

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

NATASHA ZANOSKO,)
)
) Employee,)
) Claimant,) INTERLOCUTORY
) DECISION AND ORDER
)
) v.)
) AWCB Case No. 202123178M, 202218135
)
) SOUTHCENTRAL FOUNDATION,)
) AWCB Decision No. 23-0037
) Employer,)
) and) Filed with AWCB Anchorage, Alaska
) on June 30, 2023
)
) ALASKA NATIONAL INSURANCE,)
)
) Insurer,)
) Defendants.)
)
_____)

Natasha Zanosko's (Employee) November 28, 2022, and February 2, 2023, petitions for a Second Independent Medical Exam (SIME) were heard on May 3, 2023, in Anchorage, Alaska, a date selected at a prehearing conference on March 16, 2023. Employee appeared and was not represented by an attorney. Attorney Michelle Meshke appeared and represented Southcentral Foundation and Alaska National Insurance (Employer). The record closed at the hearing's conclusion on May 3, 2023

ISSUES

Employer contends that there are medical disputes between its independent medical evaluations (IME) and the Employee's attending physicians and therefore the Board should order a panel SIME.

Employee agrees that a SIME is warranted based on disputed facts of the parties' physicians but contends the Board should decide which specialties are added to the panel rather than the Employer.

Should a SIME be ordered?

FINDINGS OF FACT

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

- 1) On November 9, 2020, Employee tested positive for COVID-19 and was placed on home isolation. Employee was working at Alaska Native Medical Center at the time of injury. (First Report of Injury, August 4, 2021).
- 2) On May 18, 2021, Employee received her first COVID-19 vaccine by Moderna. She received her second vaccine on June 15, 2021. (Deposition of Employee, March 28, 2023).
- 3) On July 16, 2021, Employee was seen by her Primary Care Provider Dr. Amanda Smith, MD. Employee stated she had aches and lung issues that may have arisen after she contracted COVID-19 but worsened within the last three weeks. Dr. Smith assessed Employee with fatigue that was likely related to either long COVID, thyroid dysfunction, or paroxysmal atrial fibrillation (PAF). The physician opined her largest concern with a potential long COVID diagnosis was a lack of medical research into the duration of long COVID symptoms, and therefore a workup of potential other causes of Employee's symptoms would be necessary to understand Employee's condition. (Smith note, July 16, 2021).
- 4) On July 20, 2021, Employee conducted a telehealth visit with Dr. Smith, where she reported on-going fatigue and body aches. Dr. Smith reiterated that lab work still needed to be conducted to rule out other possible causes of her symptoms. (Smith note, July 20, 2021).
- 5) On July 23, 2021, Employee conducted another telehealth visit with Dr. Smith. She stated that she had already missed two days of work because of her symptoms that she believed were caused by the COVID-19 vaccine. Dr. Smith opined that she did not know for sure if this was long COVID, or rather symptoms attributable to the COVID vaccine and that there were no tests that would determine definitively that it was. Her recommendation was for Employee to continue with

lab work and that she would follow-up with Employee after the results were in. (Smith note, July 23, 2021).

6) On August 10, 2021, Dr. Smith reviewed an EKG and lab work that had been performed regarding Employee. She noted the EKG was normal and the lab work performed thus far was negative for any other indicator of Employee's symptoms. Dr. Smith referred Employee to a cardiologist for further tests. (Smith note, August 10, 2021).

7) On September 22, 2021, Employer filed a controversion for all benefits with the Division. Under reason Employer stated Employee failed to sign medical releases that were sent to her on August 16, 2021. (Controversion, September 22, 2021).

8) On November 10, 2021, Employee saw Dr. Smith regarding FMLA paperwork and a work note to excuse certain days she was unable to work in October due to her symptoms. Employee reported that she was feeling better due to working in a solitary space at work. Employee stated she had ringing in her ears that had increased recently. Dr. Smith noted Employee had a history of temporomandibular joint (TMJ) issues and referred her to an Ear, Nose, and Throat (ENT) specialist. (Smith note, November 10, 2021).

9) On December 20, 2021, Employee saw Dr. Smith regarding a work note. Employee informed her physician that she developed a headache a few days prior that had worsened quickly resulting in pressure behind her eyes. Employee reported that her left ear pain had increased after returning from a trip to Hawaii and that she developed photophobia and phonophobia. Employee also complained of severe neck stiffness and that her vision has gotten worse since having contracted COVID. Dr. Smith noted that they were still waiting on a date for Employee to see an ENT physician at which time her ear pain could be addressed. Dr. Smith assessed Employee's headache as likely tension related and recommended switching muscle relaxers and performing neck stretches. (Smith note, December 20, 2021).

10) On February 8, 2022, Employee was seen by PA-C Megan Heinecke ENT for dizziness and tinnitus. PA-C Heinecke noted Employee missed her previously scheduled audiogram and therefore she could not render an opinion as to Employee's tinnitus but would follow-up once an audiogram was completed. Regarding Employee's dizziness, PA-C Heinecke opined that Employee reported dizziness for over six months occurring almost weekly but that her headache and photophobia symptoms were suspicious for what she assessed as a vestibular migraine. (Heinecke note, February 8, 2021).

11) On February 10, 2022, Employee was seen by Dr. Julia Swayne, AuD, for an audiogram. The findings of the audiogram showed mild sensorineural hearing loss bilaterally. Based on the symmetry of hearing loss in both ears it was not recommended she obtain imaging. Dr. Swayne stated it was unclear if this hearing loss was long-standing or related to Employee's recent symptoms. Dr. Swayne stated that Employee was overly bothered by her hearing and could consider a hearing aid evaluation. (Swayne note, February 10, 2021).

12) On March 14, 2022, Employer filed a controversion for all benefits against Employee. Employer stated Employee failed to sign medical releases sent to her on February 17, 2022. (Controversion, March 14, 2022).

13) On March 15, 2022, Employee called the Division asking if her benefits were controverted based on the medical releases. She stated she had already signed and returned them. The Division referred Employee to Employer's adjuster for further information that the Division did not currently have. The Division also provided a copy of the Workers' Compensation and You packet, the claim flowchart, a claim form, and a list of attorneys currently taking workers' compensation cases. (Agency file, communications tab, March 15, 2022).

14) On May 10, 2022, Employee returned to Dr. Smith with complaints of anxiety. Dr. Smith noted that Employee states that since her COVID diagnosis she has found that anxiety is a larger problem in her life. Employee reported heart fluttering, impending doom, feeling irritable, and feeling walls closing in and that she has had to leave work previously for panic attacks. Dr. Smith assessed Employee's anxiety as uncontrolled and a "new escalating issue," and recommended hydroxyzine to treat Employee's symptoms. (Smith note, May 10, 2022).

