ALASKA WORKERS' COMPENSATION BOARD

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

NICHOLAS ANDREWS, Employee, Claimant, v. ALASKA INTERSTATE CONSTRUCTION, Employer, and AIC, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 200912404 AWCB Decision No. 22-0073 Filed with AWCB Anchorage, Alaska on November 17, 2022

Nicholas Andrews' (Employee) June 10, 2022 claim was heard in Anchorage, Alaska on September 29, 2022, a date selected on August 4, 2022. A July 5, 2022 hearing request gave rise to this hearing. Attorneys Richard Harren and H. Lee appeared and represented Employee who appeared and testified. Attorney Michael Budzinski appeared and represented Alaska Interstate Construction and Northern Adjusters (Employer). The only hearing issue was Employee's claim for prospective chiropractic treatment for his lumbar spine, attorney fees and costs. Employee withdrew his claim for permanent partial impairment (PPI) benefits and acknowledged the medical bills submitted as evidence had been paid. Jared Kirkham, M.D., testified telephonically on Employer's behalf. The record remained open for Employee's attorney's supplemental fee affidavit and Employer's objections. The record reopened to advise Employee's counsel, Mr. Lee, to modify his fee affidavit and to receive Employer's additional objections. The record closed on November 10, 2022.

ISSUES

Employee contends his low back, hips, shoulders, and upper back pain are due to favoring his right side after left knee surgery. He contends his 2009 work injury is the substantial cause of his need for chiropractic treatment for his pain. He requests a prospective award for chiropractic care.

Employer contends Employee's July 27, 2009 work injury is not the substantial cause of his need for any medical treatment related to his back, hips, or shoulders and his claim should be denied.

1) Is Employee's July 27, 2009 work injury the substantial cause of his need for chiropractic treatment?

Employee contends he is entitled to attorney fees.

Employer contends Employee is not entitled to attorney fees because he cannot prove his claim by a preponderance of the evidence. If attorney fees are awarded, Employer objects to the hours billed by Mr. Lee. Employer contends they are not credible and cannot be evaluated to determine what tasks were performed or if they were reasonable.

2) Is Employee entitled to attorney fees?

FINDINGS OF FACT

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

1) On July 27, 2009, Employee had a misstep when exiting a Bobcat to refuel. He felt his left knee pop and internal knee derangement was diagnosed. Employee was referred for an orthopedic evaluation. A left knee magnetic imaging scan (MRI) showed a complete ligament tear, a ligament sprain, and meniscus tears. It also showed mild lateral compartment degenerative joint disease. (Providence Medical Center Emergency Department Chart Note, John Hanley, M.D., July 27, 2009; MRI report, July 31, 2009.)

2) On August 18, 2009, John Duddy, M.D., arthroscopically repaired Employee's left knee. One repair procedure he used was ligament reconstruction with bone-patellar-bone cadaver allograft. (Operative Note, Dr. Duddy, August 18, 2009.)

3) On June 17, 2017, Employee was in a four-wheeler accident and sought chiropractic treatment on June 26, 2017. His primary complaint was cervical aching and soreness. He also complained of lower thoracic and lumbar pain. Employee rated his pain 5/10. The recommended treatment plan was two visits per week for the next two weeks and Employee's symptoms were expected to recover fully. (Chart Note, Attila Sipos, DC, June 26, 2017.)

4) On February 23, 2021, Employee reported to Adam Ellison, M.D., his left knee had been bothering him for years and he felt loose bodies floating around his knee. Employee's left knee had a five-degree valgus malalignment, but no instability. Dr. Ellison diagnosed left knee medial meniscus tear. (Chart note, Dr. Ellison, February 23, 2021.)

5) A February 26, 2021 left knee MRI showed Employee's anterior cruciate ligament had a partial tear, a full thickness cartilage defect, "suspected" intraarticular bodies, and medial and lateral meniscus flap tears. (MRI report, February 26, 2021.)

6) On March 4, 2021, Employee denied any injuries since his 2009 left knee surgery. Dr. Ellison recommended surgery and told Employee he had arthritis in his knee and may continue to have pain even after surgery. (Chart note, Dr. Ellison, March 4, 2021.)

7) On March 31, 2021, Mr. Harren entered his appearance. Employee requested a protective order. He asked that Employer be ordered to modify a medical release to exclude reference to ex parte communications with Employee's medical providers. (Entry of appearance, Richard Harren, March 31, 2021; Petition, March 31, 2021.)

8) On April 9, 2021, Employer's medical evaluator (EME), Dustin Schuett, M.D., evaluated Employee and diagnosed recurrent anterior cruciate ligament tear. He said work was the substantial cause of Employee's disability and need for medical care. Dr. Schuett based his opinion upon "a significant body of medical literature" that says using cadaver allograft tissue in patients younger than 30 to 35 years old puts these patients at higher risk for graft failure. Employee was 21 years old when the cadaver allograft was performed and Dr. Schuett concluded the graft's failure and subsequent degeneration are the contributing factors to Employee's "current" knee pathology. There was no time after Employee's July 27, 2009 injury when work was not the substantial cause of Employee's disability and need for medical treatment. Dr. Schuett noted, "Employee's anterior cruciate ligament reconstruction tunnel is oriented vertically in the femoral component, which can lead to rotational instability of the knee, which can lead to progressive degeneration of the cartilage and meniscus." He agreed Dr. Ellison's recommended

surgical procedure, anterior cruciate ligament reconstruction revision, medical meniscus debridement, and loose bodies removal was reasonable and necessary. Dr. Schuett said Employee's pain is likely caused by his left knee lateral and medial compartment degeneration after his July 27, 2009 work injury. Dr. Schuett did not address the substantial cause of Employee's need for medical treatment for pain in his low back, hips, upper back, and shoulders. (EME Report, Dr. Schuett, April 9, 2021.)

9) On April 20, 2021, Employer answered Employee's protective order petition. It did not object to Employee's requested medical releases revision and said it would submit a revised release that did not reference ex parte communication. (Answer, April 20, 2022.)

10) On April 28, 2021, Dr. Ellison revised Employee's left knee anterior cruciate ligament reconstruction, removed loose bodies, and performed partial medial and lateral meniscectomies. (Operative report, Dr. Ellison, April 28, 2021.)

11) On April 28, 2021, neither Mr. Harren nor Mr. Lee appeared for a properly noticed prehearing. Employer's counsel, Mr. Budzinski, advised Employee's protective order petition had been resolved and Employee would receive revised releases. Mr. Budzinski noted Employee was undergoing knee surgery and benefits had not been controverted. (Prehearing summary, April 29, 2021.)

12) On May 4, 2021, Dr. Ellison recommended a high tibial osteotomy to correct Employee's knee's misalignment. (Chart note, Dr. Ellison, May 4, 2021.)

13) On June 14, 2021, Employee's physical therapy progressed, and he was introduced to proper safe hip hinge patterning. Laura Elliott, PT, reviewed Employee's "personal low back and hip issue history" and implemented modifications to his exercises to maintain safety, and control Employee's range of motion. (Physical Therapy Chart Note, Laura Elliott, PT, June 14, 2021.)

14) On November 17, 2021, Dr. Ellison performed a left knee distal femoral closing wedge osteotomy. (Operative Note, Dr. Ellison, November 17, 2021.)

15) On February 24, 2022, Employee told PT Elliott he felt tight and ached in his hips and low back and wondered if he could see a chiropractor. She noted Employee had difficulty performing the pinch pattern due to lumbar compensation, flexion through the spine, and required extensive cueing. His ongoing treatment plan included, among other things, gait training. (Physical Therapy Chart Note, Laura Elliott, PT, February 24, 2021.)

16) On February 28, 2022, Employee's main complaint was low back pain from compensation needed due to his left knee surgery. He said his low back and hip felt "off" because he had been favoring his right side. He wanted treatment to focus on his low back. PT Elliott noted Employee was walking with a cane and had a slight limp. (Physical Therapy Chart Note, Carrie King, PT, February 28, 2022.)

17) On March 7, 2022, Employee said he started a gym membership, and his work outs might have contributed to his soreness. He rated his back pain at 4/10. This was Employee's 33rd physical therapy session since his April 28, 2021 surgery. (Physical Therapy Chart Note, Carrie King, PT, March 7, 2022.)

18) On April 5, 2022, Employee was three months post-surgery and reported continued knee pain and discomfort. Bethany Davies, PA-C, noted Employee had difficulty with extension but not with walking. His knee had a palpable loose body and surgical removal was planned. (Chart Note, PA-C Davies, April 5, 2022.)

19) On April 13, 2022, Dr. Ellison removed a small piece of bone floating under Employee's left knee's muscle. The fragment did not have sharp edges, nor did it appear to be bony. (Operative Report, Dr. Ellison, April 13, 2022.)

