ALASKA WORKERS' COMPENSATION BOARD

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

TERRY PARSONS, Employee, Claimant, v. CRAIG CITY SCHOOL DISTRICT, Employer, and ALASKA MUNICIPAL LEAGUE JOINT INS. ASSOC., Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 200111621 AWCB Decision No. 23-0069 Filed with AWCB Juneau, Alaska on November 21, 2023

Craig City School District's and Alaska Municipal League Joint Insurance Association's (Employer) August 2, 2023 petition for a prelitigation screening order was heard in Juneau, Alaska, on November 7, 2023, a date selected on September 21, 2023. An August 29, 2023 hearing request gave rise to this hearing. Terry Parsons (Employee) appeared, represented herself and testified. Attorney Rebecca Holdiman Miller appeared and represented Employer. All parties appeared telephonically. The record closed at the hearing's conclusion on November 7, 2023.

ISSUES

Employer objected to Employee's non-party witness testimony because Employee did not file a witness list. It also contended the witness's written affidavit was already in the record so additional testimony would be duplicative and her testimony was not relevant.

Employee contended she filed a witness list. She contended she expected the non-party witness to testify regarding the content of her statement and to add new evidence. Specifically, Employee contended the witness testimony will prove Employer failed to properly train her to use a ladder which led to her work injury. Employer's objection was sustained, and Employee's witness was not permitted to testify.

1) Was the oral order sustaining Employer's objection to Employee's witness testimony correct?

Employer contends Employee filed several claims and lost her case on the merits, which was affirmed by the Commission, despite that, Employee then filed a petition and additional claims ,which were dismissed with prejudice, but she appealed to the Alaska Workers' Compensation Appeals Commission (Commission) and the Alaska Supreme Court (Court). Employer contends both appeals tribunals affirmed dismissal. It contends Employee has filed yet another claim seeking the same relief with no new evidence supporting her claim and it should be barred under *res judicata*. Employer contends Employee's vexatious, frivolous, and duplicative claims have caused Employer to incur excessive expense and unnecessarily burdens the Board. It contends it is highly likely Employee will appeal any adverse ruling and file another claim. Employer requests an order granting its petition for a prelitigation screening order. Employer contends Employee should be allowed to file new claims or petitions only if they are definitive, detailed and legally sufficient to state a claim upon which relief may be granted and do not restate grounds for relief that have been or could have been asserted in a prior claim against Employer.

Employee contends she was injured at work, and she should be awarded medical and permanent total disability (PTD) benefits. She contends the prior decisions in her case were wrong and she will pursue benefits until she obtains them. Employee opposes a prelitigation screening order.

2) Should Employer's August 2, 2023 petition for a prelitigation screening order be granted?

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence or are reiterated from *Parsons v. Craig City School District*, AWCB Dec. No. 11-0140 (September 13, 2011) (*Parsons I*), *Parsons v. Craig City School District*, AWCAC Dec. No. 168 (August 30, 2012) (*Parsons II*), *Parsons v. Craig City School District*, AWCB Dec. No. 18-0013 (February 7, 2018) (*Parsons III*), and *Parsons v. Craig City School District*, AWCAC Dec. No. 255 (November 26, 2018) (*Parsons IV*), *Parsons v. Craig City School District*, AWCB Dec. No. 21-0004 (January 8, 2021) (*Parsons VI*) and *Parsons v. Craig City School District*, AWCAC Dec. No. 293 (December 20, 2021) (*Parsons VII*):

1) On June 29, 2001, Employee was injured while working as a custodian for Employer. She was closing a pull-down attic ladder when it came back down, hitting her right arm and chest and knocking her to the floor. Soon after the injury, Employee began to experience symptoms, including pain in her head, neck, shoulders, arms, legs, chest, back, abdomen, pelvis, inflammation throughout her entire body, and diarrhea. (*Parsons I*).

2) On November 30, 2001, Employee filed a claim for temporary total disability (TTD) and temporary partial disability (TPD) benefits, medical and related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. She reported injuries to her arms, sides, back, hands, abdomen, and upper body. (*Parsons I*).