15) On May 16, 2022, Employee was seen by Dr. Ellie Servia, AuD, for a hearing aid evaluation. Employee was unsure if her Employer's workers' compensation would pay for the hearing aids and requested to re-schedule the appointment once she spoke with an adjuster. No evaluation was conducted. (Servia note, May 16, 2022).

16) On June 14, 2022, Employee was seen by Dr. Smith regarding a work note seeking to remain isolated at work due to her brain fog from COVID. Dr. Smith noted that Employee had been recovering slowly but she anticipated Employee's return to normal function within 18-24 months after the initial infection based on similar cases. (Smith note, June 14, 2022).

17) On August 15, 2022, Employee was seen by Dr. Smith for an update on her disability paperwork regarding COVID. Employee stated that she was requesting reasonable

accommodation to work from home due to her vestibular migraines. Employee stated that she typically missed Mondays and Fridays due to brain fog and concentration issues due to COVID-19. In her assessment, Dr. Smith stated it was reasonable for Employee to work from home when suffering a vestibular migraine. Dr. Smith also included a work release note covering previous absences for Employee totaling thirteen absences from December 17, 2021, until July 28, 2022. (Smith note, August 15, 2022).

18) On August 18, 2022, Dr. Smith submitted a work excusal for Employee from August 16 – 19, 2022, due to illness. (Smith note, August 18, 2022).

19) On August 22, 2022, Employee conducted a telehealth visit with PA-C Maggie McNamara at the Primary Care Clinic at Alaska Native Medical Center. PA-C McNamara noted that Employee was calling regarding a work excusal note from the previous week. The physician explained that she could only write a note for the appointment that day and that Employee’s primary care provider would need to provide a note for any additional days. (McNamara note, August 22, 2022).

20) On September 1, 2022, Employer filed a withdrawal of their March 14, 2022, controversion. Employer stated that Employee signed and properly executed releases on August 22, 2022. (Notice Withdrawing Controversion Notice of 3/14/2022, September 1, 2022).

21) On September 6, 2022, Employee was seen by Dr. Smith regarding FMLA paperwork. Employee stated that she needed FMLA paperwork detailing the time she was forced to miss work due to appointments, fatigue, dizziness and persistent long COVID symptoms. Employee stated that her condition is not improving. Dr. Smith discussed a physical therapy referral for Employee’s fatigue. Additionally, Dr. Smith prepared a referral for an outside audiologist to evaluate Employee’s hearing and tinnitus. Dr. Smith also wrote a work excusal note, due to COVID, for Employee from September 1 – 12, 2022. (Smith note, September 6, 2022).

22) On September 19, 2022, Employee conducted a telehealth visit with Dr. Smith. Employee reported to Dr. Smith that she felt depressed, had poor energy and motivation, and was not sleeping well. She requested Dr. Smith provide her a note for work missed from the previous week. Dr. Smith provided the work note and continued to monitor Employee’s approach to care. (Smith note, September 19, 2022).

23) On September 26, 2022, Employee conducted another telehealth visit with Dr. Smith. Employee stated that her fatigue had become “insurmountable.” She stated that she did not think

she could function for a full workday. Dr. Smith provided a work note for Employee's absence from work for the previous week. (Smith note, September 26, 2022).

24) On October 10, 2022, Employee was seen by Dr. Thomas McCarty, AuD. Dr. McCarty completed a Cognitive Audiologic report and Hearing Impairment Calculation Worksheet based on tests performed on Employee. Dr. McCarty assessed Employee with 10.625% hearing loss for both ears. In his letter of authorization for hearing aids, Dr. McCarty noted Employee had "bilateral sensori hearing loss, consistent with Covid 19 and vaccine." He provided no additional data to inform this opinion. He recommended medically necessary hearing aids to treat Employee's hearing loss and tinnitus. (McCarty note, October 10, 2022).

25) On October 11, 2022, Employee filed a claim for Temporary Total Disability (TTD), Permanent Partial Impairment (PPI), and medical costs. In describing the nature of her injury or illness Employee stated, "multiple issues since covid/covid vaccine hearing loss vestibular headaches fatigue memory issues." Her reason for filing the claim was that she needed hearing aids, time loss payments, and a PPI rating. (Claim for Workers' Compensation Benefits, October 11, 2022).

26) On October 12, 2022, Employee was seen by Dr. Jared Kirkham, MD, for an Employer's Independent Medical Exam (IME). Dr. Kirkham reviewed Employee's medical records from the date of her COVID diagnosis to present. He performed an interview and physical evaluation of Employee. Throughout his report, Dr. Kirkham opined that Employee's symptoms could have originated from a multitude of sources to include, age, genetics, and prior medical history. Dr. Kirkham provided diagnoses for the following: (1) Covid -19 infection, (2) Sensorineural hearing loss, (3) Tinnitus, (4) Vestibular migraine, (5) Anxiety and depression, (6) Fatigue, (7) Cognitive dysfunction or "brain fog," and (8) Multiple preexisting medical comorbidities. Dr. Kirkham noted the difficulty in diagnosing post Covid syndrome, in his words "one of the challenges with long Covid is that there is no objective method of diagnosis." His further analysis correlated the symptoms Employee was experiencing were not unlike symptoms a person with her comorbidities would experience had they not contracted COVID-19. In diagnosing all eight of Employee's symptoms Dr. Kirkham came to the same conclusion. He indicated that the symptoms Employee was experiencing arose from factors outside of her COVID-19 infection. He opined that there were better explanations for Employee's symptoms in her medical history that did not relate back to her COVID-19 infection. He also noted that all tests and imaging performed on Employee to

date were returned normal and not related to her COVID-19 infection. In establishing the substantial cause of Employee's need for medical treatment Dr. Kirkham found that Employee's need for medical treatment related to a variety of non-covid factors. He further explained that Employee's age, genetics, obesity, lifestyle factors, including poor sleep, smoking, and lack of exercise, and psychosocial factors, including history of anxiety and depression, history of chronic pain, poor expectations for improvement, self-limiting behavior, disability conviction, tendency to perseverate on or overreport symptoms, misattribution of symptoms, and difficulty managing stress, were the substantial causes of Employee's need for medical treatment. (Kirkham IME report, October 12, 2022).

27) On October 18, 2022, Employee conducted a telehealth visit with Dr. Smith. Employee was tearful as her workers' compensation benefits had been terminated due to the IME physician's opinion. Employee requested a note for missed work as she cannot perform her essential job functions at this time. Dr. Smith entered a referral for a physical therapist within her covered care. (Smith note, October 18, 2022).

