ALASKA WORKERS' COMPENSATION BOARD

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

<table>
<tr><td>RICHARD SCHEIDEMAN,

Employee,
Claimant,

v.

SATORI GROUP, INC.,

Employer,
and

AMERICAN INTERSTATE INSURANCE COMPANY,

Insurer,
Defendants.</td><td>)
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)</td><td>INTERLOCUTORY
DECISION AND ORDER

AWCB Case No. 202012731

AWCB Decision No. 22-0075

Filed with AWCB Anchorage, Alaska
on December 9, 2022</td></tr>
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Richard Scheideman's (Employee) September 7, 2022 petition for a second independent medical evaluation (SIME) was heard on the written record on December 7, 2022, in Anchorage, Alaska, a date selected on October 27, 2022. An October 27, 2022 request gave rise to this hearing. Attorney Robert Rehbock represents Employee. Attorney Aaron Sandone represents Satori Group, Inc. and its insurer (Employer). The record closed on December 7, 2022.

ISSUE

Employee requests an SIME and contends there is a medical dispute between his physician and Employer's medical evaluator (EME) and contends an SIME would help the fact-finders resolve this case.

Employer contends there must be a medical dispute between Employee's attending physician and its EME before an SIME may be ordered. It contends there are no medical disputes, so an SIME is not warranted, and Employee's request for one should be denied.

Should this decision order an SIME?

FINDINGS OF FACT

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

1) On June 30, 2020, Employee suffered an injury to his right thumb, wrist and shoulder while working for Employer when he pulled a start cord on a roof cutter machine. He wrapped the pull-start cord around his hand because it was oily. When the engine started, it jerked Employee's arm back, which resulted in an arm injury, which brought him to the ground and popped his shoulder out; it felt like the incident had dislocated his shoulder. After Employee's June 30, 2020 work injury, he continued to work, but his shoulder, arm, elbow and thumb continued to hurt. In July 2020, he left the job site to get his arm checked. Employee first noticed his right elbow hurt and had restricted motion about one week after the injury. (Zoom Deposition of Richard Scheideman, August 11, 2021).

2) On February 17, 2021, Alfred Lonser, MD, saw Employee on referral for his work injury with Employer, which Employee explained to Dr. Lonser in detail. Dr. Lonser had been seeing Employee and providing prescription medication for pain relief for chronic back pain that is unrelated to this work injury. Employee confirmed shoulder and wrist pain but denied "Elbow Pain." Dr. Lonser checked Employee's right upper extremity reflexes and found them normal. His injury assessment did not include Employee's right elbow. (Lonser report, February 17, 2021).

3) On February 25, 2021, surgeon Michael McNamara, MD, evaluated Employee for his June 30, 2020 injury. This was a pre-operative physical for Employee's right shoulder surgery scheduled for March 3, 2021. However, on examination Dr. McNamara noticed Employee had limited right elbow motion, so he ordered right elbow x-rays. The x-rays showed a "large coronoid fracture." Dr. McNamara opined this was probably a "fracture-dislocation," and was concerned Employee could also have a ligament tear and fracture that needed repair or excision.

He ordered magnetic resonance imaging (MRI) for the right elbow and considered switching the scheduled surgery to the elbow rather than the shoulder. (McNamara report, February 25, 2021).

4) On March 3, 2021, Employee nonetheless underwent right shoulder surgery to repair an acute-on-chronic problem. (Operative Report, March 3, 2021).

5) On July 22, 2021, EME Amit Sahasrabudhe, MD, evaluated Employee. Dr. Sahasrabudhe listed medical reports he had reviewed. His initial impression was Employee "sustained a work-related injury to his right shoulder and elbow on June 30, 2020." "As a result," Employee had a right shoulder injury and "loose bodies in his right elbow." Dr. Sahasrabudhe opined "the substantial cause" of Employee's "symptoms, disability and need for medical treatment" relative to the "right upper extremity" was the work injury. He further opined Employee continued with disability from the work injury, was not medically stable, needed additional treatment for his shoulder and elbow and, upon reaching medical stability, may have permanent impairment. (Sahasrabudhe report, July 22, 2021).