3) On July 23, 2001, Michael Melendrez, DC, released Employee to work with restrictions. (*Parsons I*).

4) On February 28, 2002, Howard B. Kellogg, Jr., MD, a vascular, thoracic and general surgeon, Larry D. Iversen, MD, an orthopedic surgeon and Richard Carter, MD, a psychiatrist, examined Employee for an employer's medical evaluation (EME). (*Parsons I*).

5) On January 13, 2003, Employee saw Bruce Schwartz, MD, at SE Orthopedics & Sports medicine:

> She states that she had an injury a year and a half ago in which a ladder that pulls down from the ceiling apparently fell onto her forearms. She states that she had her elbows flexed at the time period she doesn't know exactly what happened because she sort of lost a couple of seconds. She states the right side of her head really lit up and then she had arm pain and has subsequently had right leg pain, back pain, abdominal pain, etc. She has had pain that extends all the way down into the long finger of her right hand. She has had occasional neck discomfort. Apparently she has seen numerous physicians. This was work related but was

> evaluated by a workers' comp independent medical evaluation and was subsequently denied.
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> She states that she had abdominal pain, lumbar pain, and leg pain prior to a hysterectomy that she had five months prior to this injury but the hysterectomy took the pain away. When she had this injury, the pain came back and has been worse.
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> Her symptoms appear to be in the shoulder, pretty much in its entirety, with radiation down the upper arm to the forearm and occasionally into the long finger of the right hand. She has had mild neck discomfort. She states her back hurts in the mid thoracic region, and she has pain in her stomach and down her right leg essentially in its entirety.
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> She has had an abdominal ultrasound and a colonoscopy. She has had a thoracic spine MRI which revealed a "small 2-mm right paracentral disc protrusion at T7-T8" and a lumbar spine MRI which revealed some "minimal central stenosis at L4-5 and L5-S1". Accompanying medical records from Dr. McKinney and Dr. Aaron suggest a very thorough workup for the above complaints. She continues to work as a custodian in Klawock.
> . . . .
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> I really am not very comfortable sorting out her myriad of complaints. Although symptoms referred to the long finger of the right hand may well represent a C7 radiculopathy, she certainly has full motion of her cervical spine and no other corresponding physical abnormalities. The MRI findings don't correlate with her physical examination, and so I cannot lend a lot of credence to them as the cause of her symptoms. Basically, I suggest she continue as she is at present and perhaps things will get better, or if they get worse, we may be able to figure out what is going on. (Schwartz progress note, January 13, 2003).

6) On September 2, 2010, Employee filed another claim relating to her June 29, 2001 work injury, and as amended on April 14, 2011, requested TTD, TPD, permanent total disability (PTD) and permanent partial impairment (PPI) benefits, medical and related transportation costs, penalty, interest and a finding of unfair or frivolous controversion. She reported complaints and symptoms of body inflammation, and injuries to her arms, chest, head, right side, legs, and shoulders. (*Parsons I*).

7) On January 13, 2011, orthopedic surgeon Lance N. Brigham, M.D., Dr. Kellogg and Dr. Carter, examined Employee for an EME. (*Parsons I*).

8) On August 16, 2011, Marla Anderson testified as a witness for Employee and Employer cross-examined her about her account of Employee's 2001 work injury. (*Parsons I*).

9) On September 13, 2011, *Parsons I* held (1) Employee's November 30, 2001 claim was not denied under AS 23.30.110(c) and (2) Employee's 2001 work injury was not a substantial factor in her past and current need for medical treatment for her ongoing complaints, symptoms and disability. *Parsons I* considered Maile J. Roper's, DO, medical records and opinions and denied Employee's November 30, 2001 and September 2, 2010 claims. (*Id*.).

10) On August 30, 2012, the Commission issued *Parsons II* (1) reversing *Parsons I*'s order denying Employer's petition to dismiss under AS 23.30.110(c) and (2) affirming its order denying Employee's claim for benefits. (*Parsons II*).