28) On October 20, 2022, Employer filed a controversion notice in response to Employee's claim. Employer specifically denied TTD, TPD, PTD, vocational rehabilitation, PPI in excess of 0% and ongoing medical treatment beyond October 18, 2022, as a result of the November 9, 2020, COVID-19 exposure or the May 18, 2022, and June 15, 2022, COVID-19 vaccine. Employer's reason for controverting was based on the IME performed by Dr. Kirkham on October 12, 2022, Employee was medically stable regarding her COVID-19 infection and vaccinations. Dr. Kirkham found that there was no objective medical evidence of any residual effects from COVID-19 or the COVID-19 vaccination. (Controversion Notice, October 20, 2022).

29) On October 26, 2022, Employee conducted a telehealth visit with PA-C Heinecke. Employee reported symptoms of dizziness, headaches, and hearing loss. PA-C Heinecke noted that these were the same symptoms reported to her on February 8, 2022. Employee has a history of papillary thyroid carcinoma which resulted in a thyroidectomy in November of 2021. Employee had concerns of the "cancer returning." PA-C Heinecke reassured Employee that based on her labs that there was low concern of her thyroid cancer recurring. PA-C Heinecke also informed Employee that while her symptoms could be related to COVID-19 she could not definitely say they were. (Heinecke note, October 26, 2022).

30) On November 7, 2022, Employee conducted a telehealth visit with Dr. Smith. Employee reported feeling much improved. Employee requested to go back to work with half time restrictions for sedentary work as well as continuing in an isolated room. (Smith note, November 7, 2022).

31) On November 9, 2022, Employer filed a controversion notice. Employer controverted TTD, PTD, PPI, medical and related benefits which are unnecessary, unreasonable, and/or unrelated to the November 9, 2020, injury effective October 12, 2022. Employer's controversion notice added additional rationale from their previous controversion notice on October 20, 2022. Employer added IME physician Dr. Kirkham's opinion that COVID-19 or the vaccine was not the substantial cause of Employee's need for medical treatment, that none of her preexisting conditions were exacerbated by COVID-19 or the vaccine, and that Employee had the physical capacity to return to her work for Employer. Employer added Employee did not sustain an injury as defined in AS 23.30.395(24). (Controversion notice, November 9, 2022).

32) On November 9, 2022, Employer filed an Answer to Employee's claim for benefits. Employer denied Employee's claim for TTD, PTD, PPI and medical benefits. Employer raised affirmative defenses regarding pending discovery, work not being the legal cause of Employee's disability, Employee's injury not being defined under AS 23.30.395(24), lack of medical evidence that supports Employee being totally and permanently disabled from work, and the IME physician's opinion that work was not the substantial cause of Employee's need for medical treatment, the injury did not exacerbate a preexisting condition, and Employee's capacity to return to work. (Answer to Employee's Workers' Compensation Claim, November 9, 2022).

33) On November 18, 2022, Employee was seen by Ophthalmologist Dr. James Ford, MD. Employee complained of tearing and blurry vision which she related to her COVID vaccinations. Dr. Ford assessed Employee with cataracts that were age related and recommended Cataract Extraction and Interocular Lens procedure for both eyes. (Ford report, November 18, 2022).

34) On November 18, 2022, Employee was seen by Neurologist Dr. George Banks MD. Employee had been experiencing consistent headaches that warranted a referral from her primary care provider. Dr. Banks in his evaluation noted Employee had a history of headaches prior to her COVID infection that were worsened after her infection. In his evaluation, Dr. Banks did not observe any abnormal findings and recommended pharmaceutical intervention for Employee's migraines. Dr. Banks also noted it can be hard to tell whether the migraines were a primary

disorder or whether they were being driven by comorbid symptoms. In his assessment he concluded that treating the migraines with medication is important and treating Employee's other comorbidities such as arthralgias, myalgias, depression, and anxiety were equally important. (Banks note, November 18, 2022).

35) On November 21, 2022, Dr. Ford conducted a cataract extraction with intraocular lens implant procedure on Employee's right eye with no complications. (Ford note, November 21, 2022).

36) On November 28, 2022, Employee filed a petition for a SIME. In the "other" section of the form Employee entered "ppi rating medical bills time loss future medical." Under reason for petition Employee stated, "to have hearing aids paid for and medical bills and ppi paid i am considered mmi for hearing loss it is not coming back. I request seme due to no mention of my second exposure on 5/27/22 I am still currently being treated. also doctor states i was in shorts and wrong injury date I do not think this is my report I was not in shorts my injury date is 11/9/20 and no mention of 5/27/22." (Petition, November 28, 2022).

37) On November 29, 2022, Dr. Ford conducted a cataract extraction with intraocular lens implant procedure on Employee's left eye with no complications. (Ford note, November 29, 2022).

38) On December 1, 2022, Employee was seen by Dr. Smith. In her notes, Dr. Smith listed multiple concerns for Employee as the reason for her visit. Employee stated that after eye surgery her dizziness and migraines had improved but she was still experiencing fatigue. Dr. Smith wrote a referral for memory testing at Employee's request. Employee stated her memory was improving but would like to get tested. Dr. Smith noted that Employee had been taking Ozempic since August and had not been able to lose as much weight as was expected while on the medication regimen. Employee stated she was not in the right mental space to focus on her weight loss and would like to keep trying. (Smith note, December 1, 2022).

39) On December 6, 2022, Employee conducted a telehealth visit with Dr. Smith. Employee's primary concern was her accommodation to wear a hat and sunglasses at work had expired. She requested a letter from Dr. Smith to continue this accommodation. She stated to Dr. Smith that her migraine medication Phenergan was causing tinnitus, and that her headaches had not subsided with additional pharmaceutical intervention. Dr. Smith wrote a letter for Employee's

accommodation and recommended she use her migraine medication only as necessary. (Smith note, December 6, 2022).

40) On December 6, 2022, Employee filed a First Report of Occupational Injury for a COVID exposure on May 27, 2022. Employee stated she took a home test for COVID-19 and was positive on that date. (First Report of Occupational Injury, December 6, 2022).

41) Employee submitted to polymerase chain reaction (PCR) testing for COVID-19 on May 20, 2022, and May 27, 2022, with both tests being negative. (Employer's medical summary, pg. 82-83, December 7, 2022).

42) On December 7, 2022, Employee filed a claim for workers' compensation benefits asserting TTD, TPD, PTD, PPI, Compensation Rate Adjustment, medical costs, penalty for late paid compensation, and interest. Employee stated she was positive for COVID on May 27, 2022, and tested positive 7 days after exposure notification. She also indicated that the new injury exacerbated her current symptoms of long COVID. Employee failed to sign and date the bottom of the Workers' Compensation form. (Claim for Workers' Compensation Benefits, December 7, 2022, observations).

43) On December 14, 2022, the Division sent Employee a claim rejection letter, letting Employee know she failed to sign and date the bottom of her claim form and therefore her claim could not be processed. (Claim Rejection Letter, December 14, 2022).

44) Employee has not filed a corrected claim form for her December 7, 2022, claim. (Agency file, observations).

