ALASKA WORKERS' COMPENSATION BOARD

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

STEPHEN LOWERY, Employee, Claimant, v. SHAAN SEET, Employer, and ALASKA TIMBER INSURANCE EXCHANGE, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 200222093 AWCB Decision No. 22-0048 Filed with AWCB Juneau, Alaska on July 6, 2022

Shaan Seet's and Alaska Timber Insurance Exchange's (Employer) March 29, 2022 petition to dismiss was heard on June 14, 2022 in Juneau, Alaska, a date selected on May 11, 2022. An April 19, 2022 hearing request gave rise to this hearing. Stephen Lowery (Employee) appeared telephonically, represented himself and testified. Attorney Martha Tansik appeared and represented Employer. The record closed at the hearing's conclusion on June 14, 2022.

ISSUE

Employer contends Employee's claim should be dismissed because he failed to timely request a hearing or additional time to prepare for a hearing. It contends the Alaska Workers' Compensation Act does not permit an extension of the AS 23.30.110(c) deadline because Employee asked for additional time after the deadline passed. Employer contends failing to dismiss would prejudice Employer because it would result in ongoing litigation and discovery

costs and negatively impact its insurance rates. It contends dismissing Employee's claim protects Employer from future medical costs being redirected against it by Medicare.

Employee contends his claim should not be dismissed because his is still waiting for medical evidence. He contends the COVID pandemic has delayed his ability to obtain medical treatment, as has his remote work.

Should Employer's petition to dismiss be granted?

FINDINGS OF FACT

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

1) On January 6, 2003, Employer reported he injured his lower back while working for Employer on January 3, 2003, when he lifted grader chains. (Report of Occupational Injury or Illness, January 6, 2003).

2) On February 25, 2020, Employee filed a claim for "aggravation and occupational disease from employment and L5S1 fusion and surgerys[sic]." He did not check a box for any benefits. (Claim for Workers' Compensation Benefits, February 25, 2020).

3) On March 17, 2020, Employer denied medical costs, time loss benefits and permanent partial impairment (PPI) benefits, contending Employee's current disability and/or need for medical treatment did not arise out of or in the course of his employment with Employer. It served Employee by first-class mail. The controversion notice included:

> **TO EMPLOYEE . . . . READ CAREFULLY**
> . . . .
>
> **TIME LIMITS**
> . . . .
>
> 2. When you must request a hearing (Affidavit of Readiness for Hearing form)?
>
> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.

> **IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING CONTACT THE NEAREST AWCB OFFICE.** (Controversion Notice, March 17, 2020).

4) On March 31, 2020, the Board designee held a prehearing conference and Employee confirmed he was seeking temporary total disability (TTD), medical and PPI benefits for a back injury. The Board designee advised Employee:

> must serve and file an ARH requesting a hearing or written notice he has not completed all discovery but still wants a hearing within two years of Employer's March 17, 2020 Controversion to avoid possible dismissal of his claim. AS 23.30.110(c). He must file an ARH or written notice he has not completed all discovery but still wants a hearing by March 21, 2022 (March 17, 2020 + 2 years + 3 days under 8 AAC 45.060 (a) = Sunday, March 20, 2022 = Monday, March 21, 2022 under 8 AAC 45.063(a))."

The Board designee encouraged the parties to seek the assistance of a Workers' Compensation Technician for questions pertaining to this case, including assistance in filling out forms and determining which form to use, and provided Division telephone numbers. The summary also stated:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, March 31, 2020).

5) On April 2, 2020, the Division served Employee the March 31, 2020 prehearing conference summary by first-class mail to his address of record along with a blank copy of the Affidavit of Readiness for Hearing (ARH) form and a Request for Conference form. (Prehearing Conference Summary Served, April 2, 2020).

6) On May 13, 2020, Employer denied medical and time loss benefits. It served Employee by first-class mail. The controversion notice included:

> **TO EMPLOYEE . . . . READ CAREFULLY**
> . . . .
>
> **TIME LIMITS**
> . . . .
>
> 2. When you must request a hearing (Affidavit of Readiness for Hearing form)?
>
> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.
>
> **IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING CONTACT THE NEAREST AWCB OFFICE.** (Amended Controversion Notice, May 13, 2020).