6) On September 18, 2021, Dr. Sahasrabudhe reviewed additional medical records for Employee from July through December 2020. He stated in a written "addendum":

> Upon review of these additional medical records, records that were not available at the time of the Independent Medical Examination, opinions previously authored with respect to the right elbow have changed. The medical records from the date of injury do not reflect any injury complaint or diagnosis with respect to the right elbow. It is not until many months later that Mr. Scheideman even complains of his right elbow being symptomatic. Plus, from an objective medical perspective, there is simply no way of relating the right elbow complaints, diagnoses, or need for treatment to the industrial incident in question. The work event is not the substantial cause of Mr. Schneideman's right elbow symptoms, disability, or need for treatment. (Addendum, September 18, 2021).

7) On September 20, 2021, Dr. Lonser examined Employee again for his June 30, 2020 work injury with Employer. Employee explained he was pulling on a motor cord when he had an acute "jerk/kickback" with shoulder and elbow pain. Dr. Lonser's assessment included right shoulder pain "06.30.2020 injury at work to the right shoulder," and right elbow fracture, "06.30.2020 injury at work to the elbow." (Lonser report, September 20, 2021).

8) Dr. Lonser's September 20, 2021 report created a medical dispute between him and Dr. Sahasrabudhe as to "causation" for the symptoms, disability and need to treat Employee's right elbow. (Observations).

9) On September 30, 2021, Employer controverted Employee's right to all benefits for his right elbow based on Dr. Sahasrabudhe's September 18, 2022 report. (Controversion Notice, September 30, 2021).

10) On October 14, 2021, Dr. McNamara predicted Employee would have a ratable permanent impairment greater than zero to his right shoulder and "arm," but could not comment on Employee's ability to return to work until after Employee had elbow surgery. (McNamara responses, October 14, 2021).

11) On October 25, 2021, Dr. Sahasrabudhe predicted Employee would have permanent physical capacities to perform the physical demands of Asbestos Removal Supervisor and Safety Inspector. (Sahasrabudhe responses, October 25, 2021).

12) On January 13, 2022, Dr. Sahasrabudhe evaluated Employee again and reiterated his previous causation opinions. In respect to Employee's right elbow, he opined the substantial cause of Employee's right elbow symptoms, disability and need for treatment "would be his underlying age-related degenerative changes." Dr. Sahasrabudhe also stated the cause for ongoing narcotic medication Employee was obtaining from Dr. Lonser was a motor vehicle accident Employee had in October 2011, and not the June 30, 2020 work injury. He also opined that effective January 13, 2022, Employee's right shoulder was medically stable, needed no further treatment and no treatment was likely to result in any notable improvement in range-of-motion, strength or function. Dr. Sahasrabudhe provided a seven percent permanent partial impairment rating for the right shoulder. He also provided physical restrictions for Employee's right shoulder including no repetitive overhead work with the right arm, no lifting overhead with the right arm greater than five pounds, no lifting pushing, carrying or pulling more than 10 pounds from waist to shoulder and 20 pounds from floor to waist. (Sahasrabudhe report, January 13, 2022).

13) On March 10, 2022, Dr. Sahasrabudhe referenced his October 25, 2021 opinions that Employee would have permanent physical capacities to perform light-duty Safety Inspector and medium-duty Asbestos Removal Supervisor positions. He reviewed these job descriptions again and affirmed his prior opinions. (Sahasrabudhe report, March 10, 2022).

14) On March 10, 2022, Dr. McNamara saw Employee for a pre-op for right elbow surgery set for March 11, 2022. He assessed "right elbow arthritis and loose bodies anterior posterior."

After explaining the symptoms, findings and surgical procedure, Dr. McNamara stated, "This is Workman's Comp." (McNamara report, March 10, 2022).

15) By March 10, 2022, Dr. Lonser no longer included Employee's right elbow as part of his assessment, which was limited to Employee's right shoulder. However, there is no medical record in which Dr. Lonser recanted his September 20, 2021 opinion that the June 30, 2020 work injury caused a right elbow injury. (Lonser report, March 10, 2022; observations).

16) On March 11, 2022, Dr. McNamara operated on Employee's right elbow to remove multiple loose bodies and to decompress the ulnar nerve. (Operative Report, March 11, 2022).