45) On December 14, 2022, Employer filed a controversion notice for Employee's December 7, 2022, claim with a date of injury of May 27, 2022. Employer denied all medical benefits. Employer stated the claim is barred under AS 23.30.100 as not being timely reported, that Employee did not sustain an occupational disease or illness as defined in AS 23.30.395(24), and that Employee failed to provide medical evidence of a positive COVID test for the date of the reported injury. It is unclear whether Employee corrected her rejected claim and sent it to Employer. The Division has no record of a corrected claim being filed. (Controversion Notice, December 14, 2022, agency file, observations).

46) On December 14, 2022, Employer filed a corrected controversion notice relating back to the November 9, 2022, controversion. The only change between the two controversions was the

Employers' date of signature, with the latter being dated on December 14, 2022. (Corrected Controversion Notice, December 14, 2022).

47) On December 14, 2022, Employee was seen by LPC, Ariel Moilanen, at her Employer's Behavioral Health Clinic. Employee reported to Counselor Moilanen she had been experiencing memory problems after contracting COVID-19. She stated she would leave faucets running, forget where she parked her car, and had to constantly use GPS in her vehicle to know where she was. The Montreal Cognitive Assessment (MoCA) Test was administered to Employee. The test's purpose is to determine cognitive issues that may require additional testing. The test is 30 questions and takes roughly 10-12 minutes to complete. It is scored on a scale of 1-30, with 30 being a perfect score. Employee scored a 13. Counselor Moilanen in her assessment stated, "While CO (Employee) is reporting functional impairment associated with cognitive complaints, her score of 13 seems lower than would be expected considering level of functional impairment she is reporting." (Moilanen report, December 14, 2022).

48) On December 20, 2022, Employer filed a petition to consolidate both of Employee's claims. The first with a date of injury of November 9, 2020, and the second claim, which was never corrected and resubmitted to the Division, with a date of injury of May 27, 2022. (Petition, December 20, 2022).

49) On December 27, 2022, Dr. Jared Kirkham performed a records review IME for Employer. Additional records provided to Dr. Kirkham began June 28, 2021, through December 6, 2022. Dr. Kirkham in his discussion noted that Employee continues to have diffuse widespread symptoms since he last saw her on October 12, 2022. He noted continuing multiple preexisting and unrelated conditions as well as psychosocial factors influencing her widespread symptomology. In his report, Dr. Kirkham stated that Employee was alleged as testing positive for COVID-19 via a home test kit on May 27, 2022. However, Dr. Kirkham noted in his report that Employee had taken PCR COVID tests on May 20, 2022, and May 27, 2022, that were both negative. He noted that the PCR tests were more accurate than home tests. Dr. Kirkham further noted that Employee had not seen any providers around that time frame to corroborate symptoms that would make it more likely than not that she contracted COVID-19 on that date. In summation, Dr. Kirkham reiterated his previous opinion that nothing in the new records changed his previous opinion rendered on October 12, 2022. He found no objective evidence of any condition related to COVID-19 or the COVID vaccination. He recommended multimodal, multidisciplinary treatment focusing on the

psychosocial factors that are the main cause of her chronic somatic symptoms and subjective inability to return to work. (Kirkham report, December 27, 2022).

50) On December 28, 2022, Employee was seen via telehealth by NP, Priscilla Marble. Employee reported a positive COVID-19 test on December 27, 2022, and complained of severe ear pain in one ear. Employee requested steroids during the visit. NP Marble explained she could not prescribe steroids without a physical examination of Employee's ear. Employee understood and stated she would schedule an appointment. (Marble note, December 28, 2022).

51) On December 28, 2022, Employee was seen at Employer's Walk-In clinic by NP, Amy Zink. Employee stated she had contracted COVID-19 and was experiencing ear pain. NP Zink recommended Employee start an antiviral medication to alleviate her COVID symptoms. In evaluating Employee's ear, NP Zink noted no infection, with possible eustachian tube dysfunction, and recommended a trial of fluticasone for her symptoms. (Zink note, December 28, 2022).

52) On December 29, 2022, Employee's primary care provider was out of town. She called Neurologist Dr. Banks' office, for a telehealth visit. Employee reported over the phone to Dr. Banks that she was in severe pain all over her body, and that all her joints and muscles were hurting. Dr. Banks in his assessment found that her current symptoms were not neurological or compatible with a primary headache disorder. He stated she had migraines in the past and had reported similar symptoms when she was last seen by him. He stated that her pain is not an acute viral myalgia but a more chronic disorder of pain akin to fibromyalgia. His ultimate assessment was that Employee's pain was part of a systemic disorder and not capable of being adequately treated in a neurology setting. (Banks note, December 29, 2022).

53) On December 29, 2022, Employee conducted a telehealth visit with NP, Lara VanHoozer. Employee presented with complaints related to her recent COVID infection as well as a flare up of hidradenitis suppurativa, a skin disorder. NP VanHoozer recommended Employee maintain her current treatment for her COVID related symptoms to include Ibuprofen for aches and pain and remaining hydrated. NP VanHoozer also prescribed Bactrim to treat Employee's skin disorder. She recommended follow-up in 5-7 days with her primary care provider if her symptoms did not subside. (VanHoozer note, December 29, 2022).

54) On January 5, 2022, Employee was seen by Dr. Smith via a telehealth visit. Employee reported that the whole side of her face was hurting. She stated that the medication she was prescribed on December 28, 2022, for her ear pain did not help. Dr. Smith opined that Employee's

symptoms could be Bell's Palsy, but it was difficult to determine without a physical exam. Dr. Smith provided a work excusal from December 27, 2022 – January 11, 2023, for Employee to quarantine based on her positive COVID test on December 27, 2022. (Smith note, January 5, 2022).

55) On January 6, 2023, Employer filed a controversion notice for both of Employee's claims. Under reason for controversion, Employer reiterated Dr. Kirkham's original opinion as to why Employee's first claim was controverted and added Dr. Kirkham's December 27, 2022, opinion that Employee's positive home test was a less credible determination of her contracting COVID given the PCR tests Employee took on May 20, 2022, and May 27, 2022, that were both negative. In his opinion the PCR tests were a more accurate predictor of a COVID infection. (Controversion notice, January 6, 2023).

56) On January 10, 2023, Employer filed an Affidavit of Readiness for Hearing on Employer's petition to consolidate both of Employee's cases. (Affidavit of Readiness for Hearing, January 10, 2023).

57) On January 12, 2023, Dr. Smith provided Employee with a work excusal note until January 23, 2023. Dr. Smith stated Employee was requiring additional time off from work to recover from her recent COVID infection and would need to return to work in a part-time capacity. (Smith note, January 12, 2023).

58) On January 25, 2023, Dr. Smith provided Employee with a work modification letter. In her letter Dr. Smith stated Employee was suffering from refractory long COVID symptoms and while she had shown signs of improvement, she was not fit for full-time work. She recommended part-time work up to 20 hours per week and anticipated the modification to be in place for 4 months. (Smith note, January 25, 2023).

