ALASKA WORKERS' COMPENSATION BOARD

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

TARRANCE WRICE, Employee, Claimant, v. CARLILE TRANSPORTATION, Employer, and ARCH INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202003256 AWCB Decision No. 23-0022 Filed with AWCB Anchorage, Alaska on May 3, 2023.

Tarrance Wrice's July 20, 2020, claim for Temporary Total Disability (TTD) benefits and medical costs was heard on February 8, 2023, in Anchorage, Alaska, a date selected on December 29, 2022. A November 17, 2022, affidavit of readiness gave rise to this hearing. Attorney Joseph Kalamarides appeared and represented Tarrance Wrice (Employee). Attorney Colby Smith appeared and represented Carlile Transportation and Arch Insurance Company (Employer). Upon completion of the hearing the parties requested the record remain open until a deposition of Dr. Amit Sahasrabudhe, the IME physician, could be conducted. The record closed on March 21, 2023, the date the Division was in receipt of the deposition.

ISSUES

Employee contends his February 26, 2020, work injury is the substantial cause for his need for medical treatment, and compensation. He contends that he injured his knee while working for

Employer and exacerbated the injury when he went from a seated to standing position on his couch at home. Employee contends he is entitled to continuing medical care.

Employer concedes that although Employee can raise the presumption that his continuing need for medical care for his knee arose from his work injury, it contends the presumption is rebutted and he cannot prove his claim by a preponderance of the evidence. It contends that Employee's intervening act of rising out of the chair and standing, and not the original work injury, is the substantial cause of his need for medical treatment. It therefore asserts that Employee cannot prove his claim. It contends Employee's claim for continuing medical care should be denied.

1) Is work the substantial cause of Employee's disability and need for medical care?

Employee addressed attorney's fees and costs in his hearing brief and at hearing. Employee's attorney submitted fee affidavits prior to hearing and after the hearing due to the parties leaving the record open to conduct an additional deposition.

Employer did not address fees or costs in its hearing brief but agreed to Employee's submission of an updated fee affidavit after the post-hearing deposition.

2) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

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

1) On February 26, 2020, while working for Employer, Employee was unloading freight as heavy winds swayed his truck. Employee fell onto his knee in the back of the truck and reported the injury to Employer the next day. (First Report of Injury, March 10, 2020).

2) On February 27, 2020, Employee saw Kimelia Clendenin, N.P. at Beacon Occupational Health Services. NP K. Clendenin opined that Employee had left knee pain with a differential diagnosis of (1) fracture (2) contusion (3) strain/sprain (4) meniscus injury (5) ligament injury.

Employee was directed to take Ibuprofen, utilize a soft knee sleeve, and was returned to work in a light duty capacity temporarily. (K. Clendenin Report, February 27, 2020).

3) On February, 27, 2020, Employee had an X-ray reviewed by Dr. Harold Cable M.D. on his left knee. Dr. Cable assessed no acute radiographic abnormalities. (Cable Report, February 27, 2020).

4) On March 5, 2020, Employee returned for a follow-up with NP K. Clendenin. She noted that Employee was performing his work but was still experiencing pain in his left knee when direct pressure was applied. She ordered a subsequent X-ray and repeated her previous directions for Employee to take Ibuprofen and wear a knee sleeve. (K. Clendenin Report, March 5, 2020).

5) On March 5, 2020, Dr. Cable conducted a comparison of Employee's two left knee X-rays. He noted a minor osseous irregularity at the insertion of the ACL and of the tibia based on the previous X-ray, but opined no obvious acute abnormality was present. (Cable Report, March 5, 2020).

6) On March 12, 2020, Employee returned for a follow-up on his left knee. He was seen by Brianna Clendenin NP, who noted that Employee had returned to work with no limitations. However, as she indicated, Employee was still experiencing pain in his left knee only with palpitation. NP B. Clendenin performed physical manipulation tests on Employee's knee with normal results. Based on Dr. Cable's noted irregularity on Employee's second X-ray, NP B. Clendenin ordered magnetic resonance imaging (MRI) for the left knee. (B. Clendenin Report, March 12, 2020).

7) On March 12, 2020, Dr. Cable reviewed the MRI and concluded that Employee had a high-grade tear of the posterior horn of the medial meniscus, with bucket-handle configuration. He also noted marked truncation of the anterior horn of the medial meniscus also representing a tear. All other portions of Employee's knee were observed to be normal or with minor defects unrelated to the work injury. (Cable Report, March 12, 2020).

8) On March 14, 2020, Employee went to the Alaska Regional Hospital Emergency Department with complaints of left knee pain and was seen by Dr. Mark Shepard M.D. Dr. Shepard spoke with the Employee but noted in his report that he did not review previous records or imaging. Dr. Shepard's report further indicates Employee believed that his MRI two days prior showed a bone bruise. No additional imaging was conducted, and Employee was directed to return to his primary care provider and orthopedist for his scheduled follow-up appointments as there was no

additional treatment to be performed in the Emergency Room. (Shepard Report, March 14, 2020).