11) On September 18, 2017, Employee requested her claim be reopened in a letter which stated:

> I wrote a letter a while back. And your office gave me a certain amount of time before closing my case. I couldn't get my info [sic] in time because of the stress and also sickness and meds [sic], I was on. The meds [sic] took their toll on me. . . . Please help me reopen my case. So I can live the rest of life with the help I deserved a long time ago. (*Parsons III*).

12) On October 11, 2017, Employee filed a June 7, 2010 notarized letter from Marla Anderson. Ms. Anderson stated she witnessed Employee's 2001 work injury and provided an account of her observations. (Evidence, October 11, 2017).

13) On February 7, 2018, *Parsons III* issued. It treated Employee's September 18, 2017 letter as a petition to modify. *Parsons III* found her request untimely and that *res judicata* barred her request. It dismissed Employee's petition to reopen her case with prejudice. (*Parsons III*).

14) On November 26, 2018, *Parsons IV* issued and affirmed *Parsons III*'s dismissal of Employee's petition. (*Parsons IV*).

15) On November 20, 2019, the Court affirmed *Parsons IV*. (*Parsons v. Craig City School District*, Memorandum Opinion and Judgment No. 1748, November 20, 2019) (*Parsons V*).

16) On September 8, 2020, Employee sought PTD, an unfair or frivolous controversion finding, a penalty for late paid compensation and interest for her 2001 work injury. She described the nature of the injury or illness as joint pains and nerve damage when an attic ladder fell on her which "caused damages, yrs [sic] of stress an [sic] medicines numerous. [sic] that affected my body along with injury!" The reason Employee provided for filing the claim was, "injury at work caused permanent total disability and I Terry M Parsons on disability because of injury that

happened on the job 2001. Also new findings from injury neck damage, affected by body." (*Parsons VI*).

17) On October 14, 2020, at a prehearing conference, Employee was informed she was responsible for obtaining, filing with the board, and serving on Employer the medical opinions she intended to rely on to prove her claim. She was directed to contact her physician's office to obtain copies of her medical records, file them with the board, and serve them on Employer. Employee was advised to obtain a medical opinion regarding issues relating to her claims, including causation, prior to a hearing on her claim. (*Parsons VI*).

18) On January 8, 2021, *Parsons VI* issued and held *res judicata* barred Employee's claim. It dismissed her claim with prejudice and denied Employer's petition for attorney fees and costs it incurred defending against Employee's claim holding the Act only provides for awarding fees to an employer against an injured worker when fraud by the injured worker was demonstrated. (*Parsons VI*).

19) On December 20, 2021, *Parsons VII* issued and affirmed Parsons *VI*. (*Parsons VII*).

20) On March 22, 2023, the Court affirmed *Parsons VII*. (*Parsons v. Craig City School District*, Memorandum Opinion and Judgment No. 1957, March 22, 2023). (*Parsons VIII*).

21) On July 19, 2023, Employee requested a prehearing conference but did not provide a reason for her request. (Request for Conference, July 19, 2023).

22) On August 2, 2023, Employer requested the August 17, 2023 prehearing conference be cancelled or, in the alternative, a prelitigation screening order be issued. (Petition, August 2, 2023; Attachment to Petition to Cancel Prehearing or, in the Alternative, for a Pre-litigation Screening Order, August 2, 2023).

23) On August 17, 2023, the Board designee asked Employee why she requested a prehearing conference:

> Employee stated she requested the prehearing conference because it is not fair that she still needs medical treatment and is unable to work due to her work injury and she is not getting benefits. The board designee explained to Employee that her past claims were denied due to insufficient evidence, which the Alaska Supreme Court affirmed in March 2023. Employee stated that was not fair because she already "proved" her case with evidence from her doctors in Alaska. She asked whether she had to file the evidence again. The designee reiterated that her previous claims were denied and the decisions were final and Employee would need to file a new claim with new evidence supporting a claim as the evidence she

> had already submitted had been considered and her claims were denied due to insufficient evidence. Employee stated her new treating doctors would not know about her work injury and asked how she was supposed to get evidence. The board designee informed Employee it is her duty to obtain evidence to support her claim and the board does not assist injured workers with obtaining medical evidence from treating physicians. . . . (Prehearing Conference Summary, August 17, 2023).