59) On February 2, 2023, Employee filed a petition for a SIME. In her reason for filing the petition Employee stated, "I do not think Dr. Kirkham has diagnosed and treated covid patients I called AFOC where he is employed they stated they do dx or treat covid 19 that they treat orthopedic issues and my treating doctors and his opinion do not match up I went to neurology seen Dr Banks he stated my head pain is not just headaches his report is attached i ask that a doctor be chosen by the board." (Petition, February 2, 2023).

60) On February 7, 2023, the parties attended a prehearing conference. The parties agreed to administratively join Employee's two cases. The parties could not agree on SIME deadlines.

Employee advised she would be filing an affidavit of readiness for hearing shortly. (Prehearing Conference Summary, February 7, 2023).

61) On February 7, 2023, Employee was seen by Dr. Susan Mermelstein, AuD. An audiogram was performed in her office. Dr. Mermelstein opined that the results of the audiogram were grossly stable. Employee mentioned a muffled sensation in her left ear but when tested individually with her right ear being occluded, she stated the sound in her left ear was good. Employee was informed she had bilateral hearing loss in both ears in the low-to-mid frequencies, which can impact communication but the results in both ears were the same. (Mermelstein note, February 7, 2023).

62) On February 8, 2023, Employee was seen by Dr. Vanina Chavarri MD, for a follow-up on her ear and sinus issues. Employee reported sitting under a cold vent at work caused a muffled sensation in her left ear and an itching sensation in the back of her throat near her ears. Dr. Chavarri performed a nasopharyngolaryngoscopy in which a fiberoptic scope is placed inside the nasal cavity for a more precise evaluation. Upon completion of the procedure, Dr. Chavarri found normal nasal mucosa except for congested inferior turbinates, normal adenoid bed and fossae of rosenmeuller, and normal bilateral true vocal folds. (Chavarri note, February 8, 2023).

63) On February 8, 2023, Dr. Smith provided a letter to Employer stating Employee may benefit from working in a location that does not have direct overhead air flow. (Smith note, February 8, 2023).

64) On February 8, 2023, Employee filed a request for amendment of the February 7, 2023, prehearing conference summary. Employer asserted it misstate the date of the scheduled IME and that the IME would be conducted on February 27, 2023, at 4:30PM. Employer asserted Employee received notice of the IME and she planned to attend. (Agency file, letter, February 7, 2023).

65) On February 9, 2023, Employee conducted a telehealth appointment with Dr. Smith. Employee reiterated her joint pain due to cold working conditions with overhead air flow. She also mentioned she felt like she had Post-Traumatic Stress Disorder (PTSD) from speaking with customer owners who also had COVID. Dr. Smith referred Employee to the Behavioral Health Clinic. (Smith note, February 9, 2023).

66) Employee works at the Alaska Native Medical Center. At the medical center patients are referred to as “customer owners” in documentation and colloquially. (Knowledge, observations, experience).

67) On February 10, 2023, Employee filed an affidavit of readiness for hearing on her petition for a SIME. (Affidavit of Readiness for Hearing, February 10, 2023).

68) On February 21, 2023, Employer filed an opposition to Employee's affidavit of readiness for hearing. Employer asserted that this is the second petition for a SIME Employee has filed. In response to Employee's original petition, Employer had stated that additional discovery was required to identify the nature of any medical disputes. Employer asserted that it did not object to a SIME being conducted but necessary information gathering needed to occur due to the nature of Employee's illness and disability for the parties to ascertain the specialists required to execute a proper SIME. Employer noted if the parties could not stipulate to a SIME, a written record hearing would be appropriate to determine whether a SIME is necessary and what specialties are warranted. (Affidavit of Limited Opposition to Affidavit of Readiness, February 21, 2023).

69) On February 22, 2023, Employer filed its answer to Employee's petition for a SIME. Employer asserted it did not object to the petition but rather, Employee failed to complete a SIME form outlining medical disputes, nor did she attach medical records documenting a dispute between her treating providers and the Employer's independent medical examiners. (Answer to Employee's Petition for a SIME, February 22, 2023).

70) On February 27, 2023, at 10:13 AM, Employee emailed Employer's attorney asking if the IME was scheduled for 4:30 that day. At 10:35 AM Employer's attorney responded to Employee's email confirming the date. Employer's attorney attached the January 26, 2023, notice of IME with the date, time, and location for the IME. (Agency file, Email, communications tab, February 27, 2023).

71) On February 27, 2023, at 5:08 PM, Employee emailed Employer's attorney and stated, "Im. At ime I was late no number provided they stated you did not provide my number so needs to be rescheduled I was at kirkhams tudor address then realized it was not there." Employer's attorney responded at 6:21 PM and notified Employee she had been properly notified multiple times of the date and time of the IME, to include earlier that a notice of IME had been sent to Employee with date, time and location included. Employer's attorney notified Employee that her benefits would be controverted because of Employee's failure to attend a properly noticed IME. (Agency file, Email, communications tab, February 27, 2023).

72) On February 28, 2023, Employee filed a petition to reschedule an IME. Employee asserted she was late to her IME, and it should be rescheduled. (Petition, February 28, 2023).

73) On February 28, 2023, Employer filed a controversion notice. Under the reason for controversion section Employer asserted, “[t]he employee’s rights to benefits are suspended, pursuant to AS 23.30.095(e). The employee was provided adequate and repeated notice of the scheduled time, in accordance with the Act, and failed to appear at the noticed location at the scheduled time. By 4:54 p.m. the employee was considered a no-show. (Controversion notice, February 28, 2023).

74) On March 13, 2023, Employee conducted a telehealth appointment with Dr. Smith. Employee stated she was getting worse due to her new working conditions that were dusty. Employee reported having issues with breathing, taste, and smell. Dr. Smith prescribed Flovent and Albuterol to help with Employee’s cough. Dr. Smith provided Employee a work excusal note from March 13-17, 2023. (Smith note, March 13, 2023).

75) On March 15, 2023, Employee was seen by Dr. Chavarri for continued sinus issues. Dr. Chavarri noted that Employee was seen in her office on February 8, 2023. Employee reported that her symptoms were worse after sitting under vent at work that blew cold air. She also stated she was having facial pain that before was intermittent but now was permanent. Employee informed Dr. Chavarri that she thought she might have COVID. As a result, Employee’s physical exam was deferred. Dr. Chavarri offered a CT scan as an alternative. This was performed in the office with subsequent follow-up to discuss results. As to Employee’s facial pain, Dr. Chavarri opined it may be more related to her chronic pain issues and anxiety. Employee mentioned stellate ganglion blocks performed by Dr. Luke Liu in Anchorage. Dr. Chavarri stated that she was unfamiliar with the procedure but would reach out to pain management specialists about it. (Chavarri note, March 15, 2023).