9) On March 18, 2020, on referral from NP B. Clendenin Employee was seen by Dr. Jason Gray, MD Orthopedic Surgeon at Alaska Orthopedic Specialists. Dr. Gray conducted an assessment and reviewed Employee's medical records and imaging. He assessed Employee with left anterior knee pain, mild prepatellar bursitis with no concern for infection, chronic medial meniscus bucket-handle tear currently asymptomatic, and mild degenerative change of the medial compartment. He opined, "while there are findings on MRI consistent with bucket-handle tear I suspect due to surrounding bony changes as well as lack of mechanical symptoms at this [time] is chronic in nature. We will continue to observe and consider intervention including surgical excision/partial medial meniscectomy if mechanical symptoms occur." Employee was placed on a physical therapy regimen of one to two times per week for six weeks, with a follow-up appointment in six weeks. (Gray Report, March 18, 2020).

10) From March 26, 2020, to April 29, 2020, Employee attended Denali Physical Therapy twelve times. Employee was seen by Amanda Atwood, DPT, and Wesley Minton, DPT. On his final visit, Dr. Atwood opined Employee has been complaining about anterior knee pain that has remained constant since his first visit. Dr. Atwood noted that she was skeptical as to Employee's adherence to his home exercise plan but did not expound upon her skepticism or draw any correlations between Employee's continued pain and his participation in his home exercise plan. (Atwood Notes, April 29, 2020).

11) On April 30, 2020, Employee complained of tenderness to palpitation over the anterior left knee, Employee denied range of motion issues or knee locking. Dr. Gray diagnosed left anterior knee pain (Osgood-Schlatter's), chronic medial meniscus bucket-handle tear currently asymptomatic, and asymptomatic mild degenerative medial compartment changes. Dr. Gray recommended conservative measures, to include knee pads, and returned Employee to full duty. (Gray report, April 30, 2020).

12) On April 30, 2020, Nurse Case Manager, Millie Tuccillo, RN, CCM, sent a letter to Employee's physician Dr. Jason Gray to assist with Employee's workers compensation claim. Tuccillo posited four questions to Dr. Gray. (1) Is Tarrance Wrice able to return to work full duty? Dr. Gray answered YES and provided a start date of May 1, 2020. (2) Has Tarrance Wrice reached medical stability? Dr. Gray answered NO and provided an estimated target date of

medical stability in six weeks. (3) Will Tarrance Wrice incur a Permanent Partial Impairment because of his work injury of February 26, 2020? Dr. Gray answered NO. (4) Is Tarrance Wrice released from care of the work injury of February 26, 2020? Dr. Gray answered NO. (Tuccillo Letter, April 30, 2020).

13) On May 12, 2020, Employee was seen by Dr. Jason Gray for a re-check of his left knee. Employee told his doctor that his knee locked up on him on May 9, 2020. Employee stated he had intense pain that lasted for 45 minutes that then subsided after slowly flexing, extending, and rotating the knee. This is the first time this had happened to Employee. Dr. Gray in his report stated the following:

> My first impression was that this bucket-handle meniscus tear may be a remote injury and scarred into place, given his initial presentation and reevaluation. However, the recent locking event indicates that the meniscus is still mobile and likely more of an acute injury. With no other traumatic events aside from the work-related injury back in February to base my assessment off of, I can only assume that there is some correlation. . . . However, I cannot definitively say whether or not this caused the meniscal tear aside from the fact that the patient was asymptomatic prior to the event. If there was a torsional component through the knee, there is a high probability that this meniscus tear is directly attributed to the February 25th event.
>
> My recommendation at this point would be arthroscopic evaluation and surgical excision of the bucket handle meniscus tear. . . . As this is a work comp case, I suspect patient may require an IME at which point we will either wait for approval or move forward without especially if patient has another mechanical event. (Gray report, May 12, 2020).

14) On May 12, 2020, Nurse Case Manager Millie Tuccillo, RN, CCM, sent a letter to Employee's physician Dr. Jason Gray to assist with Employee's workers compensation claim. Tuccillo requested Dr. Gray provide responses to the following:

> (1) Please describe the mechanism of injury that created the injury to Tarrance Wrice on 2/26/2020.
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> Dr. Gray: "Attempted to brace a crate to the ground that was about to fall due to high wind. Definitely landed on anterior aspect of left knee. Does not recall if there was a rotational component through A/L knee."
>
> (2) Please list *all causes* of the symptoms experienced by Tarrance Wrice on 2/26/2020.

