ALASKA WORKERS' COMPENSATION BOARD

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

FELICIA CROCKETT,	)	
	)	
Employee,	)	INTERLOCUTORY
Claimant,	)	DECISION AND ORDER
	)	
v.	)	AWCB Case No. 201507018
	)	
STATE OF ALASKA,	)	AWCB Decision No. 23-0054
	)	
Self-insured Employer,	)	Filed with AWCB Anchorage, Alaska
Defendant.	)	on September 29, 2023
	)	

The State of Alaska's (Employer) June 9, 2023 petition to dismiss, and Felicia Crockett's (Employee) July 6, 2023 petition for an extension of time to request a hearing, were heard in Anchorage, Alaska, on September 28, 2023, a date selected on August 10, 2023. A June 28, 2023 hearing request gave rise to this hearing. Assistant Atty. Gen. Daniel Moxley appeared and represented Employer. Employee appeared by Zoom, testified and represented herself. The record closed at the hearing's conclusion on September 28, 2023.

ISSUE

Employer contends Employee failed to strictly or even substantially comply with her obligation to request a hearing on her pending claim timely. It seeks an order dismissing her claim.

Employee contends she has actively pursued her case since her injury occurred. She contends she filed petitions requesting more time and her claim should not be dismissed.

Should Employee's November 21, 2018 claim, filed on February 15, 2019, be denied?

FINDINGS OF FACT

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

1) Beginning on or about March 29, 2015, Employee claimed she suffered cumulative exposure to diesel fumes and other airborne irritants at work, which she contends caused or aggravated a respiratory disorder. (First Report of Injury, May 6, 2015).

2) On July 23, 2015, Employer filed and served on Employee a two-sided, Division of Workers' Compensation (Division) pre-claim controversion Form 07-6105, revised in August 1997, denying her right to temporary total disability benefits after April 26, 2015. It contended Employee submitted no medical evidence to support these benefits after that date and no evidence showing she was taken off work as a result of the reported work injury beyond that date. Moreover, Employer contended, "The employee voluntarily resigned her position with the State of Alaska effective June 9, 2015." The flip-side stated Employee's right to and time limits for filing a claim for controverted benefits. It also stated:

> Within two years after the date the insurer/employer filed this controversion notice, you must request a hearing before the AWC board. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within the two years. Before requesting a hearing, you should file a written claim.

The form also advised Employee if she was unsure whether it was too late to file a claim or request a hearing she should contact the nearest Board office. (Controversion Notice, July 21, 2015).

3) On April 10, 2018, Employer's adjuster sent Employee a letter stating, in relevant part:

> This letter is to inform you that part or all of your benefits under the Alaska Workers' Compensation Act have been denied. Enclosed please find a controversion notice (AWCB form 07-6105) which explains the reasons for denial. Also, please read the back of the controversion for your rights regarding this denial.
>
> Under the Alaska Workers' Compensation Act, if you choose to appeal this denial, you must file 1) A Claim for Benefits, also referred to as Workers' Compensation Claim (WCC), AWCB form 07-6106 with the Alaska Workers' Compensation Division. . . .

The letter also provided the Alaska Workers' Compensation Division's (Division) website address and addresses and phone numbers for each Division office state-wide. Attached to the letter was the second, two-sided, pre-claim controversion, on the August 1997 Division form, and an employer's medical evaluator's (EME) report from Lawrence Klock, MD, upon which Employer based its denial. This notice denied Employee's right to temporary total and temporary partial disability benefits and medical treatment "beyond" February 23, 2018, and permanent partial impairment benefits. (Controversion Notice; letter, April 10, 2018).

4) On August 2, 2018, Employer filed and served on Employee its third, pre-claim controversion, on the August 1997 form, and denied a bill from North Star Radiology. It stated this bill did not appear to relate to asthma, as it was for a foot x-ray. (Controversion Notice, August 2, 2018).

5) On October 25, 2018, Employee called the Division to find out how to "appeal a denial." Division staff informed her she could file a claim, "explained the adjudication process," and mailed and emailed her a "packet." The packet included the Division's *Workers' Compensation and You* pamphlet, an attorney list, claim form, medical summary, Petition form, Affidavit of Readiness for Hearing and address change forms, and a simple adjudication "flow chart." (Agency file: Judicial, Communications, Phone Call, Letter tabs, October 25, 2018).

6) On February 15, 2019, Employee filed on a Division claim form dated November 21, 2018, a claim for temporary total and permanent total disability benefits, and permanent partial impairment benefits. Her claim form did not include her case number, but included Employer's and its adjuster's addresses. Describing her injury and the reason for filing her claim, Employee said:

> Exacerbation of asthma that led to total disability. Exposed repeatedly to diesel fumes while training in the Child Support Office. Lung took a significant loss in function which led to ample medications, hospitalizations, loss of function.
>
> This injury cost me my ability to work, continue my education and basic functionability [sic]. Can't breathe, can't move. The medication used to keep me alive has significantly damaged my body. I spend most of my time in physical therapy, doctors apts, hospitalizations, emergency visits and need help with daily functions.

Attached to her November 21, 2018 claim was the following letter, stating in relevant part:

> Dear Workmen's Compensation Board,
>
> My name is Felicia L. Crockett. I am appealing my case closure. I believe my case was closed prematurely. When I went to my IME apt. [the] IME doctor did not have significant medical information to determine the case closure. I have discovered that there are significant time delays between providers/hospitals to send medical and billing information and to workmen's compensations [sic]. Sometimes the bills don't arrive to the workmen's compensation workers for six months. In my case some records never arrived to the IME doctor. I was sent to collections on several emergency doctors [sic] bills that were not paid. The hospital did end up forgiving the debts. These bills that ended up in collections never ended up with the IME doctor and possible [sic] before my workmen's compensation workers. Considering the significant lack of information, I would like my workmen's compensation case to be reinstated. . . .
>
> I can't find a lawyer who will take my case. I have been working on this by myself for the past three years. I have no idea what I am doing. I hope that I am answering the questions on form 07-6106 to the best of my ability. I know there is a delay with me turning in the appeal. I don't know what I am doing. This process is intimidating. . . .
>
> . . . Because my case was closed it is harder to get the medical help I need. It is delaying my possible wellness. I need both the finical [sic] and medical support back. Since the medical has been dropped I haven't been able to get the all [sic] the recommended medical treatments. For example, I was supposed to go through pulmonary rehabilitation and Medicare and Medicaid will only cover so much. I stopped going to speech therapy appointments because my medical coverage was cut with no warning. Getting the medical reinstated alone is a significant piece. I also need the finical [sic]. According to my doctors and even social security [sic] disability I cannot work because of my injury. I can't even clean my own house. I must get help. If I don't get the medical re-instated there is a medication that I am on that I may not receive here soon. Medicare and Medicaid don't pay for it. My doctors have been amazing at getting sample [sic] of the medication since my medical workmen's compensation was terminated. . . .
>
> Thank you for taking the time to read this. If you have any questions I can be reached at [phone number redacted for privacy]. Please let me know what the next step it [sic]. (Claim for Workers' Compensation Benefits; letter, November 21, 2018).

7) On March 6, 2019, the Division emailed Employee another attorney list, the *Workers' Compensation and You* pamphlet, and the adjudications flow chart. (Agency File: Judicial, Communications, Phone Call tabs, March 6, 2019).

8) On March 7, 2019, Employer filed and served on Employee its first post-claim controversion on the August 1997 Division form and included the information from its April 10, 2018 controversion. The notice states the adjuster mailed the controversion to Employee. (Controversion Notice, March 7, 2019).

9) Two years from March 7, 2019, was March 7, 2021. March 7, 2021, fell on a Sunday. Moving the prescribed date to Monday, March 8, 2021, and adding three days to the prescribed time because the adjuster served the notice on Employee by mail, Employee had until March 11, 2021, to either request a hearing or ask for more time to request one. (Experience, judgment and observations).

10) On March 7, 2019, Employer and a representative from a third-party medical provider that had filed its own claim for benefits, attended a prehearing conference before a Board designee. Employee did not attend. The summary for this conference shows those two parties discussed their issue, and the designee's "boilerplate" advised the "Claimant":

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

The Division served this summary on Employee at her address of record. (Prehearing Conference Summary, served March 8, 2019).

11) On May 20, 2019, Employer on a newer two-sided Division Form 07-6105, revised in November 2014, controverted Employee's right to and claim for all benefits because it contended she failed to sign and return releases timely. Unlike the Division's August 1997 form, this Division Controversion Notice Form 07-6105 stated, in relevant part:

> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this

> controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.

This controversion also referred Employee to the three state-wide Division offices if she had any questions. (Controversion Notice, May 10, 2019).

12) On August 9, 2019, Employee called the Division wanting to know her claim's status. When advised she missed her prior prehearing conference, Employee said she was told it was only on the third-party medical provider's claim and was not about hers. Division staff suggested she attend subsequent prehearing conferences. (Agency file: Judicial, Communications, Phone Call tabs, August 9, 2019).

13) On August 12, 2019, Employee filed a petition form but omitted her Division case number. She checked every box on the form and stated, "My workmens [sic] comp. was canceled too soon. I am not at a pre-injury status. I am now without medication and finances, and resources." Among the boxes Employee checked were block 13 requesting a second independent medical examination (SIME), and block 17 which states, "REQUEST FOR EXTENSION OF TIME TO REQUEST A HEARING UNDER AS 23.30.110(c)" (all caps in original). Although the petition also states Employee served it on herself, Employer and "Other," by mail, email and facsimile, she did not include any mail or email address or facsimile number for the party upon whom she served this document. (Petition, August 12, 2019).

14) On August 12, 2019, Division staff forwarded Employee's emailed Petition to Employer's attorney and advised Employee to file documents with the Division server and not directly to an individual staff member. Division staff also advised her to always serve the opposing attorney. (Agency file: Judicial, Communications, Email tabs, August 12, 2019).

15) On August 16, 2019, Employee filed another petition almost identical to her previous petition, and again omitted her Division case number. She again checked every available box including service methods, but this time, Employee also included in boxes 6 through 9 reserved for her employer's and insurer's names, mailing addresses, email addresses and fax numbers, "N/A I'm not employed" (in boxes 6 and 8), and "N/A" (in boxes 7 and 9). Again, she checked box 13 for an SIME and box 17, which was a "REQUEST FOR EXTENSION OF TIME TO REQUEST A HEARING UNDER AS 23.30.110(c)" (all caps in original). (Petition, August 12, 2019).

16) Employee apparently believed since she was no longer working for Employer, she did not need to list its or its adjuster's addresses on the petition. (Inferences from the above).

17) It is the Division's long-standing custom and practice to automatically schedule a prehearing conference when a self- or non-attorney represented injured worker files a claim or petition, so a designee can go over the claimant's pleadings, specifically. (Experience, observations).

18) On August 20, 2019, Employer filed another controversion denying Employee's claims for temporary total, temporary partial and permanent total disability benefits, permanent partial impairment benefits and medical treatment "beyond" February 23, 2018. This Division Form 07-6105 reverted back to the August 1997 version. (Controversion Notice, August 20, 2019).

19) On August 27, 2019, Employer and the third-party medical provider attended another conference. Again, Employee did not attend. The summary for this conference included the parties' discussions and repeated the same §110(c) language to the claimant included in the designee's March 7, 2019 summary. The designee also noted Employee's August 12, 2019 petition, showing the Division received and reviewed it notwithstanding Employee's failure to include her case number on the petition; the designee did not mention her August 16, 2019 petition. The designee stated in regard to the August 12, 2019 Petition, "Reason: unspecified." The designee did not note Employee's November 21, 2018 claim filed on February 15, 2019, as one of her pleadings. The Division served this summary on Employee at her address of record. (Prehearing Conference Summary, August 27, 2019).