76) On March 16, 2023, the parties attended a prehearing conference. The summary of the prehearing conference stated the parties were not in agreement as to the course and scope of the SIME and would require a board ruling regarding the same. (Prehearing Conference Summary, March 16, 2023).

77) On March 17, 2023, Radiologist Dr. Elizabeth Hosselkus, MD, reviewed Employee’s CT scan. Dr. Hosselkus opined that the results of the imaging showed a normal sinus CT. (Hosselkus note, March 17, 2023).

78) On March 17, 2023, Radiologist Dr. Joel Verbrugge, MD, reviewed a chest X-ray of Employee. He noted lungs were expanded and clear, cardio mediastinal silhouette and pulmonary

vascularity appeared normal with mild degenerative change present throughout the spine. He opined no acute cardiopulmonary process identified. (Verbrugge note, March 17, 2023).

79) On March 20, 2023, Employee conducted a pulmonary function test lab with Pulmonologist Dr. John Clark, MD. Dr. Clark stated his impressions, including a mild obstructive ventilatory abnormality, significant improvement with bronchodilator, total lung capacity as normal, and diffusing capacity of carbon monoxide at the lower range of normal. He also noted Employee coughed throughout testing. (Clark note, March 20, 2023).

80) On March 20, 2023, Employee was seen via a telehealth appointment by PA, Mikayla DeSoto. Employee stated she was struggling with long COVID symptoms and this past week her symptoms were worse. PA, Mikayla DeSoto, provided a work excusal for Employee stating Employee may return to work on March 27, 2023, due to Employee not feeling well. PA DeSoto noted this was not due to COVID. (DeSoto note, March 20, 2023).

81) On March 21, 2023, Employee was seen by Pulmonologist, Dr. Thomas McLemore, MD. Dr. McLemore reviewed Employee's function test lab performed the day prior. Dr. McLemore's assessment of Employee noted that her coughing during the evaluation contributed to variable results which raised questions for him. However, he found that Employee did have chronic sinus issues with Paroxysmal Nocturnal Dyspnea (PND) a condition which results in shortness of breath during sleep. He recommended a follow-up with an ENT for surgical intervention but in the interim, that Employee remain on a Flonase regimen. He made no findings or correlations to COVID-19. (McLemore note, March 21, 2023).

82) On March 28, 2023, Employee was seen by Behavioral Psychiatric Provider, Dr. Jonathan Benaknin, DO. Dr. Benaknin assessed Employee with a moderate risk level for anxiety and depressed mood based on her representations of COVID infections, difficulty at work, and recent memory issues. Dr. Benaknin recommended Employee seeing a therapist, antidepressants, and Duloxetine. (Benaknin note, March 28, 2023).

83) On March 30, 2023, Employee was seen via a telehealth appointment by Dr. Smith. Dr. Smith reviewed reports from Employee's consults with pulmonology and behavioral health specialists. Employee's medications were modified based on recommendations from her consults. Dr. Smith issued a work excusal for Employee from March 27 to April 3, 2023, due to recurrent illness, appointments, and legal counsel. Employee also requested a light duty accommodation starting on April 4, 2023. (Smith note, March 30, 2023).

84) On March 30, 2023, Employee met with Dr. Christina Darby, MD, for a sleep medication consult. After evaluating Employee, Dr. Darby indicated that she believed Obstructive Sleep Apnea (OSA) was the cause of Employee's sleep issues. Dr. Darby based her determination of chronic insomnia on the following: untreated OSA, inadequate sleep hygiene with too much time in bed, the potential for contributing underlying mood disorder, psychophysiological insomnia components as secondary to the previously listed factors, and a history of hypothyroidism, long COVID-19 symptoms, allergies, migraine variant, anxiety/depression, and a BMI of 34. Dr. Darby recommended Employee treat her physiologic sleep disruptors, address her psychosocial factors with an appropriate provider, and work on better sleep hygiene. (Darby note, March 30, 2023).

85) On April 3, 2023, Employee was seen by two doctors in a panel IME. Dr. Jared Kirkham, MD, Physical Medicine and Rehabilitation, and Dr. Loretta Lee, MD, Internal Medicine, saw Employee with Dr. Kirkham focusing on Employee's chronic pain and Dr. Lee focusing on Employee's internal medicine complaints. Dr. Kirkham dictated the report and Dr. Lee agreed with his findings and provided her input, where necessary. Dr. Kirkham previously saw Employee on October 12, 2022, for an IME. Dr. Kirkham also provided a chart review on December 27, 2022, for Employee. The purpose of the IME was to diagnose five issues for Employee: (1) COVID infection on November 9, 2020; (2) COVID vaccination on May 18, 2021, and June 15, 2021; (3) Positive COVID home test on May 27, 2022, with corresponding negative PCR test on same day; (4) COVID infection on December 27, 2022; and (5) Diffuse widespread pain. In his discussion and recommendation, Dr. Kirkham reiterated that it is well established in medical literature that COVID infections can cause a persistent state of ill health termed long COVID or Post-COVID-19 syndrome. However, there are many challenges with such a diagnosis: including that there is currently no objective method of diagnosis for providers and that many of the symptoms of long COVID including fatigue, brain fog, headaches, and muscle aches, are nonspecific and found in both normal individuals and individuals with a multitude of comorbidities. They indicated that based on medical literature, the duration of long COVID is difficult to find but in many cases, symptoms subside in a matter of months. Dr. Kirkham further noted that Employee did not begin reporting symptoms for her November COVID infection until eight months after the infection and shortly after she received the vaccine. In his opinion this delay in symptoms is not consistent with long COVID. Typically, long COVID patients would be