7) On January 12, 2021, Employee called the Division and asked how to request a prehearing conference because "he was stuck." The Workers' Compensation Officer directed Employee to the Request for Conference form sent with the prehearing conference summary. Employee said he tried calling attorneys, but no one would take his case and he was "getting treatment through the VA, who have referred him for surgical consultation and chiropractic care." The Officer discussed the benefits Employee claimed, the medical summary and notice of intent to rely forms, and the AS 23.30.110(c) deadline to request a hearing set forth in in the March 31, 2020 prehearing conference summary. (Phone Call, January 12, 2021).

8) On March 19, 2021, Employee filed medical evidence. (Medical Summary, March 19, 2021).

9) On March 31, 2021, a workers' compensation technician mailed Employee a blank copy of the ARH form and letter stating:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an

> affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Letter, March 31, 2021).

10) On March 29, 2022, Employer requested Employee's February 25, 2020 claim be dismissed for his failure to actually or substantially comply with AS 23.30.110(c). (Petition, March 29, 2022).

11) On April 26, 2022, Employee attended a prehearing conference to discuss Employer's March 29, 2022 petition. (Prehearing Conference Summary, April 26, 2022).

12) On May 3, 2022, Employee answered Employer's March 29, 2022 petition:

> I Stephen Lowery am responding to the employer filing the March 29th 2022 petition. As you know I was not completely prepared to go on filing paperwork I did not have. I am currently working out of town and I have been trying to get this appointment with Roland Kent MD. Between covid and trying to get help with the VA, I have found myself very frustrated trying to get this accomplished. I had an appointment with Roland Kent MD at Axis spine in Coeur D Alane Idaho, April 28 2022 at 10:00 am. At this appointment I was informed that I need another surgery. Included with this surgery, he will be removing all of my old hardware from the 2002 surgery I had. The screws protrude in my lower back and have been causing me pain for years. (Employee email answer, May 3, 2022).

13) At hearing, Employee testified Veterans Affairs (VA) began covering his medications in 2010. The physician who performed his first surgery retired but he recommended retraining. Employee was off work for several years, but retraining was denied. The screws in his back have been irritating him since the first surgery because they are crooked and almost protruding through his vertebrae. Employee's second surgery was at L3-4, and he paid for it. Workers' compensation in Idaho denied the second surgery as it found it was due to this work injury. Employee talked to 15 different attorneys, and he was advised to reopen his Alaska claim. He has been trying to get into see a surgeon to pursue medical benefits for his work injury. An attorney told Employee he would not take his case without more medical evidence. He had an MRI recently and was told he needed another surgery. Employee is still waiting for more medical information; he had a CT scan last week and is waiting to "know what needs to happen." COVID affected his ability to obtain medical treatment and evidence. Employee works

remotely, which affects his ability to obtain medical treatment. He needs until July to do any paperwork and he does not have the medical evidence needed to retain a lawyer. Employee finds the workers' compensation process confusing. He forgot about his claim; he is not a lawyer, and he does not do paperwork or computers. Employee needs a new surgery, which is not part of his 2020 claim; the 2020 claim sought reimbursement for the second surgery that he paid for. (Employee).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
>
> (1) This chapter be interpreted 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.
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute; . . . .

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

> **AS 23.30.110. Procedure on Claims.** . . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied. . . . .

Statutes with language similar to AS 23.30.110(c) are referred to in Professor Arthur Larson's treatise as "no progress" or "failure to prosecute" rules. "[A] claim may be dismissed for failure

to prosecute it or set it down for hearing in a specified or reasonable time." 7 Arthur Larson & Lex K. Larson, *Workers' Compensation Law*, §126.13[4], at 126-81 (2002). The statute's object is not to "generally pursue" the claim; it is to bring a claim to the Board for a decision quickly so the goals of speed and efficiency in Board proceedings are met. *Providence Health System v. Hessel*, AWCAC Dec. No. 131 (March 24, 2010).

AS 23.30.110(c) requires an employee to timely prosecute a claim once the employer controverts. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995). AS 23.30.110(c) requires an employee to request a hearing within two years of the controversion or face claim dismissal. *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-13 (Alaska 1996). Technical noncompliance with AS 23.30.110(c) may be excused when a claimant has substantially complied with the statute. *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193 (Alaska, 2008), accord, *Omar v. Unisea, Inc.*, AWCAC Dec. No. 053 (August 27, 2007) (remanded to the Board to determine whether the circumstances as a whole constituted compliance sufficient to excuse failure to comply with the statute). Because AS 23.30.110(c) is a procedural statute, its application is "directory" rather than "mandatory," and substantial compliance is acceptable absent significant prejudice to the other party. *Kim* at 196. However, substantial compliance does not mean noncompliance, *id*. at 198, or late compliance, *Hessel* at 12. Although substantial compliance does not require filing a formal affidavit, it nevertheless still requires a claimant to file, within two years of a controversion, either a request for hearing, *id*., or a request for additional time to prepare for one. *Denny's of Alaska v. Colrud*, AWCAC Dec. No. 148 (March 10, 2011).

