased costs associated the following modifications for a truck Employee purchases with his own funds: leather seats, hands-free controls, a backup camera, the hand controls for the accelerator and brakes, the XL seat, the hydraulic lift with clam shell topper and crane, and auxiliary battery and alternators. If a trim package including leather seats, hands-free controls and a backup camera is less expensive than adding those options individually, Employer is ordered to pay for the trim package.

3) Employee is ordered to pay the cost of any truck he selects, except for the modifications Employer is ordered to pay, and he may sell or trade-in his current truck to off-set his cost.

Dated in Anchorage, Alaska on April 22, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Sara Faulkner, Member

/s/
Matthew Barth, Member

KATHRYN SETZER, DESIGNATED CHAIR, DISSENTING IN PART

The Designated Chair dissents from the majority's analysis and conclusions regarding the necessity of a modified truck, and would analyze the issue as follows:

a) Leather seat, hands-free controls, back up camera, auxiliary battery and alternators.

The dissent agrees with the majority's analysis on these points. As these modifications are necessitated by the work injury, Employer should be ordered to pay for them.

b) Crew Cab, New Modified Truck, Chevrolet 2500 HD LTZ, four-wheel drive, off-road package, and engine block heater

However, the dissent disagrees on some of these points. Employer failed to rebut the presumption of compensability regarding the crew cab as it failed to prove something other than work was the

substantial cause of the need for that modification and that work could not have caused the need for that modification. *Williams*.

Had Employer rebutted the presumption, Employee would prove by a preponderance of the evidence the work injury necessitated a crew cab. *Koons*; *Saxton*. Employee credibly testified he requires a crew cab to store his belongings, including his large wheelchair when needed, as the crane assembly occupies the truck bed. AS 23.30.122; *Smith*. As this modification is necessitated by the work injury, Employer should be ordered to pay for it.

Employee credibly testified his current truck and the modifications Employer previously paid for are worn out and need to be replaced. AS 23.30.122; *Smith*. A preponderance of the evidence demonstrates Employee's modified truck needs to be replaced. *Koons*; *Saxton*. He credibly testified the Chevrolet Colorado dimensions were not large enough to fit his 6'5" frame and the hand controls for the brake and acceleration so he purchased the Chevrolet Silverado 1500. AS 23.30.122; *Smith*. He provided substantial evidence the work injury requires a larger truck than the truck he had before the injury to fit the hand controls for the hydraulic lift clam shell topper and crane. *Id*. Therefore, he has proven an increased cost for a new modifiable truck necessitated by the work injury, as he requires a larger, more expensive truck to fit the hand controls necessitated by the work injury. *Koons*; *Saxton*.

Employee credibly testified he has been able to participate in a majority of the recreational and avocational activities he has elected to pursue with the Chevrolet Silverado 1500 which had four-wheel drive according to the January 21, 2011 prescription. AS 23.30.122; *Smith*. A preponderance of the evidence proves the work injury necessitated the Chevrolet Silverado 1500 model with four-wheel drive. *Koons*; *Saxton*.

The modified vehicle cost must be reasonable but there is no fee schedule for modified vehicles. AS 23.30.001(1). A "reasonable" price does not mean "the lowest price possible." *Rogers & Babler*. Employee credibly testified the dealership requires Employee to select a "trim package" and the trim package he selected includes standard features and was the least expensive trim package which included leather seats and a backup camera. AS 23.30.122; *Smith*. It was

reasonable for Employee to select the trim package which provided the leather seats and backup camera as standard features because they are necessitated by the work injury. Inclusion of the convenience and technology packages, sunroof and window tinting in the trim package does not make the trim package cost "unreasonable." The hand-buffed sealant is a separate cost. Employee provided no reason for its inclusion in the estimate and has not proven the hand-buffed sealant was necessitated by the work injury and Employer should not be liable for it. However, a preponderance of the evidence proves the Chevrolet Silverado 1500 with a gas engine, four-wheel drive, crew cab and the least expensive trim package which includes leather seats and a backup camera and the following modifications: the hand controls for the accelerator and brakes, an XL seat, the hydraulic lift with clam shell topper and crane, auxiliary battery and alternator, and a towing capacity similar to Employee's current truck was necessitated by the work injury and is reasonable. *Hibdon*; *Koons*; *Saxton*.

c) Employer liability, Employee contribution, and equitable principles

The dissent concurs with the majority's analysis of the equitable contention. However, *Warnke-Green* held the employer is liable for the "increased costs associated" with the purchase of a modifiable vehicle and the employee should contribute towards the cost of the modified vehicle. Under the dissent's analysis, Employer should be ordered to pay the difference between (1) the cost of a new Chevrolet Silverado 1500 with a gas engine, four-wheel drive, crew cab and the least expensive trim package which includes leather seats, hands-free controls and a backup camera and the following modifications: the hand controls for the accelerator and brakes, an XL seat, the hydraulic lift with clam shell topper and crane, auxiliary battery and alternator, and a towing capacity similar to Employee's current truck, and (2) the cost of a new truck similar to Employee's previously owned Chevrolet Colorado. Employee should be ordered to pay the remaining cost of any truck he selects, and he may sell or trade-in his current truck to off-set his cost.

/s/
Kathryn Setzer, Designated Chair

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 Ira Edwards, employee / claimant v. State of Alaska, self-insured employer / defendants; Case No. 201019395; 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 22, 2022.

/s/
Kimberly Weaver, Office Assistant II