symptomatic within 14 days and those symptoms would simply not subside over the course of many months. It is unlikely for symptoms to appear eight months after an infection. Dr. Kirkham opined that on a more probable than not basis, Employee's multitude of chronic symptoms, including chronic pain complaints, are not substantially caused by COVID infection or COVID vaccination and instead are substantially caused by non-COVID factors. These factors can be grouped into medical factors and psychosocial factors. Regarding medical factors for Employee's chronic pain the physicians opined that age, genetic factors, obesity, history of chronic pain, and lifestyle factors including poor sleep, smoking, and lack of exercise were the cause of her chronic pain. Dr. Kirkham previously noted that Employee displayed psychosocial factors that could be attributing to her need for medical treatment, such as history of anxiety and depression, poor expectations for improvement, self-behavior, disability conviction, tendency to perseverate on and overreport symptoms, misattribution of symptoms and difficulty managing stress. To validate his diagnosis, Dr. Kirkham noted that Employee reported a near maximum score on the pain disability questionnaire. Employee reported her pain as a 10/10 but her demeanor during the exam did not indicate as such. He noted that Employee felt Employer was retaliating against her increasing her anxiety and depression. When asked whether any of the COVID infections or vaccinations were the substantial cause of Employee's need for treatment, Dr. Kirkham stated that with a positive infection a 14-day disability determination would be warranted, he also noted that with the vaccine it is not uncommon for persons to experience 48-72 hours of illness that would impede their ability to work. He opined that after those time frames, Employee's work would not be the substantial cause of any disability or need for medical treatment. Both physicians summarized the nuance of Employee's long COVID diagnosis by reference to the medical definition of long COVID, i.e., that a person experiencing long COVID is diagnosed as long COVID in the absence of an alternative diagnosis. They explained that in Employee's case, her chronic pain symptoms are better explained through her history of chronic pain and psychosocial factors rather than objective residual effects of COVID or the COVID vaccine. When asked what additional specialties would be required if a second independent medical exam were to be ordered, Dr. Kirkham believed that because of Employee's myriad of symptoms a cardiologist, pulmonologist, gastroenterologist, neurologist, neuropsychologist, ENT specialist, and physical medicine specialist could all be warranted. He did note however, that a panel of all specialties would be costly and excessive. As to medical stability, Dr. Kirkham believed that Employee was medically stable as of the date of

the current IME. He based his opinion on his belief that factors other than COVID are contributing to her disability. He recommended she return to her current work with no restrictions. (Kirkham report, April 3, 2023).

86) On April 4, 2023, Employee called her primary care provider office. She was seen via telehealth by NP, VanHoozer. Employee requested a work note, and stated she was suffering from persistent symptoms related to long COVID. Employee believed she would be unable to work during the week due to her symptoms. (VanHoozer note, April 4, 2023).

87) On April 5, 2023, NP, VanHoozer, wrote a work note excusing Employee from April 3 – April 7, 2023, with a return-to-work date of April 10, 2023. (VanHoozer note, April 5, 2023).

88) On April 13, 2023, Employee was treated by Physician Assistant, Morgan Noad. PA Noad listed Employee's chief complaint for the visit as "paperwork/labs.". PA Noad noted that Dr. Smith had done the majority of the necessary paperwork for Employee's work notes and accommodations. PA Noad reviewed Employee's file and wrote a note for Employee's current 20-hour work week schedule, indicating light duty along with her other accommodations. (Noad note, April 13, 2023).

89) On April 25, 2023, Employee was seen by Nurse Practitioner, Briana Witteveen, at her Employer's Walk-In clinic. Employee reported left side face pain including tingling in her left arm. NP Witteveen reassured Employee she did not see any signs or symptoms of stroke. She offered to have an MRI ordered on Employee's brain and cervical spine to assist future providers as necessary. (Witteveen note, April 25, 2023).

90) On April 27, 2023, Employee conducted a follow-up appointment with pulmonologist, Dr. Thomas McLemore. Employee had also been seen in March by Dr. McLemore. During this visit, he conducted a new exam on Employee addressing her cough. In his assessment, Dr. McLemore noted that Employee's cough was significantly contributed to by chronic sinus issues and postnasal drip. He noted her sinus CT scan on March 17, 2023, was unremarkable. He ordered a CT scan of Employee's thorax to rule out any abnormalities in the chest that may be causing Employee's cough. (McLemore note, April 27, 2023).

91) On April 27, 2023, a CT scan of Employee's Thorax was conducted and reviewed by Diagnostic Radiologist Dr. Rhonda Smith, DO. Dr. Smith also reviewed previous imaging of Employee's chest on March 17, 2023, and September 14, 2020, for comparison. Dr. Smith found the most recent imaging to be normal without abnormality. (Smith note, April 27, 2023).

92) On April 27, 2023, Employer filed its brief prior to the hearing on May 3, 2023. In its brief, Employer provided a succinct medical history of Employee's injury/disability and the various medical providers seen since her first report of injury. Employer reiterated that the Board should apply the three criteria under *Bah v. Trident Seafoods Corp.* (AWCAC Dec. No. 073 (Feb. 27, 2008)) for determining the propriety of a SIME: (1) is there a medical dispute between Employee's physician Employer's IME physician; (2) is the dispute significant; and (3) will a SIME physician's opinion assist the board in resolving the dispute? Relating the facts to the criteria, Employer asserts there is a dispute between Employer's IME physicians Dr. Jared Kirkham and Dr. Loretta Lee and Employee's attending physicians, Dr. Amanda Smith, PA-C Megan Heinecke, AuD Julia Swayne and AuD Thomas McCarty. The ENT providers have opined that Employee's complaints of hearing loss and headaches are related to her COVID diagnosis. Dr. Smith has maintained that long Covid is the condition for which Employee continues to need medical treatment and referred Employee to specialists for diagnoses related to her long COVID symptoms. Dr. Kirkham and Dr. Lee, in their IME opinions, found that there was no objective evidence that the COVID vaccinations or infections, were the substantial cause of Employee's disability or need for medical treatment. Both Employer's physicians opined that Employee's underlying medical conditions and other psychosocial factors were responsible for Employee's on-going medical issues. Employer in its brief asserted that COVID-19 is not an occupational disease within the framework of the Act. In relation to the dispute between the physicians, it is the position of the Employer that the dispute is significant. The dispute relates to whether Employee's claim is compensable, whether the Employer is liable, how long Employee's disability should last, and whether a PPI rating is appropriate. Employer, through their review of the medical records believes that a panel SIME with an ENT specialist, neuropsychologist, and neurologist would best serve the Board in resolving the disputed issues. Employer recognizes that through the opinion of their IME physicians, significantly more specialists could be included in the panel, but to limit costs and in the spirit of reasonability, the Employer suggests that the Board merely recommend 3 specialists for the SIME. Employer also submitted a SIME form as Exhibit A in its brief. Employer listed Dr. Leon D. Zeitzer for ENT, Dr. Kimmel for Neuropsychology, and Dr. Barkador for Neurology. (Employer's Hearing Brief in Support of Petition for Second Independent Medical Exam, April 27, 2022).

93) On April 29, 2023, Employee's CT scan of her cervical spine was reviewed by Radiologist, Dr. Todd Stephens, DO. For comparison, Dr. Stephens also reviewed previous imaging of Employee's chest from June 19, 2009. Dr. Stephens found mild to moderate bilateral stenosis on C4-7 vertebrae, but did not expound as to cause. (Stephens note, April 29, 2023).

94) On April 29, 2023, Employee's CT scan of her chest was reviewed by Radiologist Dr. Rhonda Smith DO. Dr. Smith reviewed previous imaging of Employee's chest on June 19, 2009 for comparison. Dr. Smith noted no abnormal findings. (Smith note, April 27, 2023).