24) On September 12, 2023, Employee sought PTD benefits, a finding of unfair or frivolous controversion, penalty for late paid compensation and interest for "injured at school when putting attic ladder back up, came back down on me. causing joint pains muscles, Fibromyalgia through out body, also setting up trigger points nerve damage, back damage, head also." Under "Reason for filing claim," Employee wrote, "injured on job, need medical treatment still today. head injury causing mental block kept me from getting benefits. because of stress and confusion and damage from being knocked out, need benefits, life time medical damage." (Claim for Workers' Compensation Benefits, September 12, 2023). She attached the following handwritten statement:

> medical facts sent many times about my condition. From early on dates and now, Facts about accident, causing my injuries that will last a life time. Heavy weight From ladder causing blood in urine, inflammation. early on cortisone shots. Also cortisone shots I get today, as needed. From orthopedics doctors at cape fear orthopedics. same reason I was at seeing Doctor roper. Trigger points set up from accident, that caused life long inflammation in my joints. Stressed out hurting taking many other medicines, along the way. Even Ins. Doctors admitting how bad injuries are. But never once acknowledged the facts, of injuries lasting me a lifetime. But Doctor Roper's facts, lasting me a life time. not well and not resolved. Still needing treatment. (Many other Doctor's Facts) about my hips problems started after accident.
>
> Statement of Facts
> June 29, 2001 injured when ladder fell on me. Witness Marla Anderson. 001525 exc000063.
> July 9, 2001 christopher Occhino inflammation in Body, same as today. Blood in urine. Exc 000090
> July 23, 2001 (Many pains like today) treated by Michael Melendrez for many body pains. Exc. 000090
> 2002 orthopedic Dr. Larry D. Iverson, Howard Kellogg MD. reports contusion right biceps, left wrist contusion, back sprain all work related. which I was treated by Brain and Spine Doctors, in Concord N.C. yr ago. Ashley Howell notes were sent. Exc 000095
> May 7, 2003 Schwartz, MD treated me with shots for cortisone.

> Dr. Roper 29, 2003 no doult trigger points setup by accident at school. cortisone shots.
> Dr. Thomas treated me for hip pain from accident.
> Feb. 2, 2010 Dr Schwartz bilateral sacrolitis Exc 000089
>
> 2. While dealing with finances pain stress harassment. Medical treatments the system, the stress caused mental block. Were alot of my life was blocked out I couldn't handle it. And at that time, I didn't realize what was happening to me. Because the accidental injuries did a number on my body, the whole body, accidental injuries cause lots of damages to my body. causing lots of Trauma to my body, harm.
> pg1. doctor facts early blood in urine when inflammation start, Doctor christopher Occhino Doc Melendrez the joints damage.
> Doc Kellogg back sprain work related. all early on
> Ashley Howell, Doctor Roper cortisone shots orthopedics Cape Fear Eric Reisinger, PA.C on going today. injuries not resolved
> bilateral hip damage seen earlier on also and not present.
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> 3. Argument
> never had any hip problems until accident. then issues started. Doctors was sending me back to work injured. And after working many yrs injured, the damage from accident was getting worse. And my employer knew I was suffering and seeking doctors care. Wrongfully firing me with false right ups, which made me feel worse, I left the Job still seeking medical answers. And soon after was told by Oregon Doctor's to go on Disability. Even had witness that saw my accident. All the body pains are coming from the inflammation and damage to my joints. not, ever had so much pains and health issues. until I had accident that caused injuries, depressed From pain and Stress of Doctors and Supervisor. Also From having to go on Disability, was life changing. Knowing I couldn't do anything about anything going on in my life. nervous all the time. I'am a reck, all the time. Fighting For my health and rights has really taking a toll on my life and wellness. (Statement, September 12, 2023).

25) On September 13, 2023, Employer requested Employee's September 12, 2023 claim be dismissed based upon *res judicata*. (Petition, September 13, 2023).