> Dr. Gray: "Osgood Schlatter's, Bucket handle medial meniscus tear, mild osteoarthritis w/ medial impairment."
>
> (3) In your opinion, which of the identified causes listed above is "the substantial cause" of Tarrance Wrice need for diagnostics/treatment.
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> Dr. Gray: "Yes. Recommend surgical excision of bucket handle meniscus tear with continued conservative treatment of Osgood Schlatter's flare."
>
> (4) Is Tarrance Wrice's work incident of 2/26/2020 "the substantial cause: of the need for diagnostics/treatment? If yes, please explain.
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> Dr. Gray: "Yes. Recent mechanical locking event consistent with symptomatic bucket handle medial meniscus tear." (Tuccillo letter, May 12, 2020).

15) On May 17, 2020, Amit Sahasrabudhe MD Orthopedic Surgeon, conducted a records review IME for Employer concerning Employee's work injury. Dr. Sahasrabudhe in his report opined that while Employee did suffer from knee pain that was consistent with the work injury it was unlikely the tear in his meniscus related to the falling episode on February 26, 2020. He noted that there was no twisting indicated by Employee when he fell, and that orthopedic literature clearly states twisting or deep flexion mechanisms are required to cause an acute meniscal tear or aggravate an underlying preexisting meniscal tear. Dr. Sahasrabudhe states "Mr. Wrice aggravated a preexisting non-work related, non-displaced, bucket handle medial meniscal tear of his left knee, at home, while doing a deep flexion activity as outlined above. While arthroscopic surgery would not necessarily be unreasonable, it is absolutely not related to the industrial incident of February 2020." Dr. Sahasrabudhe diagnosed Employee with left knee pain, anterior left knee contusion and left knee medial meniscal tear, initially bucket handle and nondisplaced, then displaced after an activity that occurred at home, with a deep flexion episode. He noted that the anterior left knee pain and contusion are related to the industrial incident in question. As to the cause of Employee's injuries the physician attributed the knee pain and contusion to the work injury. However, as to the meniscus tear, he opined that the tear's cause was probably Employee's age, general home activities, and perhaps any injury he may have incurred to the left knee prior to the incident in question. He indicated that this was evidenced by the irregularity to the ACL insertion into the tibia. He stated the substantial cause for the displacement of the bucket handle tear was the deep flexion movement across the left knee that occurred when the Employee was at home. Dr. Sahasrabudhe stated to a reasonable degree of medical probability,

the industrial incident in question merely caused an anterior left knee contusion. It did not aggravate any preexisting condition necessitating the need for medical treatment or disability. (Sahasrabudhe Report, May 17, 2020).

16) On May 28, 2020, Employer controverted Employee's medical treatment based on IME physician Dr. Sahasrabudhe's opinion the industrial accident is no longer the substantial cause of the injury and therefore no additional medical treatment is necessary. (Controversion Notice, May 28, 2020).

17) On July 20, 2020, Employee filed a claim for Temporary Partial Disability (TPD), Medical Costs, and an unfair or frivolous controversion on the part of the Employer. Employee reasoned that a misdiagnosis by his medical provider resulted in his denial of benefits and that he continues to have pain and locking in his left knee. (Claim for Worker's Compensation Benefits, July 20, 2020).

18) On December 23, 2020, Employee had Attorney Joseph Kalamarides draft a letter and questions to be answered by Employee's physician Dr. Gray.

> (1) Was the work injury of February 26, 2020 the substantial cause for the need for medical treatment? Check Yes or No.
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> Dr. Gray: Yes.
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> (2) What treatment would you recommend for the left knee?
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> Dr. Gray: Left knee arthroscopy and partial meniscectomy. (Kalamarides letter to Dr. Gray, December 23, 2020).

19) On May 5, 2021, Employee's attorney filed an entry of appearance for this case. (Notice of Appearance, May 5, 2021).

20) On July 13, 2021, Employee testified at a deposition conducted by Employer. In his deposition testimony, Employee recounted an injury to his right ankle while working for Employer in 2019. When questioned as to whether he ever injured his left knee while working for Employer Employee stated he had not. He said that prior to the injury at issue, he has never received medical treatment for his left knee. As to his work injury on February 25, 2020, Employee said he was unloading freight from the back of his box truck for a delivery to McDonald's in Wasilla, AK along the Parks Highway when the wind blew against his truck knocking him down. When questioned further regarding the way he fell, Employee remembered

dropping onto his left knee in a manner described "a direct hit" and then falling over onto his side because the cargo in his truck had fallen on top of him. Employee finished unloading freight and returned to Anchorage after completing the delivery. The next day, Employee was still in pain from his injury and reported it to his Employer. Employee testified that he saw Dr. Gray for his injuries and Dr. Gray had asked if there was any locking or popping of the knee, which at the time, the Employee denied. However, sometime after April 30, 2020, and before May 12, 2020, Employee while sitting up from the couch at his home experienced a locking incident. He stated he was getting up from the couch when his knee locked in place to the point, he could not bend it. After 45 minutes of rubbing on the knee and rolling his leg with a basketball Employee was able to unlock the knee. Employee stated he subsequently called Dr. Gray to explain the locking episode. Dr. Gray informed Employee that surgery would be the next step in treatment. Employee's medical treatment was controverted based on the IME by Dr. Sahasrabudhe. Employee stated he has not had the surgery due to the controversion. (Deposition of Employee, July 13, 2021).