20) The "comments" section from Division staff for the August 27, 2029 prehearing conference states the prehearing was set for the "Med [medical] prov [provider] clm [claim] – Rep [representative] may request a hearing." (Judicial, Prehearings and Hearings, Prehearing Conference Summary tabs, August 27, 2019).

21) On August 27, 2019, Employer withdrew its May 20, 2019 controversion that had been based on an alleged failure to sign releases. (Prehearing Conference Summary, August 27, 2019).

22) On September 13, 2019, Employee called the Division to ask why Employer had not reinstated her benefits. Division staff informed her that a partial controversion was still in place. Employee said she had been informed that prior prehearing conferences did not involve her claim. She inquired "about the petition she filed that was returned to her." Staff advised her she

marked all boxes on it and "probably did not intend to," and explained the "SIME" and "adjudicative processes." There was no discussion regarding her November 21, 2018 claim filed on February 15, 2019, or the March 7, 2019 post-claim controversion, and no indication staff provided Employee with a deadline for requesting a hearing on her claim or suggested she ask for more time if necessary. (Agency File: Judicial, Communications, Phone Call tabs, September 13, 2019).

23) On October 3, 2019, Employee, Employer's lawyer and the third-party provider's non-attorney representative attended a conference to discuss both her claim and the third-party medical provider's separate claim. Different lawyers were defending the two claims. The summary listed Employee's August 12, 2019 petition and again stated, "Reason unspecified." It did not mention her similar August 16, 2019 petition or otherwise discuss either. In respect to Employee's claim:

> Designee confirmed a 3/7/2021 110(c) deadline based on Employer's 3/7/2019 Post Claim Controversion. Employee advised that she is still disabled from the 3/15/2015 injury and advised that she may have identified a physician dispute between her treating physician and the . . . (EME) physician. Designee explained the . . . (AWCB) . . . (SIME) process and how to Petition for the same.

The designee provided Employee with another *Workers' Compensation and You* pamphlet and directed her how to find it on the Division's website. He encouraged her to seek assistance from the Division's Technicians if she had questions. The conference summary included the boiler-plate §110(c) language as stated in previous summaries. The Division served this summary on Employee at her address of record. (Prehearing Conference Summary, October 3, 2019).

24) The designee at the October 3, 2019 prehearing conference gave Employee an incorrect §110(c) deadline -- March 7, 2021, rather than March 11, 2021. (Experience, observations, inferences from the above).

25) The October 3, 2019 prehearing conference was the last contact Employee with the Division until February 24, 2021. (Agency file).

26) On February 24, 2021, Employee called the Division to advise that, among other things, she had been in and out of the hospital in the prior two months. (Agency File: Judicial, Communications, Phone Call tabs, February 24, 2021).

27) On March 18, 2021, the three parties appeared at another prehearing conference to discuss setting a hearing on the provider's third-party claim. The designee encouraged Employee and Employer to "work together" to file discovery information and work towards either a settlement or a hearing on Employee's claim. There was no discussion regarding the now-passed March 11, 2021 §110(c) deadline. The designee again listed Employee's August 12, 2019 "Reason unspecified" petition, but did not note her similar August 16, 2021 petition. The summary also included boiler-plate §110(c) language. The Division served this summary on Employee at her address of record. (Prehearing Conference Summary, March 18, 2021).

28) On April 8, 2021, all three parties attended another prehearing conference to schedule only the third-party medical provider's claim for a May 4, 2021 hearing. Again, there was no discussion regarding the now-passed March 11, 2021 §110(c) deadline. The designee again listed Employee's August 12, 2019 "Reason unspecified" petition, but did not mention her August 16, 2019 petition. The summary again included boiler-plate §110(c) language. The Division served this on Employee at her address of record. (Prehearing Conference Summary, April 8, 2021).

29) On May 6, 2021, *Providence Alaska Medical Center and Felicia Crockett v. State of Alaska*, AWCB Dec. No. 21-0040 (May 6, 2021) (*Crockett I*), examined an oral order from the May 4, 2021 hearing on the third-party's claim that continued that hearing. *Crockett I* explained the continuance order, gave Employer and the third-party additional directions and stated, in respect to Employee's pending claim:

> As an aside, in reviewing this case the panel noticed that Employee has filed her own claim for various benefits. Her agency file shows that she has not filed a formal hearing request called an "Affidavit of Readiness for Hearing" on that claim. It is unclear if Employee has made an informal hearing request or otherwise substantially complied with the two-year statute of limitations under AS 23.30.110(c). Consequently, Employee is advised that if Employer controverted (in other words denied) her claim on a board-prescribed controversion notice and she did not, or does not, request a hearing within two years following the filing of the controversion notice, her November 21, 2018 claim, filed on February 15, 2019, may be denied under AS 23.30.110(c). If Employee has any questions about this or any other issue in this case she is encouraged to contact an attorney or she may call the division and speak to a Workers' Compensation Technician at 269-4980.

The Division served *Crockett I* on Employee at her address of record. (*Crockett I*).

30) On June 30, 2021, the third-party medical provider and Employer attended a prehearing conference to re-schedule the hearing on the provider's claim. Employee did not attend. The designee again listed Employee's August 12, 2019 "Reason unspecified" petition, but not her August 16, 2019 petition. The summary included boiler-plate §110(c) language. The Division served this summary on Employee at her address of record. (Prehearing Conference Summary, June 30, 2021).

31) On September 15, 2021, *Providence Alaska Medical Center and Felicia Crockett v. State of Alaska*, AWCB Dec. No. 21-0084 (September 15, 2021) (*Crockett II*), resolved the third-party's claim. It did not address any issues involving Employee's claim. The Division served *Crockett II* on Employee on September 15, 2021. (*Crockett II*).