26) On September 21, 2023, an oral hearing was scheduled to decide, "Should Employer's August 2, 2023 petition for a prelitigation screening order be granted." The designee directed parties to file witness lists by close of business on October 31, 2023 in accordance with 8 AAC 45.112. (Prehearing Conference Summary, September 21, 2023).

27) On October 6, 2023, Employer filed 92 pages of Cape Fear Orthopedics' medical records from April 22, 2014 through July 27, 2023. None of the records mention Employee's work

injury or attributed any disability or her need for medical treatment to the work injury. (Medical summary, October 6, 2023).

28) On October 10, 2023, Employee filed a written letter from Donnie Lee Callicutt. It states:

> I have known Terry Parsons since 2017. I was writing this letter on her behalf. Since I have known Terry I have seen her struggle with the pain that she has in her leg and hips. I've seen her from walking with the use of a cane and use of a walker. This lady is a fine outstanding person. I have drove her to doctor's appointment's and to physical therapy numerous time's. This is a good Christian lady that struggle's trying to pay doctor bill's and to live on a little bit of disability the State awarded her. I think someone in this court should really take a close look at her case very closely this lady deserves everything that she asked for since her accident.
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> P.S. - The Court should search their heart's and award Mrs. Parson's what she is entitled to. And please do the right thing - God Bless. (Callicutt letter, October 10, 2023).

29) On October 13, 2023, Employee filed the June 7, 2010 witness letter from Marla Anderson. (Email, October 13, 2023).

30) On October 13, 2023, Employee filed medical evidence she intended to rely upon at hearing, including 17 pages of medical records on a medical summary form for treatment on October 5, 2022, November 29, 2022; July 27, 2023; and August 26, 2023 at Cape Fear Orthopedics. She also attached one page from the January 13, 2003 progress report by Dr. Schwartz; pages 5, 14, and 24 of the January 13, 2002 EME report; July 23, 2001 work release with a written statement from Employee, "Doctor kept sending me back to work injuried needed to be in the hospital;" and page 13 of the February 28, 2002 EME report. (Medical summary October 13, 2023).

31) Employee also attached several documents to the medical summary, including a document called "Evidence Letters" stating:

> letters chronic pain while working injuried, Proof of harassment Cassandra Bennett letter in form of Affidavit. Bennet letter in form of Affidavit. removal of wrongful grievance letter. only custodian evaluated. Proof of injuries also my dealing with chronic pains, depression. (Many medications) skull damage, dealing with stress being stressed out. Co-worker Margaret Dawson speaking the truth without being asked. While I shared by being criticized, unvalued and stressed out. While my medical condition getting worse every day. Ex II Doctors saying alcohol abuse, not true. not having children didn't have anything to do with pains + injury. Superviso did stress me out. (Greg Head)

Employee attached a May 20, 2010 letter from Joni Kuntz, President, to Jim Thomas, superintendent, stating "Terry Parsons was non-renewed for poor performance of her assigned duties." Employee wrote on the letter, "false statement some proof of the job stress. Lies trying to destroy me. while trying to work injured." She attached an April 20, 2011 telephone statement from Cassandra Bennett, a February 8, 2009 letter denying Employee's request to remove an evaluation from her employment file, letters from Margaret Dawson dated February 26, 2008 and April 25, 2011 positively describing Employee's work for Employer. (Medical Summary with various attachments, October 13, 2023). These attachments were already in the file and had been previously considered. (Record; observation).

32) On October 19, 2023, Employee filed an affidavit by Matthew Kingery dated March 16, 2011. (Email, October 19, 2023). This affidavit was already in the file and had already been previously considered. (Record; observation).

33) On October 30, 2023, Employee filed a hearing brief stating, "damaged from Accidental injury, causing permanent damage to my body. needing my benefits, then and now. I Have Lost and Suffered enough! Please, my benefits because I'am never going to heal. Always in pain always disabled. Permanent damage." (Employee Brief, October 20, 2023).

34) Employee contended her non-party witness, Marla Anderson, would provide new evidence about the work injury. Specifically, she will testify Employee was not trained on how to use the ladder which fell on her. (Record).