21) On October 14, 2021, the parties attended a pre-hearing conference and set deadlines for an agreed upon Second Independent Medical Evaluation (SIME). (Prehearing Conference Summary, October 14, 2021).

22) On June 4, 2022, Employee was evaluated by Dr. Frank Uhr, MD, JD as part of a SIME. Dr. Uhr diagnosed Employee with a traumatic left knee injury secondary to fall (2/26/20 work-related injury) and a left knee medial meniscus tear with mechanical symptoms (locking). Dr. Uhr interviewed and evaluated Employee as part of the exam, Employee informed Dr. Uhr that he had experienced three additional locking episodes since the May 9, 2020, incident. Employee informed Dr. Uhr that he had no additional medical treatment since his last appointment with Dr. Gray in May of 2020. Dr. Uhr provided the following opinion as to the cause of Employee's injury:

> Based on my interview with Mr. Wrice and review of the medical records provided, in my opinion, the 2/26/20 employment injury is the cause of Mr. Wrice's disability and need for medical treatment.
>
> Although it is possible that Mr. Wrice had a medial meniscus tear that pre-existed the 2/26/20 employment injury, there is no historical or factual information at this time to support that possibility.

> At the time of my interview, Mr. Wrice denied an injury to the left knee or a history of left knee pain, swelling, and locking prior to 2/26/20. The medical records provided did not include medical records predating 2/26/20. The medical records subsequent to the 2/26/20 employment injury do not describe/discuss a pre-existing condition of Mr. Wrice's left knee.

Dr. Uhr further opined that the February 26, 2020, employment injury was the substantial cause of Employee's need for medical treatment. He deemed Employee not medically stable based on the previous episodes of locking and lack of medical treatment since May of 2020. In his medical opinion, Employee would require a left knee arthroscopy, partial medical meniscectomy versus medial meniscus repair, and additional intra-articular surgery as indicated at the time of surgery. Dr. Uhr was asked to opine as to the significance of Employee's testimony regarding the February 26, 2020, impact to his left knee as a "direct impact straight up and down, with no locking, popping, or catching." He said that to a reasonable degree of medical probability the mechanism of the injury included a component of rotation and/or acute knee flexion. He further stated the mechanism of injury was consistent with sustaining a non-displaced bucket handle tear of the medial meniscus as demonstrated by Employee's March 12, 2020, left knee MRI. When asked if the May 9, 2020, locking incident that occurred at Employee's home was the substantial cause of Employee's need for medical treatment, Dr. Uhr stated that in his medical opinion he did not believe the May incident was the substantial cause. He further indicated that bucket handle tears of the medial meniscus usually occur because of a rotary force placed on the involved knee and that 20-30% of bucket handle tears of the medial meniscus occur with deep flexion or without a history of a traumatic event, citing *The Journal of Bone and Joint Surgery. British volume* 65.4 (1983): 383-387. (Uhr report, June 4, 2022).

23) On September 20, 2022, Employer filed a deposition of Dr. Uhr conducted on September 7, 2022. Employer questioned Dr. Uhr as to his opinion that the February 25, 2022, injury was the substantial cause of Employee's injury. Employer inquired as to the nature of Employee's fall which Employee described in his deposition as "straight up and down." Dr. Uhr noted that Employee's fall was not directly characterized as "straight up and down" because Employee had stated once his knee struck the pallet as he fell, he twisted to the right. Dr. Uhr also noted that Employee described the vehicle as swaying which would make a straight up and down fall less likely. When questioned as to the couch incident that occurred in May, Dr. Uhr explained that deep flexion can cause certain symptoms consistent with a meniscus tear to become apparent. He

described deep flexion as like squatting when changing a tire or weeding a yard. He noted that in the records he reviewed, Employee stated his knee "locked" when he stood up from the couch and that there was no indication of any "locking, popping, or catching" from Employee to any previous medical providers prior to the May incident. Dr. Uhr reiterated his medical opinion that the meniscus tear was definitively present on March 12, 2020, based on the MRI administered to Employee, but that it was asymptomatic until the couch incident. He stated he believed the couch incident was the substantial cause of Employee's locking knee, a symptom of a meniscus tear. As to the substantial cause of Employee's meniscus tear, Dr. Uhr believed the February 25, 2020, work incident was the substantial cause. When examined by Employee's attorney Dr. Uhr explained that Employee had been experiencing pain, swelling, and instability the day after the February 26, 2020, injury and that was consistent with a meniscus tear. He expounded on this by noting Employee had no previous injuries to attribute to a meniscus tear there was nothing in Employee's medical record or his interview that led Dr. Uhr to believe this was a pre-existing injury. He explained that with a meniscus injury, it is not unusual for symptoms to appear as time passes such as what occurred here with Employee. He indicated that in this instance, two months passing after the initial injury of Employee's knee for it subsequently to lock on him, is a reasonable time for such symptoms to appear. Whereas, had Employee suffered a torn meniscus years prior, it would be unlikely he would develop a symptom such as locking of the knee after from sitting up from a couch, attributable to the original injury. Dr. Uhr explained that Employee was suffering from a bucket-handle tear of the meniscus. This means the meniscus, shaped like a disk, has torn but remained attached at two separate ends thus creating the appearance of a "bucket handle" as seen with a mop bucket. He explained that with a tear of this nature the Employee would have had symptoms such as a pain and swelling that would not necessarily require surgery until a more aggressive symptom presented itself such as locking or popping. Once a more acute symptom like locking occurs it was medically reasonable to recommend surgery as locking can be an indication that meniscus tear has become displaced and would need surgical intervention to correct. (Deposition of Dr. Frank Uhr, September 7, 2022).

