ALASKA WORKERS' COMPENSATION BOARD

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

STEVE SCHOPPENHORST, Employee, Claimant, v. PROPERTY PROS, INC., Employer, and PENNSYLVANIA MANUFACTURERS ASSOCIATION, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202105734 AWCB Decision No. 23-0076 Filed with AWCB Fairbanks, Alaska on December 8, 2023

Steve Schoppenhorst's (Employee) September 29, 2021 claim was heard in Fairbanks, Alaska on June 22, 2023, a date selected on May 1, 2023. A May 1, 2023 designee determination gave rise to this hearing. Employee appeared and represented himself. Attorney Colby Smith appeared and represented Property Pros, Inc., and Pennsylvania Manufacturers Association (Employer). Employee, who testified on his own behalf, was the only witness. The record closed at the hearing's conclusion on June 22, 2023.

ISSUES

Employee contends he has been unable to maintain employment because of the work injury and he seeks compensation for his disability.

Employer contends many of Employee's own medical providers declined to restrict him from working, and since there is no evidence of Employee's inability to work because of the work injury, his claim should be denied.

1) **Is Employee entitled to disability benefits?**

Employee contends his work injuries are the substantial cause of his need for medical care and he seeks additional medical benefits.

Employer contends it initially paid medical benefits, but since Employee's injuries resulted in a temporary aggravation that resolved, no further medical benefits are due.

2) **Is Employee entitled to additional medical benefits?**

Employee contends his work injuries resulted in a permanent physical impairment and he seeks a permanent partial impairment (PPI) benefit.

Employer contends there is no evidence Employee incurred a permanent physical impairment so his claim should be denied.

3) **Is Employee entitled to a PPI benefit?**

Employee contends he is entitled to reemployment benefits.

Employer contends Employee's own doctors declined to provide him with work restrictions so his claim seeking reemployment benefits should be denied.

4) **Is Employee entitled to reemployment benefits?**

FINDINGS OF FACT

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

1) Employee has a lengthy preexisting history of low back pain dating to 2010, when a magnetic resonance imaging (MRI) study showed a large central and left-sided disc herniation that was

flattening the left S1 nerve root. (Imaging report, October 11, 2010). Employee attributed his back pain at the time to lifting items around the house and sneezing. (Fairbanks Urgent Care chart notes, October 12, 2010).

2) On July 24, 2013, Employee injured his back while working for a former employer. (Employee Work Status Report, August 5, 2013). When giving his medical history, Employee subsequently reported the 2013 work injury occurred in 2010. (Bauer report, November 12, 2021; Roland report, November 11, 2022; Schoppenhorst deposition, December 21, 2021 at 32).

3) On August 14, 2013, a lumbar spine MRI showed a moderate central/left paracentral disc extrusion at L5-S1 with mass effect upon the left S1 nerve root. (MRI Report, August 14, 2013).

4) On November 1, 2013, Kim Wright, M.D., a neurosurgeon, evaluated Employee, who reported severe pain radiating into his left lower extremity following the July 24, 2013 work injury. After reviewing the updated MRI, which showed "a rather large disc herniation to the left at L5-S1," Dr. Wright offered Employee microdiscectomy surgery. (Wright chart notes, November 1, 2013). Employee never underwent that procedure and subsequently settled his case with the employer, which closed out Employee's entitlement to medical benefits. (Schoppenhorst).

5) Employee testified that the $49,000 he received from that settlement was insufficient to cover the costs of the surgery. (*Id*.).

6) On May 15, 2017, Employee sought treatment at the Fairbanks Memorial Hospital Emergency Department (ED) for severe back pain that was aggravated while driving. He was treated with a steroid dose, morphine and Toradol, and although he initially showed improvement, his pain worsened, so intravenous (IV) access was obtained, and additional morphine was administered. A lumbar spine MRI showed a large eccentric posterior disc protrusion compressing the left S1 nerve root. Employee was discharged with a referral to Peter Jiang, M.D. (ED Record, May 15, 2017; MRI Report, May 15, 2017).

7) On June 12, 2017, Employee sought treatment for low back pain he related to a work-related injury "a couple of years ago," which was exacerbated by a rear-end motor vehicle accident in December 2016. Employee was diagnosed with a large disc herniation with an extruded fragment and left S1 radiculopathy. Dr. Jiang discussed treatment options, which included over-the-counter pain medication, physical therapy, injections, and surgery. Employee wanted to

"stay as conservative as possible primarily because of financial reasons." (Jiang chart notes, June 12, 2017; Initial Patient Assessment Form, June 12, 2017).