17) On September 7, 2022, Employee petitioned for an SIME, citing medical disputes over causation, treatment and functional capacity between his attending physicians Drs. McNamara and Lonser and EME Dr. Sahasrabudhe. He also included an opinion from a physical therapist, who is not a physician. (Petition; SIME form, September 7, 2022).

18) On September 27, 2022, Employer objected to Employee's request for an SIME on grounds there was no "causation" medical dispute between Drs. McNamara and Sahasrabudhe because "both physicians indicated that the work injury was not the cause of this injury." (Answer, September 27, 2022).

19) It is not clear why, when or how Dr. McNamara indicated the work injury was not the cause of the elbow injury. No medical record in the agency file prior to September 27, 2022 stated Dr. McNamara had changed his opinion on causation for Employee's right elbow. (Observations).

20) On October 17, 2022, Employee reported to Robert Thomas, PA-C, at Dr. McNamara's office, that his shoulder 1.5 years post-surgery continued to ache, pop and click "all the time." PA-C Thomas reviewed Employee's post-surgical x-rays and recommended a right shoulder MRI arthrogram and computer tomography (CT). He added, "Patient more than likely will require more shoulder surgery." PA-C Thomas said the CT was ordered "just in case" Employee may need a hemiarthroplasty. (Thomas report, October 17, 2022).

21) On October 31, 2022, PA-C Thomas stated Employee would be off work for "3-4 months" because of expected shoulder surgery for his June 30, 2020 work injury with Employer. (Work Status report, October 31, 2022).

22) On November 3, 2022, Employer's attorney sent Dr. McNamara a form letter, which asked him to state "whether the June 30, 2020 event was the substantial cause of the employee's

disability or need for treatment to his right elbow" that Dr. McNamara had provided. Dr. McNamara checked the box which states, "No, the June 30, 2020 event was not the substantial cause of any disability or need for treatment to the elbow." He did not provide any further explanation for his new opinion. (McNamara response, November 3, 2022).

23) On November 10, 2022, Dr. Sahasrabudhe reviewed more medical records and opined Employee's right shoulder condition was "still medically stable." He added "theoretically" Employee "might benefit from possible right shoulder treatment." Dr. Sahasrabudhe was concerned shoulder replacement was recommended without any recent x-rays or post-surgical MRI. He added if x-rays were interpreted correctly as showing "normal joint alignment," this would not represent findings to "even remotely justify a shoulder replacement, regardless of causation." In summary, Dr. Sahasrabudhe opined additional diagnostic studies were necessary to justify "possible right shoulder treatment." (Sahasrabudhe report, November 10, 2022).

24) Dr. Sahasrabudhe's November 10, 2022 report stating Employee's right shoulder is "still medically stable" creates a medical dispute about medically stability given PA-C Thomas' opinion that Employee needs additional shoulder surgery. (Observations).

25) On November 29, 2022, Employee contended an SIME was necessary because "it will further edify the Board to make the most informed decision. . . ." He contended this decision should order an SIME because (1) there is a medical dispute between Employer's physician and his physician, and (2) an SIME will advance the Board's understanding of the medical evidence. Employee contended the *Bah* decision controls and states a party's right to an SIME is premised upon the existence of a medical dispute between the employee's attending physician and an EME. He added, the dispute must be significant, and the SIME is the Board's medical expert. Lastly, Employee contended *Bah* says the Board should order an SIME if one would advance the Board's medical understanding or fill evidence gaps. He supported his contention with reference to Employer's November 3, 2022 report from Dr. McNamara that agrees with Employer's EME regarding causation. Employee contended this opinion from his own physician, which is contrary to Employee's causation position on his elbow, "is not substantial enough to override an SIME to address mechanisms that might reconcile the difference such as preexisting condition being aggravated by the initial work injury." (SIME Hearing Brief -- 12/07/2022, November 29, 2022).

26) Employee's hearing brief does not identify the medical disputes. (Observations).

27) On November 29, 2022, Employer contended EME Dr. Sahasrabudhe and attending surgeon Dr. McNamara both agree Employee's June 30, 2020 work injury was not the substantial cause of any right elbow symptoms or need for treatment that Dr. McNamara performed. Thus, it contended there is no medical dispute regarding the right elbow between an EME and an attending physician. Citing *Bah*, Employer contended the facts do not warrant the Board ordering an SIME, since there is also no gap in the medical evidence to justify one. Employer contended Employee's earliest medical records and injury reporting do not include any reference to his elbow. It contended this additional factor cuts against the Board ordering an SIME at Employer's expense. (Hearing Brief, November 29, 2022).