24) On November 17, 2022, Employee filed an Affidavit of Readiness for Hearing (ARH) on his July 20, 2020, workers' compensation claim. (Affidavit of Readiness for Hearing, November 17, 2022).

25) A December 29, 2022, prehearing conference with the parties established causation, temporary total disability and attorney's fees/costs as the issues to be decided at the February 8, 2023, hearing. (Prehearing Conference Summary, December 29, 2022).

26) Employee submitted his hearing brief prior to the hearing. In his brief, Employee stated his position that the February 26, 2020, fall was the substantial cause of his meniscus tear and that his injury was compensable. For an employee to prove his injury is compensable he must show a "preliminary" link between his injury and the employment. Once the employee has proven this link, the employer may rebut this presumption with "substantial evidence" that the injury was not work related. If the employer can rebut employee's evidence, then the employee must prove his claim by a preponderance. The Employee references *Morrison v. Alaska Interstate Construction, Inc.*, 440 P.3d 224 (Alaska 2019), where the Supreme Court held, under AS 23.30.010, that the Board must consider different causes "of the benefits sought" and the extent to which each contributed to the need for the specific benefit. The Board must then identify one cause as the "substantial cause," clarifying that the cause "is the most important or material cause related to that benefit." He directed the Board to the three medical opinions proffered in his case as to why his claim is compensable: Dr. Gray, Dr. Sahasrabudhe, and Dr. Uhr. Dr. Gray opined that after review of all the x-rays, MRIs, and interactions with Employee, the substantial cause of the Employee's need for medical treatment was the February 26, 2020, accident. Dr. Sahasrabudhe opined that the accident was not the substantial cause of Employee's bucket handle tear and that Employee's tear was pre-existing. Employee noted in his brief that, although Dr. Sahasrabudhe conducted a records review IME, he neither saw Employee nor reviewed the MRI that was taken of Employee's knee in March of 2020. Dr. Uhr opined that the February 26, 2020, work accident was the substantial cause of Employee's need for medical treatment and his resultant disability. Dr. Uhr in his deposition further explained the couch incident in May of 2020, was not a new injury but rather an event upon which a symptom (the locking of the knee) of Employee's injury from February 26, 2020, appeared. Employee requested the Board award his attorney his full fees in this matter based on Employer's controversion of Employee's claim and on-going litigation. (Hearing Brief, February 1, 2023).

27) Employee's attorney submitted his Affidavit of Attorney's Fees prior to hearing. His attorney presented an itemized list of total billable requesting fees at $18,950.00, and costs at $4,126.79.

The attorney combined both fees and costs for a total of $23,076.79. (Affidavit of Attorney's Fees, February 1, 2023).

28) Employer submitted its brief prior to the hearing. Employer included the "presumption analysis" that the Board must utilize in establishing whether a work injury is compensable. Employer states that "the employee presents evidence that the work injury is the substantial cause of his need for medical treatment, the employer may then rebut that evidence with its own substantial evidence to the contrary, if both steps are met then it is the employee's burden to prove his case by a preponderance of the evidence." The Employer also cited *Morrison*. Specifically, in that case, the Court noted that Morrison had two injuries, one in 2004, and the other in 2014. Morrison had developed osteoarthritis because of his 2004 injury which became symptomatic with his 2014 injury. The Court concurred with the physicians that symptoms are what necessitates treatment. Here, Employer contended that the Alaska Supreme Court has repeatedly held that symptoms arising after an event are insufficient to establish causation in workers' compensation cases. The Employer's position is that Employee's February 26, 2020, work injury is not the substantial cause of his need for medical treatment. Rather, Employee had been asymptomatic after his injury, and it was not until he stood up from his couch in May of 2020, that his knee "locked" causing symptoms that necessitated surgery. Employer asserts the May injury occurring at home is the substantial cause of Employee's need for medical treatment, not the work injury. Employer contends that the opinions of Dr. Gray, Dr. Sahasrabudhe, and Dr. Uhr do not definitively indicate that the work injury was the substantial cause of Employee's need for treatment. Dr. Gray opined that he "cannot definitively say whether (the work injury) caused a meniscus tear aside from the fact that the employee was asymptomatic prior to the event. Dr. Sahasrabudhe, on the other hand, opined that the work injury produced a contusion, and that the meniscus tear was asymptomatic prior to the May couch incident. Dr. Uhr and Dr. Gray both agreed that an asymptomatic meniscus tear would not require surgery. Employer contends that while Dr. Uhr did attribute the work injury as the substantial cause, his testimony contradicted that assertion. Dr. Uhr noted that Employee did not have mechanical symptoms such as "popping or locking" of the knee prior to the couch incident, and Dr. Gray had released Employee back to work prior to the couch incident. In Dr. Uhr's deposition he stated the need for surgery was precipitated by the couch incident and it was this that created the mechanical symptoms resulting in a physician recommending surgery. Employer asserts that Employee's