32) On May 11, 2022, Employee called the Division to check her case's status. The staff member's note states in relevant part:

> . . . She and Providence both had claims at the same time, and the provider's claim has since been resolved. However, EE's [Employee's] has not. She thought a hearing was going to be scheduled to discuss her portion. Called Grace for guidance. Looks like the EE's claim was forgotten and her deadline passed. Explained the Board's function as a court, and that EE needs to request action in order to move the process. Sent her an RFC [Request for Conference] as well as an FCR [File Copy Request] form, per her request. Also included the addresses for the AG's office and Penser so she could serve them copies. . . . (Agency file: Judicial, Communications, Phone Call tabs, May 12, 2022).

33) By September 15, 2022, Employee called the Division to report that she was still having difficulty obtaining evidence. Staff told her as long as she documented her efforts, "it should be okay." (Agency file, Judicial, Communications, Phone Call tabs, September 15, 2022).

34) On October 19, 2022, Employee emailed the Division a letter:

> To whom it may concern
>
> My name is Felicia L. Crockett. I don't know how to move forward with my workmen's comp case.
>
> My case has been on-going sense [sic] date of injury 3/2015.
>
> Why I believe I should win my case:

My lungs, body and brain have been permanently damaged first from the exposer [sic]. Secondly, due to the increase and [sic] ongoing medications. Due to the damage I am on a specialized medication called Fasenra that I will be on for the rest of my life. If I am not receiving the specialized medication my condition [sic] I destabilizes within two months.

I lost my career. I had to withdraw from the Master Program that I was in and I nearly lost my life. I have lost a child because of the poor health and excess medication I am on from my work-related injury.

Workmen's comp has done a disservice to me by delaying and terminating both finical [sic] and medical benefits. The most detrimental was when workmen's comp ended my medical benefits. I could not get the FASENRA medication and ended up in the hospitalized [sic] multiple times and back on prednisone. It took nearly six months before Medicaid/Medicare would approve paying for the coast [sic] of the FASENRA medication.

Prior to my exhaust exposure between 7/19/2010 to 12/27/2014 I was in the hospital/doctor appts. 36 times. From 3/15/2015 to 2/23/2018 I was in the hospital/doctor appts. 97 times and counting. (I added the excel workbook below.) I can't get all of the medical documents. The fact that my case is ongoing doesn't help. For instance, I have been trying to get a record of my prescriptions for over a year. I want to show the board the comparison of pervious [sic] medication I needed verse [sic] the increase in medications I have to take.
I don't know how to quantify some of the life changes I had to make to fight against the side effects of what has happened to me. For Instance, I have undergone gastric bypass surgery to help me loose [sic] the weight I have gained from taking large amounts of prednisone for extended periods of time due to my work-related injury.

I need to have both finical [sic] and medical benefits reinstated as soon as possible. I will have issues for the reaming [sic] of my life and need the benefits to take care of myself. I can't afford to keep relapsing due to not having or affording medications I need to stay functionable. Plus, the loss of income from not being able to work has had severe [sic] sever [sic] consequences that I don't know if there is a way to add up.

I have reached out to lawyers and none of them want to help me because of the intensity of my case. At one point I had a lawyer interested and I could not provide him with information he needed in a timely manner because I could not accuse [sic] my case information. I am on my own figuring out how to do this.

This past year I requested my document [sic] in writing via email at the end of November. I was told they needed to provide me my documents within 30 days. I didn't receive the CD until February. The documents are incomplete. I have

> more paper documents on hand at this time then there are on the CD that I received. I am not informed when opposing council has a new attorney or what documents they are filing against my case. I have not had their discovery sent to me for me to look at. I am not sure how to send them mine. I have signed every release of information that has been sent to me. I have done my best to ensure that my medical documents have gone to all three parties included [sic] the Social Security Administration. The amount of medical documentation from 3/15/2015 to current is overwhelming. I [sic] been chipping away at it for this case. I am slowly making progress. I hope that the information below is enough to show the severity of the impact my work-related injury has caused in my life and my benefits can be reinstated immediately. It is exhausting going from 36 doctor/hospital visits in a four year time frame to 96 and counting within three years.

Employee also cut and pasted from an Excel spreadsheet she made to compare her pre- and post-injury medical visits for her asthma. She asked the Division to serve this on opposing counsel, but it is not clear from the record that it did. (Letter, October 19, 2022).

35) On December 13, 2022, Employee called the Division for a case update. She said she had not heard from Employer's attorney or adjuster, and she wanted to know how to file a Request for Conference. Staff advised Employee about her "rights and responsibilities" and offered to re-send her the previous packet material already provided. Employee wanted Employer's lawyer's and the adjuster's information, which was provided; staff reminded her it was previously provided on May 11, 2022. (Agency file: Judicial, Communications, Phone Call tabs, December 13, 2022).

36) On January 23, 2023, Division staff emailed Employee to say it received her Request for Conference form, but "it was blank." Staff asked her to photograph the form when completed and refile it. (Agency file: Judicial, Communications, Phone Call tabs, January 23, 2023).

37) On January 31, 2023, a Division supervisor entered in Employee's file: "Please make sure EE is included in Prehearings. This is NOT JUST a provider claim. EE has filed a WCC and Petition." (Agency file: Judicial, Communications, Case Notes tabs, January 31, 2023).

38) On April 7, 2023, Employee emailed the Division and advised staff:

> . . . .
>
> This is so hard. My lack of basic access to legal help and technology is prolonging this case. I need my benefits to be reinstated. Also I have been checking with the pharmacy to get the information to show a comparison of my medications before my injury and after. New people have been hired and have no idea what has happened to my requests. They are advising me to start over. They

> said due to COVID they have had a lot of turnover. I need to get this conference done so I can tell them this information. Also to see about the information I submitted. . . .

Later, on April 7, 2023, the Division responded to Employee's April 7, 2023 email:

> Everything looks good except for questions 16-22 are left blank. Unfortunately, we wouldn't be able to process it unless it is signed. For questions number 17 & 21, it ask [sic] for your signature. You can type "/s/ Felicia Crockett" for an electronic signature. Also, question number 19 is a proof of service section, you have to fill that out stating that you sent the form to the attorney on file representing your employer/adjuster. . . . (Agency file: Judicial, Communications, and Phone Call [sic] tabs, April 7, 2023).