28) Employer's brief does not address the medical dispute between Drs. Lonser and Sahasrabudhe regarding causation for the disability and treatment related to Employee's right elbow, or the dispute between PA-C Thomas and Dr. Sahasrabudhe about medical stability for Employee's right shoulder. (Observations).

PRINCIPLES OF LAW

The Board may base its decision not only on direct testimony and other tangible evidence, but also on its "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 23.30.095. Medical treatments, services, and examinations**. . . .
> . . . .
>
> (k) In the event of a medical dispute regarding . . . causation, medical stability . . . degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

The Alaska Workers' Compensation Appeals Commission in *Bah v. Trident Seafoods Corp.,* AWCAC Dec. No. 073 (February 27, 2008) addressed the Board's authority to order an SIME. *Bah* stated in *dicta*, that before ordering an SIME it is necessary to find the medical dispute is

significant or relevant to a pending claim or petition. *Bah* said when deciding whether to order an SIME, the Board considers three criteria, though the statute does not require it:

1) Is there a medical dispute between Employee's physician and an EME?
2) Is the dispute significant? and
3) Will an SIME physician's opinion assist the Board in resolving the disputes? (*Id*.).

> **AS 23.30.135. Procedure before the board**. (a) . . . The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .
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> **AS 23.30.395. Definitions.**
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> In this chapter,
> . . . .
>
> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time. . . .

ANALYSIS

Should this decision order an SIME?

Employee contends this decision should order an SIME because there are medical disputes between his attending physicians and the EME. AS 23.30.095(k). He contends one attending physician's abrupt, opinion reversal muddies the medical evidence, requiring an independent physician to help the fact-finders resolve this case. Employer contends this case does not meet the *Bah* requirements for an SIME because Employee's attending physician changed his opinion and agrees with the EME that the work injury was not the substantial cause of any symptoms, disability or need to treat Employee's right elbow. *Bah* requires three findings for ordering an SIME: (1) a medical dispute between the employee's attending physician and an EME, (2) a significant dispute, and (3) an SIME opinion would assist the fact-finders in resolving the dispute. AS 23.30.095(k). There are two body parts relevant to the SIME issue:

a) The right elbow.

Employee's brief states there are medical disputes but fails to state what they are. Presumably, he relies on his SIME form on which he set forth medical disputes between his attending physicians Drs. Lonser and McNamara and EME physician Dr. Sahasrabudhe.
Initially, Dr. McNamara stated, in respect to the need for surgery for Employee's right elbow, "This is Workman's Comp." This decision takes that statement to mean Dr. McNamara believed the work injury with Employer was the substantial cause of the need to treat Employee's right elbow symptoms, and resulting disability. But, at some point Dr. McNamara changed his view. The record is not clear as to how, when or why this happened. Employer's September 27, 2022 answer to Employee's petition for an SIME objected to the request and stated, "both physicians [McNamara and Sahasrabudhe] indicated that the work injury was not the cause of this injury." However, there is no contemporaneous McNamara record so stating. Nevertheless, without explanation, on November 3, 2022, Dr. McNamara expressly stated following Employer's inquiry, "No, the June 30, 2020 event was not the substantial cause of any disability or need for treatment to the elbow." Moreover, Dr. Sahasrabudhe initially attributed Employee's need for treatment and disability for his right elbow to the work injury. However, upon reviewing additional medical information, he too changed his opinion, finding Employee failed to mention his right elbow until several months post-injury. Dr. Sahasrabudhe ultimately attributed the need for right elbow treatment to degenerative, arthritic changes. Thus, there is no medical dispute as to causation between Drs. McNamara and Sahasrabudhe. It would be helpful to know why Dr. McNamara abruptly changed his opinion on the right elbow, but a deposition and not an SIME is the appropriate way for the parties to investigate that evidence and enlighten the fact-finders.