symptoms did not arise from his work-related injury, but rather his at home injury rising from the couch and therefore, the February 26, 2020, work injury is not the substantial cause of Employee's need for surgery. (Employer's Hearing Brief, February 1, 2023).

29) At the hearing on February 8, 2023, Employee testified that he recalled being in the back of his truck when the wind threw him off his balance and he began to fall. As he was falling down the boxes in his truck fell towards him, he raised his arms to stop the boxes from falling over but cannot recall the exact mechanics of his fall. He stated that he "shook off" the pain in his knee and completed his delivery but the next day due to pain in his knee reported the injury to Employer. (Testimony of Employee, Hearing, February 8, 2023).

30) On March 2, 2023, Dr. Amit Saharabudhe was deposed by Employer and Employee's attorney. When examined by Employer, Dr. Sahasrabudhe reasserted his opinion that the work injury was not the substantial cause or need for treatment. He stated that even if the tear in the meniscus was a result of the work injury, it was the intervening couch incident that required the need for medical treatment. He reiterated that Employee's medical records indicate pain radiating from the front of Employee's knee and that the physical manipulation tests for a meniscus tear were negative. This indicated that a contusion was the ultimate result of the injury and that it had stabilized prior to the couch incident. Dr. Sahasrabudhe opined that the manner Employee described his fall in his initial report was 'straight up and down' which would be consistent with a contusion, not a meniscus tear. He further stated that the facts he weighed in forming his opinion related primarily to the location of Employee's indicated pain, the front of the knee. However, pain symptomatic of a meniscus tear would occur in the back or sides of the knee. (Deposition of Dr. Sahasrabudhe, March 2, 2023).

31) On March 29, 2023, Employee's attorney submitted an updated fee affidavit to reflect additional work performed after the hearing (the deposition of Dr. Sahasrabudhe). Attorney's updated affidavit added additional fees and costs to the previous affidavit. The attorney's total fees and costs for this litigation were $27,922.29. (Affidavit of Updated Attorney Fees, March 29, 2023).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter.
It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and

> predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .

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

> **AS 23.30.010. Coverage.**
> (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee 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 death 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 death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

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

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). The presumption's application involves a three-step analysis. To attach the

presumption, and without regard to credibility, an injured employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once the presumption attaches, and without regard to credibility, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Id*. This means the employee must "induce a belief" in the factfinders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*.

The Alaska Supreme Court has repeatedly held the fact symptoms arose after an event is insufficient to establish causation in workers' compensation cases. *Lindhag v. State*¸123 P.3d 948 (Alaska 2005); *Rivera v. Wal-Mart Stores, Inc.*, 247 P.3d 957 (Alaska 2011); *Buchinsky v. The Arc of Anchorage*, Slip Op. S-15547 (Alaska 2016).

In *Alaska Pacific Assurance Co. v. Turner*, 611 P.2d 12 (Alaska 1980), the Supreme Court was presented with a case where the Employee injured his back while working for Employer. Employee was experiencing pain in his back and leg while at work and was prescribed a topical medication to alleviate his symptoms. Employee's pain plagued him consistently after his initial report of injury. As part of a forced layoff Employee returned to his home, where while lifting a boat trailer he experienced immediate pain in his back and believed his work injury was the original and substantial cause of his need for medical treatment. The Employer disagreed, believing the boat lifting incident was separate from his work injury and therefore not compensable. The Supreme Court disagreed and found that an earlier compensable injury was a substantial factor contributing to the later injury.

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

The Board's credibility findings and weight accorded evidence are "binding for any review of

the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.145. Attorney fees.**
> (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. 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. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation 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 fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise 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 reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 150-51 (Alaska 2007), the Supreme Court explained fee awards under AS 23.30.145(a) and (b):

> Subsection (a) authorizes the Board to award attorney's fees as a percentage of the amount of benefits awarded to an employee when an employer controverts a claim. . . . In contrast, subsection (b) requires an employer to pay reasonable attorney's fees when the employer "otherwise resists" payment of compensation and the employee's attorney successfully prosecutes his claim.