39) On June 9, 2023, Employer sought dismissal of Employee's claim, contending it controverted her claim on March 7, 2019, she did not request a hearing before March 7, 2021, and "Therefore, the claim should be denied under AS 23.30.110(c)." (Petition, June 9, 2023).

40) On June 27, 2023, Employee and Employer attended a prehearing conference regarding Employee's claim. The designee again advised the parties if they were unable to settle the case, either party could file an "Affidavit of Readiness for Hearing (ARH)" notifying the Board that a hearing was necessary. The summary included boiler-plate §110(c) language. (Prehearing Conference Summary, June 27, 2023).

41) On June 28, 2023, Employee opposed Employer's dismissal petition by filing and serving an email stating she had exercised "due diligence," had lack of information from opposing counsel, represented herself and had difficulties with the discovery process. (Agency file: Judicial, Communications, and Email tabs June 28, 2023).

42) On July 3, 2023, Employee emailed the Division:

> To whom it may concern,
> I am turning in a petition.
> The form does not print off correctly. I took screenshots and a picture of a signed and dated form.
> I did receive a letter stating the opposing counsel, is requesting a readiness of hearing. I am supposed to talk to him this upcoming Friday. I am going to wait until that conversation to submit a request to delay it. If that is what I think I need to do after we talk.

Employee's email included her case number. Attached to the email was a petition, which did not include her case number, but included Employer's address in blocks 6 and 8. She checked only

box 17 and requested an extension of time to request a hearing under AS 23.30.110(c). Also included on the petition was:

> Need more time to gain medical documents specifically from the pharmacy to show the increase in medication and medication use. I was not informed that the opposing councel [sic] was changed from Henry G. Tashjian to Daniel J. Moxley until the pre-hearing on June 27th. At this time I don't know what the opposing councel's [sic] discovery or case is based on.

Employee served this Petition on Employer's counsel by email. (Petition, July 3, 2023).

43) On July 6, 2023, Division staff called and advised Employee the Division was going to reject her July 3, 2023 petition because it did not include her Division case number or injury date on the form. (Agency file: Judicial, Communications, Phone Call tabs, July 6, 2023).

44) On July 6, 2023, Employee filed and served an "updated petition." This form included Employee's case number and reiterated her request for more time to request a hearing and included the above-quoted language from the July 3, 2023 petition. (Petition, July 6, 2023).

45) On July 6, 2023, about eight minutes after filing her first July 6, 2023 petition, Employee filed and served another copy of the July 6, 2023 petition, which she referred to as "Petition form number 3." (Petition, July 6, 2023).

46) On August 10, 2023, Employee and Employer attended a prehearing conference to schedule a September 28, 2023 hearing on Employer's June 9, 2023 petition to dismiss, and on Employee's July 6, 2023 petition for an extension of time to request a hearing. The summary again listed Employee's August 12, 2019 petition with "reason unspecified," but not her August 16, 2019 petition. The summary included boiler-plate §110(c) language. The Division served the summary on Employee at her address of record. (Prehearing Conference Summary, August 10, 2023).

47) On August 22, 2023, Employee emailed the Division and Employer's counsel and requested to "extend the deadline due to having COVID" and related breathing problems. She stated this was the third time she had COVID in the past two years and it was long and difficult for her to recover. Employee contended COVID had caused problems on her case both in her ability to work on it and to access resources. She asked if there was anything she needed to do. (Agency file: Judicial, Communications, Email tabs, August 22, 2023).

48) On August 22, 2023, Moxley emailed Employee and the Division, wished Employee a speedy recovery and asked, "What deadline do you want to have extended?" (Agency file: Judicial, Communications, Email tabs, August 22, 2023).

49) On August 24, 2023, Division staff contacted Moxley and explained the Division had scheduled a hearing for September 28, 2023, with deadlines for discovery. Moxley thought this was what Employee wanted extended and, if so, Employer did not object to the request and "possibly rescheduling hearing." Division staff was trying to get clarification from Employee. (Agency file: Judicial, Communications, Phone Call tabs, August 24, 2023).

50) On September 21, 2023, Employer contended, "Neither party ever filed a petition for SIME or otherwise attempted to initiate an SIME process." It also cited applicable statutes and cited §110(c) as support for its petition to dismiss Employee's claim. Employer contended the deadline for Employee to either request a hearing or ask for more time to request one "is long since passed." It contended Employee did not strictly comply with §110(c) and her failure to comply prejudiced Employer because it will increase "its insurance rates." Employer contended it is undisputed that Employee never requested a hearing. Moreover, it contended Employee also failed to substantially comply with §110(c). Employer contended, "In this case, Employee knew about the two-year deadline, as demonstrated above, but took no action whatsoever that would demonstrate a need for additional time." It contended Employee never asked for more time to request a hearing until July 3, 2023. It contended, "And there was no other action by Employee that would clearly indicate her need for additional time to request a hearing." Employer addressed the "excuses" Employee offered to extend her time to request a hearing, and denied any had merit. It contended Employee's claim for stated and implied benefits should be denied. (Hearing Brief, September 21, 2023).

51) At hearing on September 28, 2023, Employer reiterated its briefing arguments and contended that by checking all boxes on the two petition forms, Employee rendered them meaningless. It cited no legal authority for that contention, and did not explain how its insurance premiums would go up if Employee was given more time to request and schedule a hearing on her claim. (Record).