20) On April 26, 2022, Employee still had discomfort in his hips and back, which Dr. Ellison felt was "mostly related to the limping and difficulty walking as he is healing up from his left knee." Dr. Ellison referred Employee to a chiropractor for a low back pain evaluation and to see if an adjustment would help improve his function. (Chart Note, Dr. Ellison, April 26, 2022; Referral order, Dr. Ellison, April 26, 2022.)

21) On May 10, 2022, the physical therapist said Employee will benefit from a chiropractic evaluation, and treatment will facilitate postsurgical recovery. (Physical Therapy Chart Note, May 10, 2022.)

22) On May 19, 2022, even though Employer had not controverted benefits, Employee filed a claim for permanent partial impairment (PPI) and medical benefits, attorney fees and costs. Employee said, "Carrier's denial of chiropractic treatment is delaying my recovery and return to work as a truck driver. Lost range of motion and permanent partial impairment of left knee." (Claim for Workers' Compensation Benefits, June 10, 2022.)

23) On May 24, 2022, Mr. Lee filed medical summary form 07-6103 with 220 pages of medical records. The medical summary's cover page was not properly completed. It identified

only the first record; Dr. Ellison's April 26, 2022 post-op visit chart note. The report type was identified as a hospital record (H). It was a chart note (C). Although provided, the medical summary did not list each medical report in Employee's possession. (Medical Summary, May 24, 2022.)

24) On June 10, 2022, Employer answered Employee's May 19, 2022 claim and denied Employee's entitlement to PPI benefits prior to him reaching medical stability and receiving a PPI rating. No rating had yet been assessed. Employer also denied attorney fees and costs and raised affirmative defenses.

> The employee's injury was to his left knee. Medical treatment for the left knee has not been denied but has been paid per the Act. On 5/10/22, employee requested that the adjuster authorize chiropractic treatment for low back, neck, and shoulder pain. The adjuster informed the employee that medical authorization for such treatment would be necessary. Dr. Ellison issued a "Referral Order" on 4/26/22 for a chiropractor to evaluate the employee for lower back pain, which order was served by employee's attorney on 5/19/22. In a separate report dated 4/26/22, Dr. Ellison referred the employee for "chiropractic adjustment" to address "hip and back" discomfort related to "limping and difficulty walking", which report was served by employee's attorney on 5/24/22. The employer and carrier have not denied the chiropractic evaluation/adjustment authorized by Dr. Ellison. No bill or report from a chiropractor has been received. The employer and carrier are not aware of any dispute as to medical treatment and reserve the right to pay for authorized chiropractic treatment without liability for attorney's fees and costs after receipt of medical reports and bills as provided in regulation 8 AAC 45.082(d).
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> The claim for PPI benefits is premature. The employee has not yet been found medically stable and has not been given a PPI rating. The employer and carrier reserve the right to pay PPI benefits without liability for attorney's fees and costs after receipt of the medical report showing that the employee is medically stable and after a permanent partial impairment rating has been provided.

(Answer, June 10, 2022.)

25) On June 10, 2022, Employee filed a claim, identical to his May 19, 2022 claim, for PPI and medical benefits, attorney fees and costs. Employee said, "Carrier's denial of chiropractic treatment is delaying my recovery and threatens the success of my return to work as a truck driver. Lost range of motion and permanent partial impairment of left knee." (Claim for Workers' Compensation Benefits, June 10, 2022.)

26) On June 10, 2022, Mr. Lee filed medical summary form 07-6103. It listed one medical record; Dr. Ellison's June 9, 2022 "release to work." The record was not attached to the medical summary. (Medical Summary, June 10, 2022.)

27) On June 13, 2022, Jared Kirkham, M.D., evaluated Employee as an EME. He diagnosed left knee anterior cruciate ligament tear and lateral meniscus tear, substantially caused by Employee's July 27, 2009 work injury. He noted Employee needed left knee anterior cruciate ligament reconstruction and partial lateral meniscectomy. He agreed with Dr. Schuett that this procedure was necessary because the tibial tunnel had not been optimally placed, which led to abnormal forces on Employee's left knee joint and rotational instability. This, in turn, led to recurrent cruciate ligament tears and medial and lateral meniscus tears. Hence, repeat left knee arthroscopy with partial medial and lateral meniscectomy and anterior cruciate ligament revision reconstruction was needed. Dr. Kirkham said Employee then developed lateral compartment osteoarthritis and valgus left knee malalignment. To correct this, a left knee distal osteotomy was performed. This left Employee with sub-optimal alignment of the distal femoral condyles, an inability to fully extend his knee, and associated pain and functional impairment. Dr. Kirkham found no objective evidence Employee's bilateral shoulders, cervical spine, thoracic spine, low back, bilateral hips, or sacroiliac joints were injured on July 27, 2009. He noted the first time Employee mentioned back and hip pain was February 24, 2022, and claimed his altered gait caused his spine and hip pain. Dr. Kirkham said:

> Based upon my literature review, there is no objective evidence linking altered gait to low back pain.
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> The most comprehensive review of this subject appears to be found in a discussion paper prepared for the Workplace Safety and Insurance Appeals Tribunal of Ontario initially written in March of 2004 and revised in August of 2013, authored by Ian Harrington, MD, MS, orthopedic surgeon and engineer. Dr. Harrington concludes that: 'It is unlikely that [an injury to the lower extremity] that caused a mild or moderate degree of limping over a relatively short period of time would have a major detrimental effect on the lumbar spine.' Mr. Andrews' surgery for his left knee distal femoral closing wedge osteotomy was performed on November 17, 2021. He was non-weightbearing after this surgery and then gradually transitioned to full weightbearing in February of 2022. The subsequent notes indicate that he was able to return to the gym and by May of 2022, he was able to perform farmer's carries and other more advanced activities.

> [D]uring my physical exam, he has a minimally antalgic gait. In my medical opinion, the six-month period from his left knee distal femoral closing wedge osteotomy on November 17, 2021, to my evaluation on today's date, would be considered a "relatively short period of time" mentioned in Dr. Harrington's report. Therefore, it is unlikely that Mr. Andrews' period of limping and altered gait after his surgery would cause any significant objective change in his lumbar spine. Moreover, he has a completely normal physical examination of the spine, shoulders, and hips on today's date.

Dr. Kirkham found Employee medically stable on June 13, 2022 and rated him with a five percent PPI. When the need arises, it is the July 27, 2009 work injury that is the substantial cause of Employee's need for a total left knee arthroplasty. Dr. Kirkham found all causes of Employee's hip, spine, and shoulder pain causes include age, genetics, deconditioning, weightlifting activities in the gym, altered gait after the left knee distal femoral closing wedge osteotomy on November 17, 2021, and his "possible" low back and hip issues history. He said it is unlikely a knee injury that caused temporary limping over a "relatively" short time would detrimentally affect the lumbar spine. Dr. Kirkham found no objective evidence Employee had bilateral shoulders, spine, or bilateral hip dysfunction or injuries and said Employee's current complaints are purely subjective. He opined the substantial cause of Employee's bilateral shoulders, spine, and bilateral hips' pain complaints are non-injury factors including age, genetics, deconditioning, weightlifting activities and a reported history of low back and hip issues per the June 14, 2021 physical therapy note. Dr. Kirkham concluded Employee's accepted left knee condition is not the substantial cause of the need for hips, spine, or shoulder treatment. He recommended Employee continue his home exercise program, to include strength training and aerobic activity. Dr. Kirkham added, "although there is limited evidence supporting the use of chiropractic treatment for chronic low back pain, it would still be reasonable to trial 8-12 sessions of chiropractic treatment." (EME Report, Dr. Kirkham, June 13, 2022.)

28) On June 22, 2022, Employer relied upon Dr. Kirkham's June 13, 2022 report and controverted medical benefits for Employee's hips, spine, and shoulders. (Controversion Notice, June 22, 2022.)

29) On June 30, 2022, Employer controverted and answered Employee's June 10, 2022 claim. It admitted Employee was entitled to PPI benefits related to his left knee, and the five percent PPI rating provided by Dr. Kirkham was paid on June 22, 2022. It also admitted Employee is entitled to medical and related benefits for reasonable and necessary left knee treatment.

Employer denied Employee is entitled to medical benefits for his hips, spine, or shoulders, and attorney fees and costs. (Controversion Notice, June 30, 2022; Answer, June 30, 2022.)

30) On August 4, 2022, Employee's claims for PPI, medical benefits, and attorney fees were set for a September 29, 2022 hearing. The parties planned to schedule Dr. Kirkham's deposition prior to hearing. (Prehearing conference summary, August 5, 2022.)