Subsections (a) and (b) are not mutually exclusive, however.

> Subsection (a) fees may be awarded only when claims are controverted in actuality or fact. Subsection (b) may apply to fee awards in controverted claims, in cases in which the employer does not controvert but otherwise resists, and in other circumstances. *Uresco Construction Materials, Inc. v. Porteleki*, AWCAC Decision No. 152, at 15 (May 11, 2011) (Citations omitted).

Attorney fees in workers' compensation cases should be fully compensatory and reasonable so

injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging*, 787 P.2d 103, 108 (Alaska 1990).

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784 (Alaska 2019). *Rusch* held in determining an attorney fee award, the Board must consider all factors in Alaska Rule of Professional Conduct 1.5(a), including:

> (1) the time and labor required, novelty and difficulty of the questions involved and skill requisite to perform the legal services properly;
> (2) the likelihood acceptance of the employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar services;
> (4) the amount involved, and results obtained;
> (5) the time limitations imposed by the client or 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.

ANALYSIS

1) Is Employee entitled to continuing medical care and associated benefits for his February 26, 2020, work injury with Employer?

The presumption of compensability applies to the issue of causation. AS 23.30.120(a)(1) Because Employer initially accepted the claim and paid benefits, only disability benefits and medical benefits after Employer's May 28, 2020, controversion are in dispute. Without regard to conflicting evidence, and without considering credibility, Employee raised the presumption that the February 26, 2020, injury was the substantial cause of his disability and need for medical treatment. Both Dr. Gray and Dr. Uhr opined the Employee's work injury was the substantial cause of his meniscus tear and need for surgery. *Meek.* Because Employee raised the presumption, Employer was required to rebut it. It did so through the opinion of Dr. Sahasrabudhe. He concluded that the work injury caused only a contusion that had already resolved, and that Employee's incident at home was more likely the substantial cause of his need for medical treatment. *Saxton*. Because Employer rebutted the presumption, Employee was

required to prove by a preponderance of the evidence that he is entitled to benefits after Employer's controversion. *Id.*

To support his claim, Employee produced the opinion of his treating physician Dr. Gray and the SIME physician Dr. Uhr. Employee's testimony as to the mechanics of his fall is given some weight. Here, he was able to describe the way he fell but could not recall whether he did so with any twisting motion. *Tolbert*. Dr. Gray, throughout his treatment of Employee, began with a conservative approach, recommending physical therapy prior to surgery because Employee was not exhibiting the necessary meniscus tear mechanical symptoms that would warrant surgery. Once Employee experienced a locking event of the knee in May of 2020 it was Dr. Gray's opinion that surgery was necessary to repair the bucket handle tear of the meniscus. Dr. Gray also noted on his May 12, 2020, evaluation of Employee, that he could not definitively say whether Employee's tear was attributed to the work injury because Employee could not recall a torsional or twisting component to his fall. He noted that the Employee was asymptomatic prior to the fall. Dr. Gray stated that if there was a torsional component to the fall, the tear would be directly attributable to the work injury.

Dr. Uhr's opinion is like Dr. Gray's. In his deposition Dr. Uhr opined that while Employee testified he fell straight up and down, the MRI of the Employee revealed a torn meniscus, and that in his opinion the nature of Employee's fall likely exhibited some manner of twisting. Dr. Uhr also agreed with Dr. Gray that surgery is not typical in asymptomatic meniscus tears, but once mechanical symptoms present themselves, surgery is a typical treatment response. Dr. Uhr relied on the MRI showing the tear as informing his opinion and his overall evaluation of the Employee. He noted that while the Employee's previous physical manipulation tests were negative for a meniscus tear prior to the SIME, he was more inclined to rely on the MRI that positively showed the bucket handle tear. He further explained that Employee's couch incident was not a separate injury. This is because the meniscus was already torn. As such, the couch incident was merely a triggering event that transitioned the torn meniscus from asymptomatic to symptomatic.

Without regard to credibility, Employer rebuts the presumption of compensability with Dr. Sahasrabudhe's opinion providing that the substantial cause of Employee's need for medical treatment was the displacement of the bucket handle meniscus tear when Employee rose from his