52) At hearing on September 28, 2023, Employee testified she knew her claim had been denied, but was confused. She spoke with Division staff when she had questions and they assisted her. Employee said she had been actively working on her claim for several years. She

completed releases when asked, and said she wanted to get an "independent medical examination," but the adjuster told her she had to pay for it, it was costly, and Employee testified she could not afford to pay a physician or pay travel expenses to go to Seattle for the examination. She recounted her bouts with COVID-19 since her work injury, surgery, and other health concerns many of which she contends were caused by her work exposure. Employee said she had difficulty finding an attorney and often received no return calls from them, the Division or timely responses to her emails. She did not recall filing petitions requesting more time to ask for an SIME and a hearing, but upon being informed she had, Employee queried, contrary to Employer's position that checking all boxes made the petitions meaningless, "why everything equals nothing" on her petitions. Employee said she would be ready for hearing in a few months, and would not need much longer to prepare for a hearing, which she wants to have. She asked that her claim not be "thrown away" because she used the wrong form or checked the wrong box. (Employee).

PRINCIPLES OF LAW

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

> (1) this chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
> . . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and . . . 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 on not only direct testimony, medical findings, and other tangible evidence, but also on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

Richard v. Fireman's Fund, 384 P.2d 445, 449 (Alaska 1963), said:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), an adjuster provided a wrong §110(c) deadline to the claimant at a prehearing conference. The designee did not correct the error and the Board denied the claim under §110(c). *Bohlmann* said:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation (footnote omitted). We have not considered the extent of the board's duty to advise claimants. . . .
> . . . .
>
> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

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

> (k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, 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. . . .

AS 23.30.110. Procedure on claims. . . .

> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied. . . .

AS 23.30.110(c) requires an injured worker to prosecute a claim timely once the employer controverts it. *Jonathan v. Doyon Drilling, Inc*., 890 P.2d 1121, 1124 (Alaska 1995). *Tipton v. ARCO Alaska, Inc.,* 922 P.2d 910, 912-13 (Alaska 1996) noted a statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it."

AS 23.30.110(c)'s objective is not for the claimant to "generally pursue" the claim; it is to bring a claim to the Board for a decision so speed and efficiency goals in Board proceedings are met. The claimant bears the burden to establish with substantial evidence a legal excuse from the §110(c) statutory deadline. *Providence Health System v. Hessel*, AWCAC Dec. No. 131 (March 24, 2010). A claimant who bears the burden of proof must "induce a belief" in the minds of the factfinders the facts being asserted are probably true *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

Kim v. Alyeska Seafoods, Inc., 197 P.3d 193, 196-99 (Alaska 2008) said:

> The first and last sentences of AS 23.30.110(c) govern the manner by which hearings are requested before the Board and the consequences of failure to prosecute a claim:
>
> Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied (citation omitted)
>
> The first sentence of the subsection sets out prerequisites for *scheduling* a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing (citation omitted; italics added). The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if "the employee does not request a hearing within two years" of controversion, "the claim is denied" (citation omitted). . . . But because a statutory dismissal results from failing to *request* a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar (italics in original). We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory.
>
> . . . .

Second, the legislature added the affidavit requirement to create procedural guidelines for the orderly conduct of public business. Although the last sentence of subsection .110(c) imposes a penalty on a claimant for failing to meet the deadline to request a hearing, legislative history supports the conclusion that the primary purpose of requiring an affidavit was to create guidelines for the orderly conduct of public business (footnote omitted). . . .

Finally, this case aptly demonstrates the serious consequences of a conclusion that the affidavit requirement is a mandatory component of a request for a future hearing -- a party who wants to request a future hearing, but is for legitimate reasons unable to truthfully state readiness for an immediate hearing, faces denial of workers' compensation benefits.

. . . .

In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything (footnote omitted). A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance (footnote omitted). We construe subsection .110(c) to require filing a request for hearing within two years of the date of the employer's controversion of a claim. If within that two-year period the claimant is unable to file a truthful affidavit stating that he or she actually is ready for an immediate hearing, as was the case here, the claimant must inform the Board of the reasons for the inability to do so and request additional time to prepare for the hearing. Filing the hearing request and the request for additional time to prepare for the hearing constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim (footnote omitted). If the Board agrees to give the claimant more time, it must specify the amount of time granted to the claimant. If the Board denies the request for more time, the two-year time limit begins to run again, and the claimant has only the remainder of that time period to file the paperwork necessary to request an immediate hearing (footnote omitted).

. . . The lack of a Board regulation to deal with exceptional circumstances, and the myriad reasons why a party might not be able to swear truthfully that the claimant is prepared for an immediate hearing despite conducting discovery and obtaining evidence, make strict adherence to an affidavit requirement problematic. A party or attorney should not be in a position of having to choose between perjury and relinquishing a valid claim.

. . . Although Kim's request was titled differently, he too requested an extension of time for a hearing. The Board never ruled on the merits of Kim's request, presumably because he did not file an affidavit of readiness with the motion for continuance (footnote omitted). If so, this seems to place form over substance

> (especially when the motion was discussed at the pre-hearing conference) (footnote omitted).
>
> On remand, the Board should fully consider the merits of Kim's request for additional time and any resulting prejudice to Alyeska. If in its broad discretion the Board determines that Kim's reasons for requesting additional time have insufficient merit, or that Alyeska would be unduly prejudiced, the Board can set a hearing of its own accord or require Kim to file an affidavit of readiness within two days -- the amount of time remaining before the original two-year period expired.
>
> **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.

Narcisse v. Trident Seafoods Corp., AWCAC Dec. No. 242 (January 11, 2018) stated the two-year period is tolled when "some action" by the employee shows a need for additional time before requesting a hearing, and a request for an SIME is a demonstration that additional time is needed. *Roberge v. ASRC Construction Holding Co*., AWCAC Dec. No. 19-001 (September 24, 2019), held the Board is obliged to find a way around the running of the §110(c) deadline because statute of limitations defenses are generally disfavored.

> **8 AAC 45.060. Service**. . . .
>
> (b) . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail. . . .
>
> **8 AAC 45.063. Computation of time**. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the day which is neither a Saturday, Sunday nor a holiday.

ANALYSIS

Should Employee's November 21, 2018 claim, filed on February 15, 2019, be denied?