95) On May 3, 2023, the parties attended a hearing regarding Employee's petition for a SIME. Employer reiterated its arguments as laid out in its brief and provided context regarding the parties' position on a SIME. The parties agree that a SIME should occur but disagree as to whether Employer should dictate which providers should be selected. The designee informed Employee of the manner SIME physicians are selected. The Division maintains a current list of physicians of various specialties and physicians can be selected by the designee as they appear on the list. Often, physicians are selected based on geographic location when selected for a panel. The purpose behind this is to reduce costs for the Employer and for the sake of efficiency when multiple specialties are required it is more prudent to have an employee been seen by as many physicians as possible in a short period of time. Employee acknowledged that she understood. Designee also informed Employee that based on review of the submitted specialists, it was likely that the specialists Employer listed may still be selected due to the limited number of physicians on the SIME list for the specialties that were needed for her specific SIME panel. Employee stated she understood. Employee added that she believed adding an orthopedic surgeon to the SIME panel is warranted based on her most recent medical records that were obtained shortly before hearing. (Hearing testimony, May 3, 2023).

96) Differing medical opinions can create significant medical disputes over "causation" of Employee's continuing disability or need for treatment, "functional capacity" regarding her ability to work full time, "the amount and efficacy of the continuance of or necessity of treatment," and "medical stability." (Experience; judgment).

97) Disability and medical care benefits may be substantial in value. (Experience).

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 the employers. . . .

. . . .

4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered

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

AS 23.30.095. Medical treatments, services, and examinations. . .

(k) In the event of a medical dispute regarding determinations of 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 cost of an examination and medical report shall be paid by the employer. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. . . .

The Alaska Workers' Compensation Appeals Commission (AWCAC) in *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008) addressed the Board's authority to order a SIME under §095(k). The AWCAC referred to its decision in *Smith v. Anchorage School District*, AWCAC Decision No. 050 (January 25, 2007), and said, referring to AS 23.30.095(k):

[t]he statute clearly conditions the employee's right to a SIME . . . upon the existence of a medical dispute between the physicians for the employee and the employer.

The Commission in *Bah* stated when deciding whether to order a SIME, the Board typically considers the following 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 a SIME physician's opinion assist the board in resolving the disputes?

ANALYSIS

Should a SIME be ordered?

Employee seeks a SIME per AS 23.30.095(k). The purpose of a SIME is not to assist any party but to assist the factfinders. *Bah.* When there is a medical dispute between an injured worker's attending physician and an IME physician, a SIME may be ordered. AS 23.30.095(k). There are three requirements before a SIME can be ordered. *Bah.*

First, there must be a medical dispute between Employee's attending physician and Employer's IME. On July 6, 2021, Dr. Smith assessed Employee to have Long Covid Symptoms, thyroid dysfunction, and paroxysmal atrial fibrillation. Throughout her treatment of Employee, Dr. Smith has maintained her diagnosis of Employee as having long covid syndrome. On October 10, 2022, Dr. McCarty diagnosed Employee with bilateral sensori hearing loss consistent with Covid-19 and the vaccine. On February 8, 2022, PA-C Heinecke, assessed symptoms of vestibular migraine paired with long covid symptoms, but opined that Employee's symptoms of headache and photophobia were suspicious in their relation to vestibular migraine. On October 12, 2022, Dr. Kirkham opined that the substantial cause of Employee's need for medical treatment was a variety of non-covid factors including poor sleep, smoking, lack of exercise and psychosocial factors including history of anxiety and depression, history of chronic pain, poor expectations for improvement, self-limiting behavior, disability conviction, tendency to persevere on or overreport symptoms, misattribution of symptoms and difficulty managing stress. On December 27, 2022, Dr. Kirkham, as part of an updated records review IME, opined that there is no objective evidence of any condition related to covid-19 or covid vaccination. Employee has received workup and treatment for her multitude of somatic symptoms, including fatigue, headaches, anxiety, depression, hearing loss, vertigo, and cognitive complaints. Employee's primary physician Dr. Smith referred Employee to multiple specialists for her various symptoms. Employer's physician, Dr. Kirkham, reviewed medical reports and notes from not only from Employee's primary care provider, but also from all specialists Employee has seen. There exists

a dispute between the parties' physicians regarding the cause of Employee's symptoms, Employee's functional capacity to work, Employee's need for treatment, and Employee's medical stability.

Second, for a SIME to be ordered, the dispute must be significant. Employee seeks disability and medical benefits. Because Employee's entitlement to those benefits depends on whether her work is the substantial cause of her disability or need for further treatment, her inability to return to work and the date of medical stability, the dispute is significant because these benefits may be substantial. *Rogers & Babler*. This justifies the cost of a SIME.

Third, for a SIME to be justified, it must be demonstrated that a physician's opinion would assist the factfinders in resolving disputes. The parties' physicians are not in agreement on the above-described medical issues. There are insufficient medical opinions for the factfinders to weigh to issue a merits decision. Employee's medical records indicate a variety of symptoms with a multitude of possible diagnoses. Dr. Kirkham and Dr. Lee in their IME opinion summarized the issue best, "the one important part of Long Covid's definition is that the symptoms cannot be explained by a better diagnosis." By ordering a panel SIME, it may be possible to assess a better diagnosis. In short, additional medical opinions would aid the factfinders in resolving the disputes and this decision will order a SIME. AS 23.30.001(1), (4); AS 23.30.095(k); *Bah*.

CONCLUSIONS OF LAW

This decision orders a SIME.

ORDER

- 1) Employee's November 28, 2022, and February 2, 2023, petitions for a SIME are granted.
- 2) Per AS 23.30.095(k), the SIME will address the following: "causation" (as it relates to Employee's illness and disability), "functional capacity"(Employee's ability to work full time), "the amount and efficacy of the continuance of or necessity of treatment" and "medical stability."
- 3) An SIME panel including an ENT specialist, neuropsychologist, and neurologist will examine Employee.

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- 4) The designee responsible for obtaining SIME physicians will select appropriate physicians from the authorized SIME list.
- 5) The parties are ordered to complete and sign a SIME form in accordance with this order.
- 6) Employer is directed to follow the procedure in 8 AAC 45.092(h)(1) and (2) and provide Employee with three binders, within 10 days from this decision and order's date.
- 7) Employee is directed to follow the procedure in 8 AAC 45.092(h)(3) and (4).
- 9) The parties may submit up to 10 questions for each panelist on the SIME panel as it relates to Employee's illness/disability, causation, compensability, need for treatment, or medical stability.

Dated in Anchorage, Alaska on June 30, 2023.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
Kyle D. Reding, Designated Chair

_____/s/
Randy Beltz, Member

_____/s/
Pam Cline, 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

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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 Natasha Zanosko, employee / claimant v. Southcentral Foundation, employer; Alaska National Insurance, insurer / defendants; Case No. 202123178; 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 June 30, 2023.

/s/

Rachel Story, Office Assistant