couch at home in May of 2020. *Huit.* Dr. Sahasrabudhe in his records review evaluation of Employee opined that, as of the date of the initial accident, Employee had suffered a contusion. He was not able to interview the Employee or perform a physical evaluation of him and relied solely on his expertise and the medical records that were provided to him. He testified in his subsequent deposition that he did not have the MRI available at the time he made his determination in his IME, but had since looked at it, and that it did not change his opinion. In his opinion, the Employee suffered a contusion that had reached medical stability. As to the meniscus tear, Dr. Sahasrabudhe opined asymptomatic meniscus tears are common in adults over the age of 45 and he was aware that, at the time of the accident, Employee was only 42. He stated in his IME that it was more likely Employee's torn meniscus was age related or pre-existing his work injury. He relied on Employee's deposition to form his opinion that since Employee believed he fell straight down onto his knee that the necessary mechanics for a meniscus tear were not present. While Dr. Sahasrabudhe acknowledged in his deposition Employee had pain in his knee after the February 26, 2020 incident, he opined pain in the front of Employee's knee was not consistent with a meniscus tear. Instead, the knee pain's location is more likely attributed to the contusion. Dr. Sahasrabudhe's opinion is not relied upon or given weight. Instead, Dr. Gray, Employee's treating physician, followed him from his injury's inception. He was intimately familiar with Employee's pain and how his knee functioned. His opinion Employee tore his meniscus when he fell at work is credible and given great weight. Likewise, Dr. Uhr's opinion is credible and given more weight than Dr. Sahasrabudhe's. Dr. Uhr reviewed all Employee's medical records and imaging, including the MRI. He also interviewed and evaluated Employee in person prior to rendering his opinion.

On balance, considering all possible causes of the need for medical treatment for Employee's knee pursuant to AS 23.30.010(a), the credible medical evidence weighs in favor of Employee's position. The substantial cause of Employee's on-going need for treatment was the work injury on February 26, 2020. After the injury, Employee reported pain in his knee, and had two x-rays and a subsequent MRI. These revealed a bucket-handle tear of his meniscus. *Lindhag* His physician recommended conservative treatment in the absence of mechanical symptoms. Throughout his physical therapy, Employee maintained that he was experiencing pain that had not significantly subsided. In May of 2020, Employee experienced a locking episode of his knee and informed his physician. His physician, with the appearance of a mechanical symptom, then

recommended that surgery would be appropriate. For these reasons, Employee's claim will be granted. His work injury on February 26, 2020, is the substantial cause of his need for medical treatment.

2) Is Employee entitled to attorney's fees and costs?

An attorney requesting a fee more than the statutory minimum must file an affidavit itemizing the fees at least three working days before the hearing. 8 AAC 45.180(b). If an attorney does not do statutory minimum fees may be awarded. *Id.* Employee's attorney submitted his fee affidavit prior to hearing and with Employer's agreement filed an updated fee affidavit after the record closed to account for additional work performed. Employee in his fee affidavits did not expressly address each *Rusch* factor, similarly, Employer did not address them either in briefing or oral argument. These factors include:

> 1) *the time and*
>
> (2) *the likelihood acceptance of the employment will preclude other employment by the lawyer*: Based on the panel's experience, taking one person's case negatively impacts a solo practitioner's ability to take other employment. *Rogers & Babler*.
> (3) *the fee customarily charged in the locality for similar services*: Kalamarides has been awarded $425 per hour in other cases and Employer has not objected to that rate in this case. *Rogers & Babler*.
> (4) *the amount involved, and results obtained*: The causation claim involved in this matter was substantial, and increased Employee's benefits significantly. *Rogers & Babler*.
> (5) *the time limitations imposed by the client or the circumstances*: Employee presented no evidence on this issue. (Agency file; record).
> (6) *the nature and length of the professional relationship with the client*: Based on the panel's experience, Kalamarides represented Employee for a typical amount of time as seen in other workers' compensation cases. *Rogers & Babler*.
> (7) *the experience, reputation and ability of the lawyer or lawyers performing the services*: Based on the panel's experience, Kalamarides has significant experience, ability, and a good reputation. *Rogers & Babler*.
> And (8) *whether the fee is fixed or contingent*: With a minimal exception not applicable here, all attorney fees in these cases are contingent. *Rogers & Babler.*

Given the above analysis, and based on Kalamarides attorney fee affidavits, Employee will be awarded $27,922.29 in full, reasonable attorney fees. *Cortay.*

CONCLUSIONS OF LAW

1) Work is the substantial cause of Employee's disability and need for medical care.

2) Employee is entitled to attorney fees.

ORDER

1) Employee suffered a compensable injury on February 26, 2020.

2) Employer is liable for disability, medical and other benefits to which Employee is entitled in accordance with the Act.

3) Absent a valid legal or factual reason to controvert Employee's future rights to benefits, Employer must pay benefits to which Employee may become entitled, promptly, and directly to the person entitled to those benefits, without an order.

4) Employer retains the right to controvert Employee's rights to benefits in the future, as well as any claims for those benefits he may make, in accordance with the Act, for reasons other than those addressed in this decision and order.

5) Employer is ordered to pay Employee's attorney $27,922.29 in attorney fees and costs.

Dated in Anchorage, Alaska on May 3, 2023.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle D. Reding, Designated Chair

/s/
Marc Stemp, Member

(Term Expired)
Nancy Shaw, 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 the 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 Board 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.

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 Final Decision and Order in the matter of Tarrance Wrice, employee / claimant v. Carlile Transportation, employer; Arch Insurance Company, insurer / defendants; Case No. 202003256; 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 May 3, 2023.

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Kimberly Weaver, Office Assistant II