31) On September 9, 2022, Employer's petition to continue hearing was added as a September 29, 2022 hearing issue. The following discussion ensued:

> Employer representative advised that the 8/18/2022 petition was filed because discovery remains incomplete as the necessary depositions of Dr. Kirkham and the Employee have not taken place. Employee representative advised that he does not agree to a continuance and would only agree to continue the 9/29/2022 hearing if Employer would agree to pay for Employee's chiropractic care. Employer representative noted that his client is at a disadvantage at a hearing without discovery being complete and reminded Employee representative of the verbal agreement made at the 8/4/2022 prehearing that Dr. Kirkham's deposition would need to be completed before proceeding to hearing. In response Employee representative asked Designee to note that his client now agrees to waive his right to cross examine Dr. Kirkham.

(Prehearing conference summary, September 9, 2022.)

32) On September 12, 2022, Mr. Lee filed medical summary form 07-6103 with 299 pages of medical records. The medical summary's cover page was not properly completed. It contained only one identified medical report. The report's date was June 9, 2022, provider was listed as OPA, report type was hospital records (H), and description was, "OPA medical records." The one identified two-page record was a chart note (C), the provider was Dr. Ellison, and a proper record description is post-op visit. The medical summary contains 297 more pages of medical records, and none are properly listed or described. (Medical Summary, May 24, 2022.)

33) On September 26, 2022, Employee claimed 14.8 hours in legal fees, billed at $400 per hour by Richard Harren, and 60 hours in legal fees, billed at $275 per hour by H. Lee, for a total of $22,420. Mr. Harren used block billing, recorded his time in tenth of hour increments, and described his work's extent and character. Mr. Lee's fee affidavit records tasks in increments of entire hours, beginning and ending exactly on the hour. Mr. Lee also used block billing but did not describe his work's extent or character. He said he described his work in "generic terms" intentionally "in accordance with attorney-client privilege." Mr. Lee submitted identical entries

on March 22, 2021, each for one hour and each described as "Write Fee Letter, Attorney Conference." Mr. Lee billed four hours total for the task, "research re fee." He billed four hours total for the task "attorney conference" and 18 hours total for "client conference." He did not describe the conferences' extent, nature or purposes. Neither Mr. Harren's, nor Mr. Lee's fee affidavits address Alaska Rule of Professional Conduct 1.5(a) factors. (Fee Affidavit, Richard Harren, September 26, 2022; Fee Affidavit, H. Lee, September 26, 2022.)

34) Employee testified he has been driving a semi-truck since he was 19 years old. His knee has never been right since his 2009 injury. A year and a half to two years before his 2021 surgery, his knee started swelling and was painful. Employee's original anterior cruciate ligament replacement was from a cadaver, and it failed. He had a good result with the replacement surgery and resumed work driving semi-trucks in six to seven weeks. Employee described his third surgery: On November 17, 2021, Dr. Ellison cut the side of his femur and inserted a plate to realign his "back, hips, and knee." He believed they were out of alignment by five or seven degrees. He was on bed rest for eight weeks and it was another six weeks before he could return to work. Employee went to physical therapy three times per week. "Loose bodies" were removed five months after his third surgery. Employee was massaged during physical therapy for hip and low back pain. He said Dr. Ellison believed he would probably benefit from chiropractic care and made a referral to Dr. Ramirez. When Employee returned to work, his knees and hips hurt during long working hours. His employer purchased a new truck with automatic transmission, but it did not help his hip and low back pain. Employee said his symptoms have not gone away and are mostly hip and low back pain. He believes the pain will be alleviated by chiropractic care. Employee now lives in Pennsylvania and sought treatment with a chiropractor the week prior to hearing. He was told his hips are rotated approximately four degrees and a few discs are "out of alignment." Employee hopes to be able to find a hotshot trucking job, which would entail driving a 3,500 to 5,500 pickup with a five-bed trailer instead of a semi. He is aware one day he will need total knee replacement but for now he is requesting only hips and low back chiropractic treatment. Prior to 2009, he did not walk "funny" but since then he has had a "funny" walk and favors his right leg over his left. After the November 2021 osteotomy, Employee was non-weightbearing and did not walk on his leg for eight weeks. He used crutches and a brace. Employee did not walk enough to have a limp. He used two crutches for four weeks, then went to one crutch, and at six weeks, he used a cane. Employee said he

developed a limp when the loose body was found. He asked Dr. Ellison if chiropractic care would alleviate his low back and hip pain. (Employee, September 29, 2022.)

35) Dr. Kirkham testified he evaluated Employee on June 13, 2022, and he had a slight limp on the left, his pelvis was level from side to side, and there was no obvious malalignment from knee to knee. Employee's lower extremity reflexes were symmetrical, he had no leg length discrepancy, leg strength was full, and bilateral hip range of motion was normal. Pain disability questionnaire forms are a subjective disability measurement used to assess how much low back pain is affecting a person's activities of daily living, including work. Employee's pain disability questionnaire score, 105, indicates severe disability. Employee's subjective disability measurement exceeded what Dr. Kirkham's observations and physical exam revealed. He said this indicates, subjectively, Employee feels more impaired than the objective findings would suggest. Dr. Kirkham admitted it was possible a temporarily altered gait could cause low back pain but, in Employee's case, there were no objective findings to which low back pain could be attributed. Dr. Kirkham paid close attention to Employee's physical therapy notes. By May 2022, Employee had only a mild limp while doing the farmer's carry and there was no asymmetry in his hip level. On June 10, 2022, Employee's left knee strength was five out of five. Employee was released to return to full duty work on June 13, 2022. Dr. Kirkham said 80 percent of people have back pain; it is common. Limping over a relatively "short period" will not, in Dr. Kirkham's opinion, cause low back pain. He said the Harrington report defines "short period" as less than six months to a year. Dr. Kirkham noted Employee was non-weightbearing for eight weeks post-surgery and used two crutches for the next four weeks. His records review revealed Employee had a limp from February through May, 2022, and in April 2022, a mild limp. Dr. Kirkham said Employee's limp did not negatively affect his lumbar spine. There is limited evidence chiropractic care alleviates chronic low back pain; however, Dr. Kirkham said a short course of chiropractic care may benefit Employee. There is strong evidence general exercise, active intervention and strength training through physical therapy, home exercise and gym programs will provide the greatest benefit to reduce low back pain. Dr. Kirkham said it is "not unreasonable" to add chiropractic care to an active exercise program. When considering causation, a "short period" of limping would not warrant an extensive seven-week chiropractic treatment program. Because Employee had extensive physical therapy and was going to the gym, Dr. Kirkham believes no more than six to 12 chiropractic sessions are necessary. After

listening to Employee's testimony, Dr. Kirkham said, Employee is doing well and does not need chiropractic treatment. Employee's 2009 work injury caused his minimal altered gait after November 17, 2021, and was a contributing factor, but not the substantial cause of Employee's need for chiropractic treatment. The November 17, 2021 surgery was done to correct varus malalignment and was successful. Dr. Kirkham found Employee had an antalgic gait. He opined Employee's surgery did not cause a significantly altered gait for a long time and varus deformities do not lead to low back pain. Dr. Kirkham relied upon the Harrington report and his own experience and expertise. (Dr. Kirkham, September 29, 2022.)

36) Dr. Kirkham's opinion is based upon a discussion paper, "Limping and Back Pain," prepared for the Canadian Workplace and Safety and Insurance Appeals Tribunal (Tribunal). Ian J. Harrington, M.D., wrote the paper in March 2004 and it was revised in August 2013. The paper's introduction says the Tribunal must often deal with appeals related to claims a preexisting congenital or degenerative back disorder was aggravated by limping secondary to a compensable knee injury such as a meniscal tear or post-traumatic patella chondromalacia. For many reasons, it is often difficult to identify a specific back pain generator. Dr. Harrington says it is, therefore, important "the physical findings correlate with radiological abnormalities to be of significance." He addresses limping mechanics and says:

> Minimal force in the anteriorly located abdominal or posterior erector spinal muscles (core muscles) is required to balance the spinal column. Any condition that results in major displacement of the centre of gravity of the body's mass away from the vertical axis of the spine, e.g. forward and/or lateral bending, lifting, a large protuberant abdomen and/or weak abdominal musculature, will create increased forces in the stabilizing posterior erector spinal muscles in order to balance the spine. This, in turn causes increased force transmission across the spine segments and an increase in disc pressure. . . . Increased spinal motion as a result of abnormal displacements of the body's centre of gravity while walking, will also contribute to disc breakdown, particularly in the lumbo-sacral region. These are the basic bio-mechanical mechanisms related to limping as a cause of low back pain, i.e. the generation of increased lateral bending and rotational forces in the core musculature due to the combined repetitive side to side and vertical displacements of the body's centre of gravity and increased motion at the lumbar disc levels while limping.