35) Employer contended it did not receive a witness list from Employee. (Record).

36) There is no witness list from Employee in the record. (Record).

37) Employee testified she is a victim of the accident, her work injuries, the workers' compensation system, the doctors, and the lawyers. She was not trained to use the ladder, which led to her work injury. Employee's boss treated her unfairly after the work injury, harassed her and she was retaliated against for getting medical treatment as she was told she would be fired for going to the doctor. She was prescribed medication which affected her brain, and her physical and mental condition affected her ability to pursue her case. Employee believes the workers' compensation system turned its back on her. She intends to pursue benefits until she gets them; to her justice is not served until she gets the medical and disability benefits she deserves. Her life is a nightmare, her only income is Social Security disability benefits, she

experiences a lot of pain and cannot work, and she struggles to pay for medical treatment related to the work injury. Employee will pursue her case until the courts get it right or she is unable to pursue it. (Record).

38) Employee contended she continues to need medical treatment for the work injury and cannot work due to the work injury. She contended Dr. Roper's medical opinion is sufficient evidence to prove her work injury is a substantial factor in her disability and need for medical treatment. (Record).

PRINCIPLES OF LAW

> **AS 23.30.001**. Intent of the legislature and construction of chapter. It is the intent of the legislature that
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> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
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> (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, 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 & Bahler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.005. Alaska Workers' Compensation Board.** . . . (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .
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> **AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

In *Robertson v. American Mechanical, Inc.*, 54 P.3d 777, 779 (Alaska 2002), the Court held *res judicata*, or claim preclusion, applies to workers' compensation cases; however, it is not always applied as rigidly in administrative as in judicial proceedings. *Id.* at 779-80. When applicable, *res judicata* precludes a subsequent suit between the same parties asserting the same claim for relief when the matter raised was, or could have been, decided in the first suit. *Id.* at 780. Application of the principle requires the issue to be decided to be identical to that already litigated, and a final judgment on the merits. *Id.*

In *DeNardo v. Maassen*, 200 P.3d 305 (Alaska 2009), the Court upheld the superior court's prelitigation screening order, after reviewing it for abuse of discretion, stating that such an order would be affirmed only if it is narrowly tailored and based on adequate justification in the record. The screening order upheld by the Court stated that permission to file new complaints against the named defendants would only be granted if the complaint does not restate a cause of action that has already been asserted or could have been asserted in a prior case against the same parties; and the complaint is definitive, detailed, and legally sufficient to survive a motion to dismiss.

A third requirement in the original order, that the complainant submit proof that any court ordered sanctions and awards of attorney fees owed to the named defendants had been paid, was stricken as insufficiently narrowly tailored. *DeNardo* used two decisions of the Ninth Circuit Court of Appeals to form its analysis for reviewing screening orders. In *Molski v. Mandarin Touch Restaurant*, 347 F.Supp.2d 860 (Cal. 2004), the claimant had been declared a "vexatious

litigant" in the District Court, limiting his access to the courts based on a five-factor analysis considering:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, (Cal. 2007) found that "abuse of discretion" was the proper standard for such a review, citing *De Long v. Hennessey*, 912 F.2d 1144, 1147 (Cal. 1990). *De Long* recognized that pre-filing orders should rarely be required, as they are an extreme remedy only to be used in exigent circumstances, particularly against an unrepresented claimant, and noted that a decision issuing such an order should be supported by adequate notice, limited scope, a record showing the numerous or abusive filings, and substantive findings of frivolousness. *Id*. at 1147-49.

> **8 AAC 45.112. Witness list.** A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider
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> (1) the testimony of a party, and
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> (2) deposition testimony completed, though not necessarily transcribed, before the time for filing a witness list.

> **8 AAC 45.120. Evidence.** . . . (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining

> any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege apply to the same extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.
> . . . .