A request for additional time constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim. *Kim*. If the claimant's request for more time is denied, the two-year time begins to run again, and the claimant has only the remainder of that time-period to request a hearing. *Id*. The Board has discretion to consider the request's merits for additional time and any resulting prejudice to the employer. *Id*. at 199.

> . . . The board has discretion to extend the deadline for good cause. (*Kim* at 194). Subsection .110(c) is a procedural statute that 'sets up the legal machinery

> through which a right is processed' and 'directs the claimant to take certain action following controversion.' A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then 'substantial compliance is acceptable absent significant prejudice to the other party.'
> . . . .
>
> We conclude that the language of subsection .110(c) satisfies these criteria and hold its provisions are directory. . . .
> . . . .
>
> On remand, the Board should fully consider the merits of Kim's request for additional time and any resulting prejudice to Alyeska. If in its broad discretion the Board determines that Kim's reasons for requesting additional time have insufficient merit, or that Alyeska would be unduly prejudiced, the Board can set a hearing of its own accord or require Kim to file an affidavit of readiness within two days -- the amount of time remaining before the original two-year period expired. (*Kim* at 199).

Omar remanded so the Board could consider whether "the circumstances as a whole constitute compliance with the requirements of [AS] 23.30.110(c) sufficient to excuse any failures." *Omar* found the SIME process had tolled the statute of limitations and the two ARHs the Board considered were filed after the time had run in AS 23.30.110(c). However, the Board had failed to consider a previously and timely filed ARH. *Omar* directed the Board to consider on remand:

> If the board determines that the August 2003 affidavit of readiness for hearing was not a valid request for a hearing, the board shall make specific findings whether the circumstances require dismissal of Omar's claims or whether some other action is appropriate. In engaging in this inquiry, the board shall give due attention to the effect of Mr. Gerke's communications to the parties with respect to the requirements and time bar of AS 23.30.110(c) as well as to Omar's AS 23.30.110(c) obligations and to any substantive deficiencies in Omar's August 2003 affidavit of readiness for hearing. The board should evaluate the circumstances surrounding staff efforts made to communicate with Omar, whether Omar was self-represented, and whether Omar was instructed as to how any defects or errors could be remedied.
>
> . . . Do the circumstances as a whole constitute compliance with the requirements of AS 23.30.110(c) sufficient to excuse any failures by Omar to comply with the statute? (*Omar* at 7-8).

Pruitt v. Providence Extended Care, 297 P.3d 891, 985 (Alaska 2013), citing *Kim*, said the claimant did not substantially comply with AS 23.30.110(c) because, "She did not file anything

indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired." It explained:

> The prehearing conference summary from February 2006 shows that the Board told Pruitt to contact staff at the Board 'for assistance in filing an [affidavit of readiness for hearing], if she decides she wants to continue with the case.' It also gave Pruitt some warning, in addition to the warnings on the notices of controversion that she had to file a request for a hearing within two years of the controversions. Yet in spite of this information, Pruitt took no action in her case for more than three years, waiting until her long-term disability ended to take action on her workers' compensation claim. Her 2009 hearing request cannot be considered substantial compliance with the statute.

Certain legal grounds may excuse noncompliance with AS 23.30.110(c), such as lack of mental capacity or incompetence; lack of notice of the time-bar to a self-represented claimant; or equitable estoppel asserted against a government agency by a self-represented claimant. *Tonoian v. Pinkerton Security,* AWCAC Dec. No. 029 (January 30, 2007). *Tonoian* held the Board's "obligation to give notice was satisfied by mailing the Board-approved controversion forms," and "[t]he obligation to inform and instruct self-represented litigants on how to pursue their claims did not require division staff to seek out [the claimant] and urge her to file paperwork on time or to volunteer information that it may have reasonably assumed she has been told." *Id.* at 12, 14. *Tipton* said the statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it." *Id*.