Dr. Harrington says the best way to envision an antalgic gait is to imagine a stone in one's shoe or a nail sticking through the shoe's sole. When weight is taken on the foot in that shoe, it will hurt, and the discomfort is lessened by getting off that foot as quickly as possible. The person

will shorten the stance phase duration on the painful side. "This produces a characteristic gait with uneven strides of different duration, whereby the stance phase of the painful limb is shortened and that of the normal leg increased." Dr. Harrington said any condition that causes pain in a lower extremity bone can produce an antalgic gait and is often a response to an acute short term "problem." He addressed the biomechanical effects of limping and whether limping affects the low back. Dr. Harrington said if patients had pre-existing back discomfort, limping would probably aggravate spine symptoms in direct proportion to the limp's magnitude. The magnitude of force transmitted by "biological joints" according to Dr. Harrington is directly related to obesity, joint deformity, stride length, limb length discrepancy, walking speed, and any gait pattern that causes a "major" mass displacement of the body's center of gravity.

> In all probability, from a biomechanical perspective, limping can cause back pain and aggravate pre-existing back pain. Clinical data, however, i.e. patient studies directly related to the incidence of back pain in the general population for individuals walking with a limp, are limited and inconclusive. Therefore, each case must be considered individually and all the above factors considered.

Dr. Harrington concluded it is unlikely meniscal tear injuries involving either the medial or lateral meniscus that cause a mild or moderate limp over a "relatively" short time period would have a "major" detrimental effect on the lumbar spine or opposite lower extremity. (Limping and Back Pain, Ian Harrington, M.D., P.Eng. B.A.Sc., March 2004, revised: August 2013.)

37) On September 22, 2022, Employee filed a three-page brief. One paragraph acknowledged there was only one hearing issue, "whether or not chiropractic care is a reasonable and necessary treatment. . . ." Employee quoted and provided as an exhibit Dr. Ellison's referral for chiropractic care. He also provided Dr. Kirkham's EME report as an exhibit and quoted his summary of three of Dr. Ellison's chart notes, which were not provided as exhibits. Employee also quoted six physical therapist's chart notes as summarized by Dr. Kirkham. He did not provide the notes as exhibits. Employee also quoted Dr. Kirkham's opinion. The brief's final paragraph suggested because Dr. Kirkham researched and relied upon Dr. Harrington's study, he "may upon consideration of more moderate and convincing authorities withdraw his contrary opinion on the issue of the compensability of chiropractic care." Employee's brief did not quote or reference any statute, regulation, or case precedent. His brief did not provide a history of his injury and the procedures he has undergone. It did not analyze if Employee's 2009 work injury

is the substantial cause of his need for chiropractic treatment. Employee's brief did not assist the panel to analyze and decide the issue. (Employee's Brief, September 22, 2022; Judgment.)

38) On September 30, 2022, Employee supplemented his attorney fees and claimed an additional 9.5 hours, billed at $400 per hour by Richard Harren. Attorney time now totaled $26,220. (Supplemental Fee Affidavit, Richard Harren, September 30, 2022.)

39) On October 5, 2022, Employer objected to Employee's attorney fee request. It objects to all amounts billed by Mr. Lee for several reasons. First, he began billing for work on March 9, 2021, which was more than a year before any dispute arose over Employee's entitlement to chiropractic care. Second, Mr. Lee billed every task in one-hour increments starting on the hour and ending on the hour. Third, Employer found it impossible to determine what kind of work took exactly one or two hours to perform because Mr. Lee failed to describe in any detail his work's extent and character. Employer objected to Mr. Lee's time because he failed to comply with 8 AAC 45.180(b) and (d)'s requirement "the extent and character of the work performed" in the affidavit itemizing hours expended. It contended Mr. Lee's work cannot be evaluated, nor can it be determined if tasks or time spent was reasonable. Had Mr. Lee been the only attorney representing Employee, the panel could surmise he performed work to assist in prosecuting Employee's claim for chiropractic care. Employer noted Mr. Harren also submitted a fee affidavit, which describes his work's extent and character. Employer contended it is apparent Mr. Harren performed all necessary work to go to hearing on the disputed issue of Employee's entitlement to chiropractic care. It contended Mr. Lee's fee affidavit does not credibly describe the tasks he performed and requested his fees be denied. It also requested fees incurred prior to the chiropractic treatment dispute be denied. (Objection to Employee's Request for Attorney Fees and Costs, October 5, 2022.)

40) On October 31, 2022, Mr. Lee was advised:

> Employer has requested all fees for work performed by Mr. Lee be denied. Employer has filed its compelling and persuasive detailed objections. Mr. Harren and Mr. Lee, you are both encouraged to review the Supreme Court's decision in *Rusch*. To ensure quick, fair, efficient delivery of benefits at a reasonable cost to Alaska Interstate Construction, all parties must be afforded due process. To reduce time and resources in further litigation, prior to denying most fees billed by Mr. Lee and being chided by the Supreme Court for violating due process, Mr. Lee will be given an opportunity to modify his fee affidavit before a decision is issued. You are advised that although the regulation does not specify a time

> increment for billing, attorney time is routinely billed in tenths of hours, not an hour or multiples thereof for every task performed. Mr. Lee may provide a modified fee affidavit that itemizes his time by tenths of hours and describes the extent and nature of work performed on Mr. Andrews' behalf. When describing the extent and nature of work performed more than a "generic" description is required and the disputes or issues for which the work was performed should be identified.

Mr. Lee was given until November 3, 2022, to modify his fee affidavit and Employer was given until November 10, 2022, to file objections. (Letter to Harren, Lee and Budzinski, October 31, 2022.)

41) On November 3, 2022, Mr. Lee timely filed his modified fee affidavit and the following five documents:

> Exhibit 1 – H. Lee original timesheet
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> Exhibit 2 – H. Lee original attorney fee affidavit
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> Exhibit 3 – Board's October 31, 2022 Letter
>
> Exhibit 4 – H. Lee's "Inbox" regarding Mr. Andrews
>
> Exhibit 5 – H. Lee's "Sent Box" regarding Mr. Andrews

Mr. Lee's second attorney fee affidavit says since June 2022, Mr. Harren's firm has had two attorneys, but no secretaries or paralegals. He said his $275 per hour rate reflects work he performs as an attorney, as well as secretary and paralegal. Without a secretary or paralegal, Mr. Lee said, "I cannot afford to spend too much time in timesheet composition, detailing what I did in a task or exactly how much time I spent in that task. Is practically a matter of impossibility for me to spend too much time in composition of elaborate timesheet." Mr. Lee contends the lists he provided showing his email inbox and sent emails demonstrate he has a heavy workload, and his hours are extensive. He said he could not edit his original timesheet to modify the hourly billing increments to tenths of an hour because he could not recall how much time he spent on individual tasks. Mr. Lee said he could not modify his original timesheet to provide his work task's exact starting and ending times. He explained his timekeeping method:

> I recorded starting and ending time like 1 PM, 9 AM, and omitting the minute level detail, for the sake of economy, efficiency, and practicality. When I write I

> started the task at 1 PM, it means 1 PM is the closest hour, meaning it could be 12:35 PM or 1:25 PM. Statistically, those minute differences on average evens out, canceling the surplus and deficit of the minutes from the hour, making the total rounded hours accurate reflection of the work hours. That is, about 50% of the time when I write 1 PM, it means it's earlier than 1 PM. The other 50% of the time when I write 1 PM, it means it's later than 1 PM. So all in all, 1 PM is a correct description of the time of my start/end moment of the task on average.

Mr. Lee suggested, "For more details in statistics, see normal distribution, a.k.a. Gausian Curve or Bell Curve" on Wikipedia. Mr. Lee said, "Considering my heavy workload, performing the function as an assistant attorney and also functions and paralegal as our financial status cannot afford to hire one, rounding up or down my hours and giving the generic description of the tasks are the best that I can do regarding timesheet composition." Mr. Lee contended his email inbox list and sent email list demonstrate his workload is heavy and, as in other cases, his hours expended in Employee's case are extensive. In his second fee affidavit, Mr. Lee said:

> We offer to ER discounted hours of H. Lee, in order to demonstrate our willingness to negotiate the attorney fee amount with ER, without conceding the point that the original timesheet of H. Lee is conservative and accurate for all practical purposes. We offer 33.3% discount of H. Lee's work hours so that H. Lee's work hours would be adjusted from 60 hours to 40 hours, as we keep an open mind regarding negotiation of EE's attorney fee awards.