Employer's July 21, 2015, April 10, 2018, and August 2, 2018 pre-claim controversions are immaterial to the issue decided here, because they only denied Employee's right to certain benefits, and not a claim for any benefits. Therefore, they did not start the §110(c) clock. *Jonathan*. These Division documents are, however, confusing and misleading. Even though Employee received these controversions before she filed a claim, the pre-claim controversions do not differentiate between pre- and post-claim denials. These controversions informed Employee she had two years to request a hearing, or she would lose her right to benefits denied. The forms then advised her to file a claim before requesting a hearing. These documents could be read to mean she must request a hearing on a claim she had not filed. In other words, the notices begged the question: Did the two-year period under §110(c) begin to run on the date Employer filed these controversions, or did it begin once she filed a claim? The 1997 Division forms did not properly inform or advise Employee of her rights. *Richard*; *Bohlmann*.

Employee filed her November 21, 2018 claim on February 15, 2019. It is undisputed that Employer controverted her claim on March 7, 2019, and served it on her by mail. Employer's "post-claim controversion" started the clock ticking for Employee to take some action on her claim. AS 23.30.110(c). Employee called the Division on October 25, 2018, and obtained assistance. This resulted in her filing a claim dated November 21, 2018, on February 15, 2019. Attached to her claim was Employee's letter explaining her position, advising she could not find an attorney to assist her, and admitting, "I don't know what I am doing. This process is intimidating. . . ." In response, the Division emailed Employee another attorney list, another Division informational pamphlet and the adjudications flow chart.

Applying the Act, case law and associated regulations to this issue, it is clear Employee had to either request a hearing on her claim, or ask for more time to request one, on or before March 11, 2021. *Kim*. Two years from March 7, 2019, was Sunday, March 7, 2021. In computing time prescribed under the Act or its regulations, the last day of the period is included unless, as here, it was a Sunday. In such cases, the §110(c) deadline extended until the end of the next day which was not a Sunday. 8 AAC 45.063(a). This moved the March 7, 2021 §110(c) deadline to March 8, 2021. Because Employer served the controversion on Employee by mail, three days are added

to the prescribed §110(c) period Employee had to request a hearing or more time to request one. 8 AAC 45.060(a); *Kim*. This moved the March 8, 2021 §110(c) deadline to March 11, 2021.

On October 3, 2019, the designee gave Employee an incorrect, March 7, 2021 §110(c) deadline that was four days too early. A similar error in which a designee failed to correct a wrong §110(c) date given by an adjuster to the claimant at a prehearing conference resulted in a dismissal order being reversed by the Alaska Supreme Court. *Bohlmann*. As it turns out, the designee's error here was immaterial, because on August 12, and August 16, 2019, Employee twice petitioned with a "REQUEST FOR EXTENSION OF TIME TO REQUEST A HEARING UNDER AS 23.30.110(c)." She also twice petitioned for an SIME under AS 23.30.095(k). Employee's agency file shows Division staff forwarded her August 12, 2019 petition to Employer's attorney, so even if she failed to properly serve it, the Division served it for her. Even though Employee checked every box on the Petition form, she undeniably checked two boxes -- one seeking more time to request a hearing and one asking for an SIME. *Kim*; *Narcisse*. At hearing, Employer contended that by checking every box, Employee rendered her petitions "meaningless," and by asking for "everything," she made the petitions the equivalent of "asking for nothing." It cited no law to support this contention.

Meanwhile, a third-party medical provider pursued its claim. Employee testified she was told she did not need to attend prehearing conferences that did not involve her case. Her testimony was credible, logical, and explained why she missed several prehearing conferences that only involved the third-party's claim. AS 23.30.122. Eventually, *Crockett I* and *II* resolved the provider's claim. However, during prehearing conferences for the medical provider's claim, designees beginning on August 27, 2019, noted Employee's August 12, 2019 petition but not her August 16, 2019 petition, both of which requested more time to request a hearing under §110(c), and an SIME. For reasons not shown in the record, the August 27, 2019 designee inexplicably said the reason Employee filed her August 12, 2019 Petition was "unspecified," even though she checked every box on the form, which included asking for more time, and for an SIME. Unfortunately, subsequent designees at every prehearing conference thereafter repeated this.

On September 13, 2019, Employee called the Division to see why her benefits had not been reinstated. Staff informed her that a partial controversion remained in place. Employee advised

she had been informed she did not need to attend prehearing conferences that did not involve her claim. When asked why her recent petition had been returned to her, Division staff told her it was because she marked all boxes and suggested she "probably did not intend to." The summary of this conversation in Employee's agency file does not include any discussion regarding her November 21, 2018 claim she filed on February 15, 2019, Employer's pending March 7, 2019 post-claim controversion, the deadline for requesting a hearing on her claim or any suggestion she ask for more time to do so if necessary, which the record shows she had already done -- twice.

It is the Division's long-standing procedure to hold a prehearing conference *specifically* addressing petitions filed by unrepresented injured workers. *Rogers & Babler*. Why the Division did not do so in this instance, where Employee candidly admitted, "I don't know what I am doing. This process is intimidating. . . ." and why a designee decided Employee "probably did not intend to" do what she in fact had done twice -- petition for more time to request a hearing, and request an SIME -- is not discernible from the record. The Division conducted a prehearing conference on August 27, 2019, but comments from that conference clearly show, as does the summary itself, that this conference was held only to discuss the medical provider's hearing on its claim.

At hearing, Employee credibly testified she had difficulty obtaining medical and prescription records during 2019 through 2021, and thereafter. AS 23.30.122. This is a clear indication that she was not ready to proceed to a hearing on her claim, and could not have signed an affidavit stating that she was without perjuring herself. *Kim*. On March 18, 2021, the parties appeared at another prehearing conference to set a second hearing on the medical provider's claim. The designee at this prehearing conference was apparently not aware that the March 11, 2021 §110(c) deadline had already passed. According to the prehearing conference summaries, no designee at any prehearing conference after August 12, 2019 discussed Employee's two pending August 2019 petitions, her requests for more time to request a hearing, or her requests for an SIME.