The Board has power to excuse failure to file a timely request for hearing when evidence supports equitable relief, such as when the parties are participating in the SIME process. *Kim*, 197 P.3d at 197; *Tonoian*, AWCAC Dec. No. 029 at 11 (January 30, 2007. However, in *Alaska Mechanical v. Harkness*, AWCAC Dec. No. 176 (February 12, 2013), the Commission held a stipulation for an SIME was not enough; the parties must follow through on the stipulation to toll the running of the two-year time period.

Narcisse v. Trident Seafoods Corp., AWCAC Dec. No. 242 (January 11, 2018), noted the two-year time period is tolled when some action by the employee shows a need for additional time before requesting a hearing, and a request for an SIME is a demonstration that additional time is needed before a hearing is held. *Id*. at 22.

A claimant bears the burden to establish with substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline. *Hessel*. A claimant who bears the burden of proof must "induce a belief" in the minds of the factfinders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

The Alaska Supreme Court in *Richard v. Fireman's Fund Insurance Co*., 384 P.2d 445, 449 (Alaska, 1963), held the Board owes a duty to fully advise a claimant of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right. *Bohlmann v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska, 2009), held the Board had a duty to inform a self-represented claimant how to preserve his claim under AS 23.30.110(c), and to correct the employer's lawyer's incorrect prehearing conference statement that AS 23.30.110(c) had already run on his claim. *Bohlmann* said *Richards* may be applied to excuse noncompliance with AS 23.30.110(c) when the Board failed to adequately inform a claimant of the two-year time limitation. Since Bohlmann still had more than two weeks to file a hearing request when the employer's lawyer gave wrong information, and the Board's designee did not correct it, the Court found an abuse of discretion and reversed the Board's dismissal and directed it to accept the tardy hearing request as timely. The Court presumed Bohlmann would have timely filed his hearing request had the Board or staff satisfied its duty to him, because he had consistently filed his own pleadings previously.

Davis v. Wrangell Forest Products, AWCAC Dec. No. 18-007 (January 2, 2019), held because Davis "was never told of the actual date by which he needed to request a hearing and his continuing actions to prosecute his claim . . . [he] substantially complied with the requirements of the Act and is entitled to a hearing on the merits of his claim. The Board's assistance to [Davis] was insufficient to apprise him of the deadline for requesting a hearing on the merits, since the Board never told [him] when he must file an ARH. Even though [Davis] still has not requested a hearing on the merits of his claim for medical treatment, it is apparent from the record and his actions to pursue his claim that, had he been fully informed about the deadline for asking for a hearing on the merits, he, like [Bohlmann], would have timely requested a hearing."

Subsequently, in its order on the parties' motions for reconsideration, the Commission in *Davi*s held:

> The Commission, following the reasoning raised by the Court in *Bohlmann*, now holds that in cases involving a pro se claimant, the Board shall advise the claimant at the first prehearing, following a [claim], employer's answer, and employer's controversion, when and how to request a hearing. The Board designee in the first prehearing needs not only to advise the pro se claimant as to how to calculate the timeline in AS 23.30.110(c) for requesting a hearing, but must also provide the claimant with an actual date by which an ARH must be filed in order to preserve the claim. (Order on Motion for Reconsideration, March 1, 2019).

> **8 AAC 45.060. Service.** . . . (b) . . . Service by mail is complete when deposited in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail. . . . .

> **8 AAC 45.063. Computation of time.** (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.
>
> (b) Upon petition by a party and for good cause, the board will, in its discretion, extend any time period prescribed by this chapter.

ANALYSIS

Should Employer's petition to dismiss be granted?

AS 23.30.110(c) requires an injured worker to request a hearing within two years of Employer's after-claim controversion. A claim must be prosecuted timely once controverted. AS 23.30.001; *Jonathan*; *Tipton*. Employer controverted Employee's claim on March 17, 2020. Employee was required to request a hearing by March 21, 2022 (March 17, 2020 + 2 years + 3 days = Sunday, March 20, 2022 = Monday, March 21, 2022). AS 23.30.110(c); 8 AAC 45.060(b); 8 AAC 45.063(a). Employee did not request a hearing by March 21, 2022. Therefore, he failed to comply with AS 23.30.110(c).