8) On April 7, 2021, Employee reported injuring his low back when he lifted a heavy dental chair and from shoveling heavy snow the previous day. (First Report of Injury (FROI), May 4, 2021; Workers' Compensation Claim, September 29, 2021).

9) Employer initially provided medical benefits. (Annual Report, January 3, 2022).

10) On April 10, 2021, Employee sought treatment at the Tanana Valley Clinic (TVC) for lower back pain from a work injury. Peter Dillon, M.D., prescribed medications, and physical therapy and instructed Employee to follow-up with his primary provider. He released Employee to work without restrictions. (Dillon chart notes, April 10, 2021).

11) On August 27, 2021, Employee presented at TVC for bilateral lower hamstring and calf cramping, which he related to the April 6, 2021 work injury, and stated "I need a get out of work note." John Walters, PA-C, noted Employee had been released to work on April 10, 2021, and referred Employee for an occupational medicine evaluation. (Walters chart notes, August 27, 2021).

12) On September 29, 2021, Employee filed a workers' compensation claim for a back injury that occurred while he was lifting a heavy dental chair and shoveling heavy snow, though he did not check any boxes on the claim form to indicate specific benefits he was seeking. (Claim, September 29, 2021).

13) On October 6, 2021, Employee presented at TVC to ascertain whether he could return to work. He also complained of calf cramping. Corrine Leistikow, M.D., reminded Employee he had been released to work in April and explained calf cramping is a common problem. She opined she saw nothing on her physical exam that would keep Employee from working construction and offered him a note clearing him to go back to work. Dr. Leistikow was also concerned Employee "may have some mental health reasons that might keep [Employee] from working but he did not want to address those and got mad when I brought them up." She also recorded that Employee was very unhappy with his visit, swore at her, told her she was useless, and told her "to go F myself." Dr. Leistikow wrote that she was not willing to see Employee again. (Leistikow chart notes, October 6, 2021).

14) On October 7, 2021, Employee returned to TVC because he was having trouble maintaining employment. During the visit, Employee alternatively related his back pain to

lifting an exam table and picking up a snow blower. Herbert Day, D.O., ordered an MRI and planned to refer Employee to a spinal surgeon. He released Employee to work with no restrictions. (Day chart notes, October 7, 2021).

15) On August 27, 2021, Employee presented to TVC for occasional bilateral lower hamstring and calf cramping, which Employee related to the April 6, 2021 work injury, and stated "I need a get out of work note." John Walters, PA-C, noted, "Direct questioning of why patient is here is often met with comments that are vague, varied and often ultimately resulted in a response of 'I don't know.'" P.A. Walters observed Employee had been released to work on April 10, 2021, and referred him to occupational medicine for a second opinion. (Walters chart notes, August 27, 2021).

16) On November 12, 2021, R. David Bauer, M.D., performed an employer's medical evaluation (EME). He asked Employee if he had made a complete recovery following the 2010 [sic] work injury and, Employee replied, "There is always pain, you know." Dr. Bauer diagnosed a back strain injury based solely on Employee's history and the medical records. He opined the work injury was not the substantial cause of Employee's current back pain and explained, if Employee overexerted himself on the date of injury, Employee's pain would have persisted for no more than 60 days. Instead, Dr. Bauer thought Employee's current back pain was caused by degenerative changes in his lower back. He opined Employee was medically stable on August 27, 2021 and thought Employee had not incurred a permanent physical impairment because of the work injury. No further medical treatment was reasonable or necessary, and Employee could return to full duty work without restrictions, according to Dr. Bauer. (Bauer report, November 12, 2021).

17) On November 19, 2021, Employer controverted TTD benefits after August 27, 2021, as well as medical, PPI and reemployment benefits based on Dr. Bauer's November 12, 2021 report. (Controversion notice, November 19, 2021).

18) A November 19, 2021 lumbar spine MRI showed severe disc height loss and desiccation at L5-S1, as well as a moderate diffuse disc bulge with superimposed central/left paracentral protrusion. It was further noted that this study, like one performed on August 14, 2013, showed compression and posterior deviation of the left S1 nerve root in the lateral recess. (MRI report, November 19, 2021).