Mr. Lee's modified fee affidavit provided reasons why he could not and did not provide an affidavit itemizing the hours expended or describing the extent and character of work performed on the hearing issue. Mr. Lee's "modified" fee affidavit did not provide the additional information requested. (Second Fee Affidavit, H. Lee, November 3, 2022; Fee Affidavit, H. Lee, September 26, 2022; Timesheet, H. Lee, September 26, 2022; Spreadsheet, Email Inbox, H. Lee; Spreadsheet, Sent Emails, H. Lee; observations.)

42) On November 10, 2022, Employer filed its opposition to Employee's second affidavit of attorney fees. It contended Mr. Lee's November 3, 2022 modified fee affidavit and his supporting exhibits suffer from the same deficiencies as his original fee affidavit and timesheet, and Employer again requested Mr. Lee's attorney fees be denied. Employer contended Mr. Lee's admission he could not recall the times he started and stopped the past tasks performed to modify his initial timesheet illustrates contemporaneous recording of time spent and the tasks performed is important. It contended Mr. Lee's inability to reconstruct records cannot excuse his

failure to adequately account for time spent to Employer's detriment. Employer contended awarding the fees requested without accurate records would reward and perpetuate inadequate time keeping practices. It argued the consequences of Mr. Lee's inadequate record keeping should not fall on Employer. Employer objected to Mr. Lee's email lists as proof he expended "extensive" hours and contends the lists do not support his fee request.

> But these emails do not explain the extent and character of the work performed. The exhibits do not include time increments for the emails or describe tasks that may have been associated with the content of the emails. Mr. Lee did not explain how the emails describe the work that he performed. He apparently is relying on the Board to review the email list and discern for itself how the list might describe the work for which he requests payment.

Employer contends even after reviewing Mr. Lee's second affidavit and exhibits it is not possible to determine the nature and reasonableness of work Mr. Lee performed and for which he requests payment.

> For example, on 3/9/21, Mr. Lee billed an entire hour for an "Attorney Conference." However, there is no description of who the conference was with, what was discussed, or what purpose it had to further litigation or provide assistance to Employee in his claim. In Exhibits 4 and 5 to the Second Fee Affidavit, Mr. Lee documents an email that day between himself and the Board to request the Board's file. However, a request to the Board for a copy of its file cannot reasonably be characterized as an "Attorney Conference." The Board can also rely on its knowledge and expertise to find that an email to request the Board's file would not take an hour.
>
> This problem is not unique to the first entry; it is true for each entry in the original timesheet. And, if Employer is [not] mistaken an "Attorney Conference" does in fact refer to an email to the Board, then that demonstrates the problem with hourly billing increments. Billing in hourly increments is not a credible or a fair way to account for the tasks performed. The rationale provided by Mr. Lee for that practice is difficult to follow. More importantly, it is an unnecessary practice and an inadequate substitute for simple and direct time entries in increments of one-tenth of an hour as commonly practiced in Alaska. The "hourly rounding" method should therefore be rejected by the Board.

Employer contends Mr. Lee's explanation that Mr. Harren's office had no support staff beginning in June 2022 does not explain why adequate time entries could not be made by Mr. Lee contemporaneously with work he performed. It contends Mr. Lee's excuse also

does not explain why inadequate entries were made from the beginning of his representation on March 9, 2021. Employer notes Mr. Lee's pattern of excessive time and inadequate task entries began in March 2021 and did not change in June 2022 when there were no longer staff available. It contends throughout the course of Employee's claim, Mr. Lee's affidavits reflect excessive time and inadequate task entries. Employer asserts Mr. Lee's entries cannot be reviewed for reasonableness and should be denied. Finally, it rejects Mr. Lee's offer to negotiate fees. Employer maintains Employee's request for fee award is not a negotiation and must be determined on the merits. It contends Mr. Lee's two fee affidavits and his supporting documentation do not sufficiently describe work performed and are too vague and overbroad to determine a reasonable fee award. Employer requests all Mr. Lee's attorney fees be denied. (Employer's Opposition to Employee's Second Affidavit of Attorney Fees, November 10, 2022.)

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
>
> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

The board may base its decision 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).

> **AS 23.30.010. Coverage**. (a) . . . [C]ompensation or benefits are payable under this chapter . . . if the disability . . . or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. . . .

For injuries occurring on or after November 7, 2005, the relative contribution of all causes

of disability and need for medical treatment must be evaluated, and if employment is, in relation to all other causes, "the substantial cause" of the disability or need for medical treatment, benefits are awardable. *City of Seward v. Hanson*, AWCAC Decision No. 146 at 10 (January 21, 2011).

> **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. . . .
>
> **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 . . .

"The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Medical benefits, including continuing care, are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The Alaska Supreme Court in *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991) held a claimant "is entitled to the presumption of compensability as to each evidentiary question."

The presumption's application is a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the "claim" and her employment. In less complex cases, lay evidence may be sufficiently probative to make the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Whether or not medical evidence is required depends on the probative value of available lay evidence and the complexity of the medical facts. *Id*. An employee need only adduce "some," minimal

relevant evidence, *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987), establishing a "preliminary link" between the "claim" and the employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, once an employee attaches the presumption, the employer must rebut it with "substantial" evidence that either, (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability ("affirmative-evidence"), or (2) directly eliminates any reasonable possibility that employment was a factor in causing the disability ("negative-evidence"). *Huit v. Ashwater Burns, Inc*., 372 P.3d 904, 919 (Alaska 2016). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). The mere possibility of another injury is not "substantial" evidence sufficient to rebut the presumption. *Huit* at 920, 921. The employer's evidence is viewed in isolation, without regard to an employee's evidence. *Miller* at 1055. Therefore, credibility questions and weight accorded the employer's evidence are deferred until after it is decided if the employer produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994).

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

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and

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

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

> **AS 23.30.145. Attorney fees.** (a) . . . When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries. . . .
>
> (b) If an employer . . . resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. . . .

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney successfully prosecutes the employee's claims. *Id*. In this latter scenario, reasonable fees may be awarded. *Id*. at 152-53.

Wise Mechanical Contractors v. Bignell, 718 P.2d 971, 974-75 (Alaska 1986), held attorney fee awards should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on the claim's merits, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id*. The nature, length, and complexity of services performed, the employer's resistance, and the benefits resulting from the services obtained, are considerations when determining reasonable attorney fees for successful claim prosecution. *Id*. at 973, 975. Since a claimant is entitled to full reasonable attorney fees for services on which the claimant prevails, it is reasonable to award one-half the total attorney fees and costs where the claims on which the claimant did not prevail

were worth as much money as those on which he did prevail. *Bouse v. Fireman's Fund Ins., Co.*, 932 P.2d 222, 242 (Alaska 1997).

Rusch v. Southeast Alaska Regional Health Consortium, 450 P.3d 784, 803 (Alaska 2019), held the statutory presumption of compensability does not apply to the amount and reasonableness of attorney fees sought by claimants in workers' compensation claims where "the parties did not dispute claimant's entitlement to attorney's fees; they dispute the fees' reasonableness." More importantly, addressing what the board must consider when determining a reasonable attorney fee:

> To clarify our holding in *Bignell*, we hold that the Board must consider all of the factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney's fee (footnote omitted). . . . Some factors mirror those set out in the Act, such as the amount involved and the results obtained. On remand, the Board must consider each factor and either make findings related to that factor or explain why that factor is not relevant. *Id*. at 798-99.

The specific Rule 1.5(a) factors to consider in awarding attorney fees in these cases include:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
>
> (2) The likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The time limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent. *Id*. at 799.

The Court criticized the *Rusch* panel for going outside the agency record and consulting information in the workers' compensation database to determine a reasonable attorney fee

without giving the parties an opportunity to respond to the information retrieved. *Id*. at 800-01. *Rusch* noted 8 AAC 45.108 requires "an affidavit itemizing the hours expended as well as the extent and character of the work performed" but provides no additional guidance about the affidavit's form. In a footnote, *Rusch* said, "It does not, for example, require the use of a specific time increment in billing, nor does it forbid block billing." *Rusch* chided the panel because it "did not inform [claimant's attorney] his affidavit was inadequate, nor did the panel allow him an opportunity to modify the affidavit before issuing its decision." *Rusch* found the panel's actions violated due process by reducing attorney fees without either providing adequate notice about the information the attorney needed to present to preserve his claims or allowing him to present evidence to address his fee affidavit's inadequacies and the panel's reasons for lowering the fees. *Id.* at 800.

Rusch addressed the use of a specific time increment and noted:

> The fact that workers' compensation attorneys generally bill in increments of one-tenth of an hour does not make that custom a rule of law. The Board's regulations do not require use of a specific time increment, and the Board did not tell Graham at the hearing that he needed to use tenths of an hour so that he could modify his affidavit. The reduction in hours solely based on the use of quarter-hour increments was an abuse of discretion. *Id.* at 806.