Technical noncompliance with AS 23.30.110(c) may be excused when a claimant has substantially complied with the statute. *Kim*. Substantial compliance requires Employee to file a request for additional time to prepare for a hearing within two years of Employer's after-claim controversion. *Colrud*. Employee did not request additional time to prepare for a hearing by March 21, 2022. He last filed medical evidence on March 19, 2021 and took no action in his case until the deadline passed and Employer requested his claim be dismissed. Therefore, these circumstances do not constitute substantial compliance sufficient to excuse his failure to comply with AS 23.30.110(c). Employee failed to substantially comply with AS 23.30.110(c).

Legal grounds, such as lack of mental capacity, incompetence, or equitable estoppel asserted against the Division may provide grounds to extend the deadline to request a hearing. *Tonoian*. Employee bears the burden of establishing a legal excuse with substantial evidence. *Hessel*. No medical record states Employee lacks mental capacity or is incompetent. Noncompliance with AS 23.30.110(c) may be excused if the Division did not properly advise Employee of the deadline. *Richard*; *Bohlmann*; *Davis*. Division staff properly instructed Employee how to pursue his claim on March 31, 2020, by informing Employee he must file an ARH, or request additional time to prepare for a hearing, by March 21, 2022. *Id*. Employee did not identify any misinformation Employer, or the Division or its staff, gave him. Employer's March 17, 2020 and May 13, 2020 controversion notices, the March 21, 2020 prehearing conference summary, and Division staff on January 21, 2021, in a phone call and on March 31, 2021, by letter gave Employee accurate, sufficient, legal notice and warning he had two years from the March 17, 2020 controversion to request a hearing or request additional time to prepare for one. AS 23.30.110(c); *Kim*; *Richard*; *Bohlmann*; *Davis*; *Rogers & Babler*. Employee failed to provide substantial evidence demonstrating he lacked mental capacity, was incompetent or the Division or its staff did not properly advise him of the AS 23.30.110(c) deadline and how to preserve his claim by filing an ARH or requesting additional time by March 21, 2022. *Saxton*.

Employee testified he forgot about the deadline, he is not good at paperwork or computers, the COVID pandemic and his remote worksite affected his ability to obtain medical treatment, and an attorney told him additional medical evidence was required before the attorney would take his

case, and he requested more time to obtain medical treatment and to obtain and file the medical evidence. An employee has the right to seek an attorney, but an attorney is not required by law to pursue a claim. Employee's inability to retain an attorney does not constitute good cause to grant an extension to the deadline. *Rogers & Babler*. Employee failed to request an SIME and took no action showing he needed additional time to pursue his claim until May 3, 2022, after the deadline expired. *Kim*; *Tonoian*; *Harkness*; *Narcisse*. Employee was still required to request a hearing or additional time to prepare for a hearing. Late compliance does not constitute substantial compliance. *Kim*; *Hessel*. While needing additional time to obtain medical evidence could constitute good cause to grant an extension of the AS 23.30.110(c) deadline in some circumstances, the only explanation Employee provided to explain his failure to timely request additional time to pursue his claim was that he works remotely, which affects his ability to file paperwork, and is not good at paperwork or computers and he forgot. His remote worksite, his difficulties completing paperwork and using a computer and his failure to remember to timely request additional time to pursue his claim do not constitute good cause to excuse him from the deadline. *Kim*; 8 AAC 45.063(b). Employee did not provide substantial evidence showing good cause to extend the deadline to request a hearing or request additional time. *Saxton*; *Rogers & Babler*.

The legislature mandates decisions be made to ensure injured workers receive indemnity and medical benefits quickly, efficiently and at a reasonable cost to employers. AS 23.30.001. Employer will be prejudiced if Employee's claim is not dismissed and his request for an unspecified extension to pursue his claim is granted because it would be required to expend additional costs for ongoing litigation and discovery and a prolonged open claim would increase its insurance rates. *Rogers & Babler*. Employee's reasons for untimely requesting additional time have insufficient merit and Employer will be prejudiced if the extension Employee requests is granted. *Kim*. Employee's claim will be dismissed for failure to request a hearing or additional time under AS 23.30.110(c) and *Kim*.

CONCLUSION OF LAW

Employer's petition to dismiss Employee's claim should be granted.

ORDERS

1) Employer's March 29, 2022 petition to dismiss is granted.
2) Employee's February 25, 2020 claim is dismissed with prejudice.

Dated in Juneau, Alaska on July 6, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Bradley Austin, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the

board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Stephen Lowery, employee / claimant v. Shaan Seet, employer; Alaska Timber Insurance Exchange, insurer / defendants; Case No. 200222093; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 6, 2022.

/s/
Lorvin Uddipa, Workers' Comp Technician