On May 11, 2022, Employee called the Division to check on her case. A staff member recorded in her agency file that Employee knew the third-party provider's case had been resolved and

"thought a hearing was going to be scheduled to discuss her portion." The staff person consulted with her supervisor for guidance and added, "Looks like the EE's claim was forgotten and her deadline passed." By January 31, 2023, a Division staff supervisor noticed confusion by Division staff concerning this case. She noted, "Please make sure EE [Employee] is included in Prehearings. This is NOT JUST a provider claim. EE has filed a WCC [claim] and petition."

Eventually, Employer moved to dismiss Employee's claim and she again requested more time to request a hearing. Employer contends neither party ever petitioned for an SIME. This is not true as demonstrated in Employee's August 12 and August 16, 2019 petitions for an SIME. Employer contends Employee did not strictly or substantially comply with §110(c) because she never requested a hearing and "took no action whatsoever that would demonstrate a need for additional time." The problem with Employer's contention is of course, Employee requested an extension of time to comply with §110(c) -- twice. The Division inexplicably ignored her requests.

The legislature intends that the Act will be interpreted to ensure efficient and fair delivery of benefits to injured workers who are entitled to them, at a reasonable cost to employers. Hearings in these cases must be impartial and fair to all parties, afford due process and present an opportunity for parties' arguments and evidence to be fairly considered. AS 23.30.001(1), (4). The Division owes a duty to injured workers to advise them as to the real facts which bear upon their right to compensation and instructing them on how to pursue that right under the law. *Richard*. The Division must inform a self-represented claimant how to preserve her claim. A failure to do so is "an abuse of discretion." *Bohlmann*.

Given the above facts, the Division did not satisfy its duty to advise Employee how to preserve and pursue her claim once she requested more time to request a hearing, and an SIME. It did not specifically convene a prehearing conference to address her August 12 and August 16, 2019 petitions and apparently returned one of them to her because she checked all blocks on the form. Division staff did not review the file in enough detail when communicating with Employee to properly advise her regarding §110(c). Indeed, a staff supervisor candidly admitted Employee's claim "was forgotten and her deadline passed." *Richard*; *Bohlmann*.

Kim made it clear that a formal Affidavit of Readiness for Hearing is not required to protect a claimant's rights under §110(c). If Employee could not honestly file an affidavit because she had not completed discovery, she could ask for more time. She had to do something to show she needed more time. *Kim*. Employee requested an SIME twice in 2019, which is a demonstration that additional time was needed. *Narcisse*. She expressly asked for more time twice in 2019. A §110(c) defense is generally disfavored and neither the law nor the facts will be strained in aid of it. *Tipton*. Consequently, this decision is obligated to "find a way around" the running of §110(c) if possible. *Roberge*. Given the above analysis, this task is not difficult, and Employee met her burden and substantially complied with the §110(c) deadline. *Hessel*; *Saxton*. Therefore, any factual or legal "excuses" she offered are immaterial. *Hessel*.

Employee tolled the §110(c) deadline on August 12 and August 16, 2019, when she requested more time to request a hearing and requested an SIME. *Kim*; *Narcisse*. Employer contends it has been prejudiced by her delay because it is increasing its insurance premiums. Employer is self-insured; at hearing it could not explain how any further delays will increase Employer's insurance premiums. Moreover, Employer should have known since March 2021, that Employee had not formally requested a hearing, but it did not raise dismissal until June 9, 2023, weakening its contention that this ongoing case increased its attorney fees, costs or insurance premiums.

Given the above, Employee's petition is moot; she does not need an "extension." Instead, Employee has "the amount of time remaining before the original two-year period expired" between August 12, 2019, and March 11, 2021 (578 days) to request a hearing, and submit an affidavit stating she is fully prepared and ready to schedule that hearing. *Kim*. This decision and order is filed on September 29, 2023; 578 days from this date is Tuesday, April 29, 2025; it will be served on the parties by mail, which moves the deadline to May 2, 2025. 8 AAC 45.060(b).

The Division will be directed to convene a prehearing conference immediately to discuss Employee's request for an SIME. Employee is advised that an SIME may be ordered if there is a significant medical dispute between her attending physicians and Dr. Klock. She is further advised to attend future prehearing conferences in person, if possible, so Division staff can assist

her in completing forms necessary for the SIME process. Employee should be prepared to present to the designee at the next prehearing conference all medical records from her attending physicians that disagree with any opinions expressed by EME Dr. Klock in his report. This is the evidence she will need to support her request for an SIME. *Richard*; *Bohlmann*. Many of these records may already exist in Employee's agency file, and she can obtain a copy upon request.

The parties may also stipulate to an SIME, in which case one will be scheduled. If the parties do not agree on an SIME, the designee is directed to set the matter on for an SIME hearing, promptly.

CONCLUSION OF LAW

Employee's November 21, 2018 claim, filed on February 15, 2019, will not be denied.

ORDER

1) Employer's June 9, 2023 petition to dismiss is denied.
2) Employee's July 6, 2023 petition for an extension of time to request a hearing is denied as moot.
3) Employee has until May 2, 2025, to complete her discovery, obtain an SIME if appropriate, request a hearing and file an affidavit stating she is ready to schedule that hearing.
4) The Division is directed to schedule, and the parties are directed to appear at, a prehearing conference at the next mutually available date for the parties, to review and either stipulate to an SIME, or set the SIME issue on for a hearing.

Dated in Anchorage, Alaska on September 29, 2023.

ALASKA WORKERS' COMPENSATION BOARD

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Robert C. Weel, Member

/s/
Bronson Frye, Member

PETITION FOR REVIEW

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Felicia Crockett, employee / claimant v. State of Alaska, self-insured employer; defendant; Case No. 201507018; 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 September 29, 2023.

/s/
Lorvin Uddipa, Workers' Compensation Technician