Williams v. Abood, 53 P.3d 134 (Alaska 2002), held the board acted within its discretion in awarding only statutory minimum attorney fees for an attorney's representation of a claimant where two affidavits in support of a higher fee award were filed late, and one timely affidavit was largely undecipherable and inaccurate. While there is a policy in favor of making attorney fees in workers' compensation cases fully compensatory, the policy does not relieve an attorney from following the procedural rules for obtaining compensation. *Id.* at 140.

Where requested fees are not sufficiently itemized or otherwise appear unreasonable, courts should not hesitate to deny those fees. *Hodari v. Alaska Department of Corrections*, 407 P.3d 468 (Alaska 2017). Attorney fee awards are reviewed under the abuse of discretion standard and should be upheld unless the award is 'manifestly unreasonable.' *Bouse* at 241.

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

. . . .

(b) A fee under AS 23.30.145 will only be awarded to an attorney licensed to practice law in this state or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.

. . . .

(d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state.

(1) A request for a fee under AS 23.30.145(b) must be verified by an affidavit itemizing the hours expended as well as the extent and character of the work performed, and, if a hearing is scheduled, must be filed at least three working days before the hearing on the claim for which the services were rendered; at hearing the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the filing of the affidavit. Failure by the attorney to file the request and affidavit in accordance with this paragraph is considered a waiver of the attorney's right to recover a reasonable fee in excess of the statutory minimum fee under AS 23.30.145(a), if AS 23.30.145(a) is applicable to the claim, unless the board determines that good cause exists to excuse the failure to comply with this section.

(2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the compensation beneficiaries from the services, and the amount of benefits involved.

. . . .

ANALYSIS

1) Is Employee's July 27, 2009 work injury the substantial cause of his need for chiropractic treatment?

Employee injured his left knee in 2009. Employer does not dispute work is the substantial cause of the need for left knee treatment. Employee requests an order for prospective chiropractic care to treat low back and hip pain he believes was caused because his gait was altered after his third surgery and before the loose body was removed from his left knee. Although Employee's knee injury was medically complex, his claim for chiropractic care is not. *Wolfer*; *Rogers & Babler*.

For chiropractic care to be compensable, Employee's work injury must be, in relation to other causes, "the substantial cause" of his need for chiropractic treatment. AS 23.30.010(a); AS 23.30.095; *Hanson*. The parties' dispute centers on whether Employee's low back and hip pain are substantially caused by his limping and difficulty walking while healing from surgery for his 2009 left knee injury. This is a factual dispute to which the presumption of compensability applies. AS 23.30.120(a)(1); *Meek*; *Carter*; *Sokolowski*.

In the absence of substantial contrary evidence, Employee is presumed entitled to the chiropractic care he seeks if he can attach the presumption. AS 23.30.120(a)(1). He attaches the presumption with Dr. Ellison's April 26, 2022 chart note, which indicates Employee's back and hip discomfort is "mostly related to the limping and difficulty walking as he is healing up from his left knee" surgery and the referral to a chiropractor for low back evaluation and an adjustment. *Wolfer*; *Cheeks*; *Smallwood*; *Ugale*. Employer is now required to rebut the presumption. *Miller*.

Viewed in isolation, Employer has overcome the presumption with substantial evidence. *Runstrom*; *Miller*. Dr. Kirkham found no objective evidence Employee's hips and low back were "injured" on July 27, 2009. He found it unlikely a knee injury that caused a temporary mild limp over a short time would have a detrimental effect on Employee's lumbar spine, hips, or shoulders. Dr. Kirkham identified all causes of Employee's hip, spine, and shoulder pain causes as: age, genetics, deconditioning, weightlifting activities in the gym, and altered gait after the left knee distal femoral closing wedge osteotomy on November 17, 2021. He concluded Employee's accepted left knee condition is not the substantial cause of the need for chiropractic treatment. *Huit*.

Employee must now prove his claim by a preponderance of the evidence. *Koons*. Employee produced scant evidence to support his claim. He asks for a prospective order for chiropractic treatment for his low back and hips. Dr. Ellison opined Employee's pain was "mostly" related to limping and walking difficulties he had while healing from his final left knee surgery. When Dr. Kirkham evaluated Employee on June 13, 2022, Employee's hips were symmetrical, he had no malalignment from knee to knee, had no leg length discrepancy, and his gait was "minimally antalgic." Dr. Kirkham relied on the only medical study he could find authored by Dr. Harrington to conclude because Employee's limp was mild and present for a short time, his left knee injury was not the substantial cause of Employee's need for lumbar spine chiropractic care. Employee's testimony he walked "funny" favoring his right leg since his 2009 injury is credible. AS 23.30.122. Dr. Kirkham acknowledged the longer a significantly altered gait is present, the more likely it is to cause low back pain. He is a strong proponent for Employee to continue his home exercise program, strength training, and aerobic activity. He added, even though there is limited evidence supporting chiropractic treatment for chronic low back pain, as an adjunct to the home exercise program and strength training, eight to 12 sessions are reasonable. Dr. Kirkham's testimony is credible and portions of his report and opinion will be given as much weight as Dr. Ellison's April 26, 2022 record. AS 23.30.122; *Smith*.

Employee first complained of low back pain on June 14, 2021. Dr. Ellison has been Employee's orthopedic surgeon since February 2021 and operated on Employee's left knee three times. He observed Employee's walking difficulties, including his gait and limp. His opinion Employee's low back pain is related to his limping and difficulty walking while his left knee healed is given weight. *Id.* Dr. Kirkham's opinion the first treatment for low back pain is active exercise, including home and gym exercise programs and strengthening is also given weight. *Id.* By combining Dr. Ellison's opinion that a chiropractic adjustment is reasonable to improve Employee's function with Dr. Kirkham's opinion as an adjunct, a maximum of 12 chiropractic sessions is reasonable to treat Employee's low back pain, Employee has proven by a preponderance of the evidence his left knee surgery caused the need for limited chiropractic care not to exceed 12 sessions. *Saxton*.

2) Is Employee entitled to attorney fees?

Employee requests actual attorney fees for services he contends the Harren Law Offices provided to successfully prosecute his claim. Reasonable attorney fees may be awarded when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Moore*. Employer resisted paying medical benefits for chiropractic care to treat Employee's low back and hips. Employee retained counsel long before Employer controverted any benefits. Counsel successfully litigated Employee's claim and obtained a prospective medical benefits award -- a maximum of 12 chiropractic sessions. Thus, Employee is entitled to a reasonable attorney fee award. AS 23.30.145(b); *Rusch*.

Attorney fees should be reasonable and fully compensatory to ensure injured workers have adequate representation. *Bignell*. The award must be reasonably commensurate with the actual work Mr. Harren and Mr. Lee performed. 8 AAC 45.180. The reasonableness of Mr. Harren's and Mr. Lee's services are determined under statutory and decisional law requirements. Various factors, including those set forth in AS 23.30.145(b) and Alaska Rule of Professional Conduct 1.5(a), must be applied. Employee did not present evidence or argument concerning any of those factors. However, some Rule 1.5(a) factors applicable to ascertain a reasonable, fully compensatory attorney fee award can be gleaned from the record and will be examined. *Rusch*.

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

Employee requested a prospective order for chiropractic care. His was a simple claim for a medical benefit. Whether work was the substantial cause of the need for chiropractic care was not a difficult or novel issue. Extensive time and labor should not have been required to perform the legal services necessary to prosecute Employee's claim. *Rogers & Babler*.

Employee also seeks attorney fees. Entitlement to fees does not present a novel or difficult issue, nor does it require exceptional legal skill to properly draft a fee affidavit that accurately itemizes hours expended and describes the work's extent and character.

> (2) The likelihood acceptance of the particular employment will preclude other employment by the lawyer.

Neither Mr. Harren nor Mr. Lee addressed whether accepting Employee as a client would preclude them from accepting other clients' work. Mr. Lee said he is very busy serving as the law office's secretary, paralegal, and associate attorney. He filed his email inbox list and email sent list to illustrate he received and sent many emails in Employee's case. However, communication via email is an accepted form of expedient communication and reduces case related work hours when compared to writing formal letters, addressing envelopes, attaching postage and mailing letters.

Mr. Harren had 24.3 hours less time to work on other employment over the 19 months he participated as co-counsel on Employee's claim. Mr. Harren gave no indication he lost other employment by performing the services reflected in his affidavit.

Mr. Lee's unorthodox timekeeping method renders it impossible to determine how many hours he devoted to Employee's case. His second affidavit did not indicate he lost other employment by performing the services reflected in his affidavit. Mr. Lee's affidavit and timesheet are not credible. AS 23.30.122; *Smith*.