Employer's brief fails to address Dr. Lonser's opinion, "06.30.2020 injury at work to the elbow." Dr. Lonser was providing pain management to Employee prior to the injury for an unrelated accident, and on referral continued to provide pain management for the work injury with Employer. Although he at times listed Employee's right elbow as an assessed diagnosis, at some point that dropped off his reports, without explanation. However, Dr. Lonser never expressly changed his opinion, as did Dr. McNamara. A medical dispute still exists between Drs. Lonser and Sahasrabudhe regarding causation for Employee's need for right elbow treatment and related disability. AS 23.30.095(k).

Employee's right elbow appears to have had a significant injury. It included a fractured bone and bone chips that had to be removed. According to Dr. Sahasrabudhe, Employee had arthritic changes in his right elbow prior to the work injury with Employer. What is unclear to this panel is, assuming Employee had a preexisting elbow condition, what role if any the work injury had in aggravating, accelerating or combining with that preexisting condition to cause Employee's elbow symptoms and the need to treat those symptoms, and related disability. Similarly unclear from the record is whether the work injury caused the right elbow findings that necessitated treatment and resulted in disability.

These facts and analysis show (1) a medical dispute between attending physician Dr. Lonser and EME Dr. Sahasrabudhe about causation for Employee's right elbow symptoms, treatment and related disability. Since Employee has had right elbow surgery and still has symptoms, (2) he could be entitled to considerable benefits for his right elbow making the medical dispute "significant," and (3) an opinion from an SIME orthopedic surgeon would assist the fact-finders in resolving this interesting medical dilemma. *Bah*. Therefore, this decision will order an SIME with an orthopedic surgeon addressing "causation" for Employee's right elbow. AS 23.30.135.

b) The right shoulder.

Employer accepted Employee's right shoulder injury, paid benefits and has not controverted all medical care for it. But Dr. Sahasrabudhe opined Employee's right shoulder was, and remains, medically stable. By contrast, Dr. McNamara's PA-C Thomas opined Employee probably needs additional surgery, possibly to include a shoulder arthroplasty, which is a partial shoulder replacement. *Rogers & Babler*. Dr. Sahasrabudhe questioned the need for surgery but conceded Employee "theoretically" could need it, but surgery would have to be supported by up-to-date diagnostic imaging. Thus, there is no current medical dispute between an attending physician and an EME concerning right shoulder medical care, but there is an existing medical dispute between PA-C Thomas and Dr. Sahasrabudhe regarding right shoulder "medical stability." It is unlikely PA-C Thomas or Dr. McNamara would recommend partial shoulder replacement surgery, or some other shoulder revision, if they did not believe there would be an objectively measurable improvement in Employee's function. *Rogers & Babler*. By reiterating his opinion that Employee was and is medically stable in respect to his right shoulder, Dr. Sahasrabudhe

necessarily believes there would be no objectively measurable improvement resulting from any additional shoulder surgery. AS 23.30.395(28). These opinions (1) create a medical dispute regarding the right shoulder's "medical stability." And (2) if Employee is not yet medically stable he could be entitled to significant additional disability benefits. Lastly, (3) an independent physician's opinion on Employee's right shoulder's medical stability would assist the fact-finders in resolving this dispute. *Bah*. Thus, this decision will also order an SIME with an orthopedic surgeon addressing "medical stability" for Employee's right shoulder. AS 23.30.095; AS 23.30.135.

CONCLUSION OF LAW

This decision will order an SIME.

ORDER

1) Employee's September 7, 2022 petition for an SIME is granted.

2) The parties are directed to attend a prehearing conference at which time the designee will delineate the timetable for submitting Employee's medical records to the designee for the SIME.

3) The designee will schedule an SIME with one orthopedic surgeon from the approved SIME list, following the normal procedure.

4) The SIME physician will address "causation" for Employee's symptoms, need for medical treatment and disability for his right elbow, and "medical stability" in respect to his right shoulder.

5) The parties may stipulate at the prehearing conference to the SIME physician considering other potential medical disputes to advance the case while minimizing costs.

Dated in Anchorage, Alaska on December 9, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

/s/
Bronson Frye, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Richard Scheideman, employee / claimant v. Satori Group, Inc., employer; American Interstate Insurance Company, insurer / defendants; Case No. 202012731; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 9, 2022.

/s/
Kimberly Weaver, Office Assistant