Information inadmissible at a civil trial may be discoverable in a workers' compensation case if it is reasonably calculated to lead to relevant facts. *Granus v. Fell*, AWCB Dec. No. 99-0019 (January 20, 1999). *Granus* provided a two-step analysis to determine if information was discoverable: (1) The first step is to identify matters in dispute; this requires the designee to, at a minimum, review both the claims (which generally state the issues from the injured worker's perspective) and the answers and controversions (which generally state the issues from the employer's perspective). (2) The second step is to decide (*i.e.*, analyze) whether the information sought is relevant; or in other words, is it "reasonably calculated" to lead to facts that will tend to make a disputed issue, identified in step one, more or less likely.

> **8 AAC 45.195. Waiver of procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

ANALYSIS

1) Was the oral order sustaining Employer's objection to Employee's witness testimony correct?

If required at a prehearing conference, parties must provide notice of who will be testifying at hearing and the subject matter and substance of the witnesses' expected testimony at least five working days before the hearing. 8 AAC 45.112. If a party directed at a prehearing conference to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with 8 AAC 45.112, the party's witnesses will be excluded from testifying at the hearing. The testimony of a party or completed deposition testimony may be considered. *Id*. At the September 21, 2023 prehearing conference, the designee directed the parties to file witness lists and set a filing deadline. Employee testified she filed a witness list. However, there is no witness list in the file. Employee failed to file a witness list as directed.

A hearing panel may waive a procedural requirement if manifest injustice would result from strict application of a regulation. However, a panel may not waive a procedural requirement merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the law. 8 AAC 45.195. Employee expected the witness to testify regarding her account of the work injury and to provide new evidence that Employer failed to train Employee to properly use the ladder involved in the work injury. The witness had already testified in 2011 and provided an affidavit with her account of the work injury. To allow the witness to testify further about her account of the work injury would be unduly repetitious. 8 AAC 45.120(e).

The issue in dispute is whether Employer's request for a prelitigation screening order should be granted. *Granus*. Specifically, the history of vexatious, frivolous, or duplicative claims or petitions and Employee's motive in filing the claims and petition must be considered. *DeNardo*; *Molski*. *Parsons I* addressed the merits of her right to benefits under the Act and found Employee failed to provide sufficient evidence and did not prove her claim by a preponderance of the evidence. *Parsons I* was affirmed by the Commission. *Parsons II*. Subsequent decisions applied *res judicata* to bar a successive claim and petition, which were affirmed by the Commission and the Court. Employee was advised she needed to present new medical evidence addressing whether the work injury was a substantial factor in her disability and need for medical treatment. The expected testimony regarding whether Employee was properly trained to use the ladder involved in her work injury is not relevant to the issue in dispute at this hearing because it does not to lead to facts that will tend to make the disputed issue more or less likely. 8 AAC 45.120(e); *Granus*. Therefore, Employee failed to show manifest injustice will result from strict application of 8 AAC 45.112. The oral order sustaining Employer's objection to Employee's witness testimony was correct.

2) Should Employer's August 2, 2023 petition for a prelitigation screening order be granted?

Employer requests a prelitigation screening order based upon *DeNardo*. While the Act does not specifically set out a remedy for meritless, vexatious, or frivolous claims or petitions, it must be interpreted so as to provide "quick, efficient, fair, and predictable" delivery of benefits to injured

workers at a reasonable cost to employers. AS 23.30.001. Process and procedure must also be as summary and simple as possible. AS 23.30.005(h). The Board is granted discretion as to procedure and has the authority to waive normal procedures to avoid manifest injustice. AS 23.30.135(a); 8 AAC 45.195. Therefore, the Board has authority to issue a prelitigation screening order to prevent duplicative, frivolous, or vexatious claims or petitions. AS 23.30.001(1); AS 23.30.005(h); AS 23.30.135(a); 8 AAC 45.195.