(3) The fee customarily charged in the locality for similar legal services.

Neither party introduced evidence of the fee customarily charged in Anchorage for legal services like those provided by Mr. Harren and Mr. Lee for Employee. Mr. Harren's hourly rate is $400, which experience shows is commensurate with other claimant's attorneys in Alaska with 30 years' experience representing injured workers. *Rogers & Babler*. Mr. Lee attributes his $275 hourly rate to his role as secretary, paralegal, and attorney. Employer has not objected to these hourly rates. Experience shows both Mr. Harren's and Mr. Lee's hourly rates are within the billing rates range customarily awarded in workers' compensation cases.

(4) The benefits amount involved, and the results obtained.

The result Mr. Harren and Mr. Lee obtained for Employee is a prospective order for no more than 12 chiropractic care sessions to treat back pain. No evidence was provided by either party regarding the cost of a chiropractic session in Pennsylvania under the Pennsylvania fee schedule.

Harren Law Offices successfully obtained a limited number of chiropractic sessions for Employee. This is a minimal benefit. *Id*.

(5) The time limitations imposed by the client or by the circumstances.

This factor's applicability is not self-evident. Mr. Lee said Harren Law Offices has not had a secretary or paralegal since June 2022. This is not, however, a time limitation imposed by Employee or his case's circumstances. This factor will not be used to either support, or lessen, Employee's claimed fees. *Rusch*.

(6) The nature and length of the professional relationship with the client.

Neither Mr. Harren nor Mr. Lee provided evidence describing their professional relationship with Employee, its nature or length. On March 9, 2021, Mr. Lee logged a one hour "attorney conference." On March 31, 2021, Harren Law Offices entered its appearance and requested a protective order, which Employer did not oppose. Employee's attorneys did not address how the length of their professional relationship with Employee affects their fees. This factor will not be used to increase or lessen the fee award. *Rusch*.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

Two attorneys from Harren Law Offices with vastly different practice experience, worked on Employee's case. Employee's attorney of record, Mr. Harren, has over 30 years' experience. Mr. Lee's affidavit did not provide his years' experience. Neither Mr. Harren's nor Mr. Lee's ability to perform services, or the skills necessary to perform the services properly were fully demonstrated in this case. As examples, Employee's hearing brief was unhelpful. The brief was unskillfully written. It contained little more than medical record summaries authored by EME Dr. Kirkham inserted as block quotations. The brief's second paragraph says, "the treating physician, Dr. Adam Ellison has said that chiropractic care should be allowed as reasonable and necessary convalescence." This is not an accurate representation of Dr. Ellison's written opinions. The brief suggests Dr. Kirkham "may, upon consideration of more moderate and convincing authorities withdraw his contrary opinion on the issue of the compensability of a chiropractic referral." "More moderate and convincing authorities" were not properly introduced

as evidence 20 days prior to hearing. The brief's final sentence says, if Dr. Kirkham does not withdraw his opinion, "it seems the next step would be for an SIME examination." This statement illustrates Employee's attorneys' unfamiliarity with the requirement a second independent medical evaluation (SIME) request had to have been made within 60 days after receiving Dr. Kirkham's report or Employee's right to request a SIME was waived.

(8) Whether the fee is fixed or contingent.

Mr. Harren's fee affidavit acknowledges he agreed to represent Employee for a fee contingent on his success. Mr. Lee's fee affidavit does not address whether he agreed to represent Employee on a fixed or contingent fee basis.

Employee requests actual attorney fees for time Mr. Harren and Mr. Lee spent prosecuting his claim. Mr. Harren's fees total $9,720. Mr. Lee's fees total $16,500, or perhaps $11,000 after his offered discount.

Harren Law Offices sought and obtained a revision to medical records releases. It went on to file two identical claims seeking attorney fees and PPI and medical benefits. The claims were premature; Employee's benefits had not been controverted, he was not medically stable, nor had his PPI been rated. Rule 1.5(a)(7). All three issues were set for hearing. The PPI claim was withdrawn at hearing. Employee's claim for a prospective order for chiropractic treatment was successfully prosecuted. He is entitled to no more than 12 chiropractic sessions: a minimal benefit. *Rusch*; Rule 1.5(a)(4).

Law firms typically have a standardized billing policy all attorneys in the firm are required to follow, which covers time tracking, time increments, work descriptions and parameters for when tasks should be completed. *Rogers & Babler*. The Harren Law Offices do not have a standardized billing policy evidenced by the distinct differences in Mr. Harren's and Mr. Lee's fee affidavits and timesheets. Their fees will be analyzed separately.

(1) Richard Harren's Fees

Employer did not object to Mr. Harren's hourly rate or total fees. He tracks his time in tenths of an hour. His billing entries describe his work's extent and nature and contain sufficient detail to enable a thoughtful and comprehensive review. Employee is entitled to an award of reasonable attorney fees for Mr. Harren's time; 24.3 hours at $400 per hour, or $9,720.

(2) H. Lee's Fees

Employer requested all fees incurred prior to the chiropractic treatment dispute be denied, and all Mr. Lee's fees be denied. It disputes the reasonableness of Mr. Lee's fees.

Mr. Lee's experience practicing law and representing workers' compensation claimants is unknown. His fee affidavit and timesheet do not follow Mr. Harren's adopted format. Mr. Lee's billing entries use hour increments instead of tenth of hour increments. He described his work in "generic terms" purportedly to protect attorney-client privilege. With no further information about the issues or disputes his work addressed, Mr. Lee used descriptors such as, "attorney conference," "client conference," "medical review," "petition write, edit," "file," "discuss," "other motions," "write opposition," "prepare for hearing," "medical summary," and "prepare for hearing." These time entries are vague and provide insufficient information to assess the reasonableness or necessity of hours Mr. Lee claims he worked on Employee's claim.

A request for actual attorney fees must be verified by a fee affidavit itemizing the hours expended, as well as the extent and character of the work performed. 8 AAC 45.180(d)(1). An attorney is considered to have waived his right to recover actual fees greater than statutory minimum fees if his affidavit does not comply with 8 AAC 45.180(d)(1). *Rusch*, on the other hand, found reducing attorney fees without either providing adequate notice about the information the attorney needed to present to preserve his claim or allowing him to present evidence to address the reasons for lowering his fees violated due process.

Mr. Lee's September 26, 2022 fee affidavit provided scant details about his work's extent and nature. It did not identify his work's connection to the issues or disputes. Mr. Lee's work was billed in one-hour increments or multiples thereof. His unconventional incremental time billing coupled with his failure to detail his work's extent and character, made it impossible to evaluate

if his work was reasonable. To assure Employee's due process was not violated and before lowering Mr. Lee's fees, he was encouraged to review the *Rusch* decision. The record was reopened, and he was given an opportunity to modify his fee affidavit. Mr. Lee was informed his modified fee affidavit should itemize time by tenths of hours and describe the extent and nature of work performed on Employee's behalf. He was also directed to describe the work performed with more than a generic description and to identify the disputes or issues for which the work was performed. Mr. Lee was informed of the information he needed to present to preserve the fee claim and was given an opportunity to present evidence to address the reasons his fees could be lowered. *Rusch.*

Mr. Lee's second fee affidavit claimed he "cannot afford to spend too much time in timesheet composition, detailing what [he] did in a task or exactly how much time [he] spent in that task." He said it was impossible for him to spend "too much time" composing an elaborate timesheet or recording exactly how much time he spent doing case related tasks. He declared he could not edit his timesheet to modify the hourly billing increments to tenths of an hour because he could not recall how much time he spent on individual tasks. Mr. Lee's fee affidavits and time bills are not credible. AS 23.30.122; *Smith*. Accurate, honest timekeeping is an essential administrative task for attorneys seeking fee awards. *Abood*.

The Act must be construed and applied to ensure competent counsel are available to represent claimants. *Bignell* at 973. It must also be construed to ensure benefit delivery at a reasonable cost to employers. AS 23.30.001(1). There is no way to determine the actual time Mr. Lee spent performing work on Employee's behalf. He admits his "hourly rounding" timekeeping method is not accurate. He affied, "all in all" his use of start and stop times on the hour is a correct description of his tasks "on average." Mr. Lee's use of hourly increments is not a reasonable method to track work performed; his excuse for not accurately tracking his time is not credible. AS 23.30.122; *Smith*. His inability to reconstruct his billing records does not excuse his failure to account for time billed properly, adequately and accurately. To permit these billing practices would be an unreasonable cost to Employer. AS 23.30.001(1). To award fees based upon the method Mr. Lee used to track his work hours would condone and perpetuate excessive and inaccurate billing practices.

Rusch emphasizes decisions awarding or denying fees must be consistent with the goals the Supreme Court has identified including, reasonably compensating attorneys for services rendered to workers' compensation claimants and ensuring injured workers have adequate representation. Mr. Lee performed some work to successfully prosecute Employee's claim. To the extent possible, his billing entries will be considered. Mr. Lee's one hour billing increment, applying statistics and using his rounding method, is not credible or an accurate method to bill for "actual" attorney fees. AS 23.30.122; *Smith*; *Abood*; *Hodari*. Balancing the Supreme Court's goals with the finding Mr. Lee's billing methods are not accurate or credible, the panel will use its experience and expertise to determine a fee reasonably commensurate with the work we can discern Mr. Lee performed and award time accordingly. AS 23.30.108; *Rogers & Babler*.

DATE	TIME	DESCRIPTION	ANALYSIS	TIME AWARDED
3/9/2021 3/17/2021	1 HR 1 HR	Attorney conference	There is no way to know the extent, nature, or reason for two one-hour attorney conferences. Taking on a new client may require discussion between Mr. Harren and Mr. Lee. In March 2021, Employee's benefits had not been controverted. At most, the only issue to discuss was releases.	.5
3/22/2021 3/22/2021	1 HR 1 HR	Write fee letter, Attorney conference	This task was double billed.	1.0
3/25/2021 3/29/2021 3/31/2021	1 HR 1 HR 1 HR	Petition write, edit Entry of appearance and petition write, file, discuss	Mr. Lee's fee affidavit does not identify the issue or need for the petition he wrote. The record shows this was a simple petition requesting a protective order, which Employer did not dispute.	1.0
4/26/2021	1 HR	Attorney conference	There is no way to know the extent, nature, or reason for a one-hour attorney conference. Employee's benefits were being paid; there was no controversion. Mr. Lee did not identify a dispute or issue to which this attorney conference pertained. *Abood*; *Hodari.*	0
4/30/2021	1 HR	Medical review	Mr. Lee did not describe the nature or	.5

			extent of his work or identify the dispute or issue for which a medical records review was needed. Mr. Lee could have easily identified the medical records he reviewed but did not. Employee's benefits had not been controverted. Competent attorneys occasionally review their clients' medical records to stay apprised. *Rogers & Babler*. EME Schuett issued his EME report on April 9, 2021, and Employee had surgery on April 28, 2021. The panel should not be expected to comb through the record to identify the nature and extent of Mr. Lee's work. Without sufficient task descriptions, it is impossible for the panel thoughtfully analyze his work. The designated chair reviewed Dr. Schuett's EME report and it took 30 minutes and 30 minutes will be awarded.	
11/3/2021 11/15/2021 11/23/2021 12/1/2021 2/17/2022 2/25/2022 4/29/2022 5/11/2022 5/12/2022 5/24/2022 6/10/2022 7/15/2022	1 HR 1 HR 1 HR 1 HR 1 HR 1 HR 1 HR 1 HR 1 HR 2 HR 2 HR 1 HR	Client conference	Mr. Lee did not describe the nature or extent of his work or identify the dispute or issue for which 12 one-hour and two two-hour client conferences were needed. Employee's benefits were being paid without dispute until June 30, 2022. Vague billing entries make it impossible to discern if the activity has any connection to a dispute or legal issue. On June 30, 2022, Employer controverted Employee's entitlement to medical and related benefits for his hips, spine, and shoulders. After June 30, 2022, time billed for client conferences was reasonable.	3.0

8/26/2022 9/7/2022	1 HR 1 HR			
1/18/2022 5/19/2022	1 HR 3 HR	Research re fee Research re fee, medical review	Employee's benefits had not been controverted and benefits were being paid without dispute. Mr. Lee did not describe the nature or extent of his work or identify the dispute or issue for which "research re fee" was needed. Both medical and attorney fee disputes arise in workers' compensation cases. There is no way to know which type of dispute he was researching.	1.5
7/5/2022	2 HR	Affidavit of readiness, other motions	Affidavit of readiness for hearing requires completion of a form and should take no more than 15 minutes. *Rog*ers *& Babler*. Mr. Lee's time entry includes "other motions." He does not describe these "other motions," the nature or extent of his work, nor does he identify the dispute or issue for which "other motions" were needed. No "other motions" were filed.	.3
7/11/2022	1 HR	WC file request, file organization	A file request requires completion of a form and should take no more than 15 minutes and Division records are delivered in an organized fashion. *Rogers & Babler*.	.5
7/12/2022 7/21/2022	1 HR 1 HR	Attorney conference	Mr. Lee did not describe the nature or extent of his work or identify the dispute or issue for which these one-hour attorney conferences were needed. It is impossible to tell if they were attorney conferences with Mr. Harren, Mr. Budzinski, or some other attorney. After a claim is filed, settlement discussions can ensue. There is no way to know if that is what instigated attorney conferences or if two one-hour attorney conferences were reasonable.	.5
9/1/2022	1 HR	Write opposition	Mr. Lee did not describe the nature or extent of his work or identify the	1.0

			dispute or issue for which an opposition was needed. A record review indicates Employer filed a petition to continue hearing and, presumably, Mr. Lee drafted an opposition. He could have easily identified the issue but did not.	
9/2/2022 9/7/2022 9/8/2022	1 HR 1 HR 1 HR	Prepare for hearing	Mr. Lee did not describe the nature or extent of his work. The panel cannot discern what work was performed.	1.0
9/9/2022 9/9/2022	1 HR 1 HR	Compile evidence for hearing.	On September 9, 2022, Mr. Lee filed four exhibits: 1) Dr. Ellison's April 26, 2022 referral for a chiropractor to evaluate Employee's lower back pain; 2) Ortho Alaska's 22-page itemized billing statement; 3) a medical release signed by Employee on 3/22/2021; and 4) a medical release signed by Employee on 6/30/2022. The only relevant evidence Mr. Lee filed was Dr. Ellison's April 26, 2022 referral.	.5
9/12/2022	1 HR	Medical summary	Mr. Lee filed a medical summary with 299 pages of medical records. He did not properly complete the medical summary's cover page and identified only one two-page record. Preparing and filing this medical summary as he did should have taken no more than 15 minutes.	.3
9/14/2022	1 HR	Medical summary	A medical summary was not filed on September 14, 2022. Whether Mr. Lee spent time preparing and filing or reviewing a medical summary, is unknown. Mr. Lee did not describe the nature or extent of his work. The work he performed cannot be discerned.	0
9/15/2022	2 HR	Client conference	Mr. Lee does not describe the nature or extent of his work. Considering a hearing was two weeks away, a conversation with Employee	1.0

			could likely have occurred. There is no way to know based upon Mr. Lee's failure to provide anything more than a "generic" description. A two-hour conference on the one discrete hearing issue is unreasonable.	
9/15/2022 9/16/2022 9/16/2022	2 HR 2 HR 2 HR	Hearing brief Hearing brief Hearing brief, witness list	Employee's brief was three pages. It did not provide Employee's injury history. The brief contained extensive block quotes, did not provide any legal analysis, and cited no legal authority. It was poorly written and did not assist the panel to analyze and decide the issue. On September 15, 2022, Mr. Harren also billed 1.5 hours for researching and preparing a hearing brief. Mr. Lee will not be awarded time for his work on the brief. The time awarded Mr. Harren is reasonable compensation for the quality and quantity of work performed to draft the brief. 8 AAC 45.108(d)(2). Mr. Lee prepared and timely filed a witness list. He did not describe the nature or extent of his work. He did not describe if he was required to research witness contact information, or the subject matter and substance of the witnesses' expected testimony.	.5
9/26/2022	2 HR	Attorney fee affidavit	Mr. Lee's fee affidavit did not address the *Rusch* factors. Had Mr. Lee contemporaneously recorded his actual time worked, his timesheet's accuracy and honesty would not be so easily disputed or questioned.	1.0
			Reasonable Hours for Work Performed	14.1

Employee is entitled to an award of reasonable attorney fees for Mr. Lee's time; 14.1 hours at $275 per hour, or $3,877.50.

CONCLUSIONS OF LAW

1) Employee's July 27, 2009 work injury is the substantial cause of his need for chiropractic treatment.

2) Employee is entitled to attorney fees.

ORDER

1) Employee is entitled to a prospective order for 12 chiropractic treatment sessions.

2) Employee's request for actual attorney fees is granted in part. Employer shall pay Harren Law Offices $13,597.50.

Dated in Anchorage, Alaska on November 17th, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Michael Dennis, Member

Unavailable for Signature
Bronson Frye, Member

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

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

APPEAL PROCEDURES

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

reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Nicholas S. Andrews, employee / claimant v. Alaska Interstate Construction, employer; AIC, insurer / defendants; Case No. 200912404; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on November 17th, 2022.

/s/
Rachel Story, Office Assistant