A prelitigation screening order is an extreme remedy to be used only in exigent circumstances. *De Long*. The history of vexatious, frivolous, or duplicative claims or petitions; the motive in filing the claims or petitions; representation by counsel; the expense caused to other parties, or unnecessary burden imposed on the Board and its staff; and whether other sanctions are adequate to protect the parties and the Board must be assessed. *DeNardo*; *Molski*. Employee has a long history of litigation going back to 2001 when she filed her first claim. Employee is entitled to due process and for her claims to be decided on the merits. AS 23.30.001(2); (4). While Employee is unrepresented, she has been advised the evidence she submitted was insufficient and she needed to provide new medical evidence addressing causation several times. Yet, on September 12, 2023, she made a third attempt to relitigate her case by filing another claim seeking the same relief without any new evidence addressing whether the work injury was a substantial factor in her disability and need for medical treatment. *Robertson*. Employee did not submit opinions from medical providers addressing whether her work injury is a substantial factor in her need for medical treatment provided. In fact, the medical records she presented from Cape Fear Orthopedics do not mention her work injury. Employee has a history of frivolous and duplicative pleadings, which has resulted in eight decisions, three from the Board, three from the Commission, and two from the Court. *Rogers & Babler*; *De Long*.

Employee's motive in filing claims and petitions is clear - she intends to pursue benefits until they are awarded. She believes the past decisions by the Board, Commission and Court are incorrect and that justice and due process will not be provided until she obtains a decision in her favor. She believes she has already "proven" her case. Employee feels victimized and refuses to accept prior rulings and follow advice from Division staff to preserve and pursue her case. Her duplicative filings are deliberate and spiteful as she intends to vindicate a denial of benefits she

feels was unfair even as she rejects and ignores the legal requirements of the Act. AS 23.30.122; *Smith*; *Rogers & Babler*. Employee's duplicative and frivolous pleadings have imposed significant cost on Employer, as it answered each and defended against them before the Board, Commission, and the Court. Her duplicative and frivolous pleadings have also unreasonably burdened the Board and its staff because it is required to attend to, address and analyze each pleading. Employer sought an order requiring Employee to pay for its attorney fees and costs due to her duplicative and frivolous pleadings. However, *Parsons VI* denied its petition because AS 23.30.250(b) only provides for awarding fees to an employer against an injured worker when fraud by the injured worker was demonstrated. Other sanctions are not available under the Act for frivolous, vexatious, or duplicative pleadings by employees. To adhere to the mandate to ensure quick, efficient, fair, and predictable delivery of benefits at a reasonable cost to Employer, and without specific sanctions for duplicative claims, the Board is not bound by technical or formal rules of procedure. AS 23.30.001; AS 23.30.135. Employer's request for a prelitigation screening order is justified and will be granted. *Id.* The prelitigation screen order will be narrowly tailored to provide Employee permission to file a new claim against Employer only if the claim does not restate a claim that has already asserted or could have been asserted. *DeNardo*.

Employee's pleadings will be scrutinized by a Division hearing officer prior to acceptance and will be accepted only if (a) the claim or petition does not restate a cause of action that has already been asserted or could have been asserted in a prior claim or petition against Employer, and (b) the claim or petition is definitive, detailed, and legally supportable on the merits. *Robertson*; *DeNardo*. This decision and order will be applied *nunc pro tunc*, dating back to *Parsons VIII*'s issuance. The September 13, 2023 claim will be screened in accordance with the prelitigation screening order.

CONCLUSIONS OF LAW

Employer's petition for a prelitigation screening order should be granted.

ORDER

1) Employer's August 2, 2023 petition for a screening order is granted.

2) Employee's filings in this case will be reviewed by a Division hearing officer prior to acceptance, and will be accepted only if:

   a. the claim or petition does not restate a cause of action that has already been asserted or could have been asserted in a prior claim or petition against Employer; and

   b. the claim or petition is definitive, detailed, and legally supportable on the merits.

3) The above screening order is issued *nunc pro tunc*, dating back to March 22, 2023.

Dated in Juneau, Alaska on November 21, 2023.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Debbie White, Member

/s/
Bradley Austin, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Terry Parsons, employee / claimant v. Craig City School District, employer; Alaska Municipal League Joint Ins. Assoc., insurer / defendants; Case No. 200111621; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on November 21, 2023.

/s/
Lorvin Uddipa, Workers' Compensation Technician