19) On December 18, 2021, Dr. Day reviewed Employee's November 19, 2021 MRI and referred him to a neurosurgeon. (Day chart notes, December 18, 2021).

20) On December 21, 2021, Employer deposed Employee. (Schoppenhorst deposition, December 21, 2021). He testified he had recently started taxi driving and was self-employed. (*Id*. at 14). Employee could not remember if any physician had stated he could not work after his employment with Employer. (*Id*. at 16). Employee had a back injury in 2010 while he was picking up a laundry basket and he has had back problems ever since. (*Id*. at 34-35). While describing his symptoms that resulted from the April 6, 2021 work injury, he stated, "So whatever the deal is with the leg cramps thing or whatever the - - that's guaranteed that's from [Employer's] incident." (*Id*. at 42-43).

21) On January 18, 2022, Angel Britt, PA-C, evaluated Employee, who complained of left leg quadricep and calf cramping. After performing a physical examination and reviewing the November 19, 2021 MRI, she discussed conservative treatment options with Employee, as well as more invasive treatment options such as transforaminal epidural steroid injections and microdiscectomy with fusion surgery. P.A. Britt noted, although Employee described his symptoms differently that day, historically, Employee's symptoms corresponded with the MRI findings. (Britt chart notes, January 18, 2022).

22) On November 11, 2022, Charles Roland, M.D., performed a secondary independent medical evaluation (SIME). Employee reported he continued to remain symptomatic after the 2010 [sic] work injury but thought some of his lumbar and bilateral leg symptoms arose out of the instant injury. He also reported previous nonindustrial lumbar injuries in 2016 or 2018 but did recall the injury mechanisms. Dr. Roland thought the April 6, 2021 work injury aggravated Employee's preexisting advanced lumbar spine pathology to cause his need for medical treatment. He opined Employee was restricted from lifting over 10 pounds, and from bending, turning, or twisting at the torso. Dr. Roland thought Employee was medically stable when he was declared "permanent and stationary" by his primary treating physician, but also opined Employee was a surgical candidate based on his abnormal diagnostic studies and his examination. He concluded Employee had incurred a nine percent whole person impairment from his lumbar spine injury. (Roland report, November 11, 2022).

23) On March 14, 2023, Employer deposed Dr. Roland, (Roland dep., March 14, 2023), who acknowledged Employee had previously complained of bilateral leg cramps and cramping leg

pain in 2013, 2017 and 2019. (*Id*. at 9-11). He clarified he thinks the April 6, 2021 work injury was a "temporary component" of Employee's back problems since Employee had "significant pathology" prior to that date, and the temporary aggravation resolved on August 27, 2021. (*Id*. at 18-19). Since Employee had been given a 12 percent whole person impairment rating in 2014, Dr. Roland no longer thought the April 6, 2021 work injury was the substantial cause of nine percent whole person impairment rating he provided. (*Id*. at 19-20). He also changed his opinion on medical treatment and did not think the April 6, 2021 work injury was the substantial cause of Employee's need for medical treatment because surgery had been recommended since 2013. (*Id*. at 20). Dr. Roland explained, he changed his conclusions from his SIME report when he reviewed all the information again and decided the April 6, 2021 work injury "by far is the minority factor" in his assessment because Employee had so much prior pathology. (*Id*. at 21).

24) At a May 1, 2023 prehearing conference, the designee decided to schedule Employee's September 29, 2021 claim for hearing, and decided issues for hearing should include, time-loss, medical, PPI and vocational rehabilitation benefits. (Prehearing Conference Summary, May 1, 2023).

25) On June 22, 2023, Employee testified regarding his inability to find employment or an attorney to represent him in these proceedings. Regarding his 2013 low back work injury with the former employer, he said, "There's always been an injury there, I'm not denying that, but now my symptoms are more consistent." Employee is experiencing more leg cramping than before the instant work injury. Since moving back to Wisconsin, he has been working because he needs an income of some sort. Employee started working for FedEx in November of last year, but he was fired because his background check did not come back from Alaska in a timely manner. He next worked driving semi-trucks for Resident Group, then he went to [unintelligible] Express, but he "had issues there," so he quit. Employee subsequently worked for Wenninger Transportation, but he was fired because of his workers' compensation claim. He has gone through three jobs, and it is not his fault, he stated. "I can work," Employee said. (Schoppenhorst).

26) Employee has not filed medical evidence he suffered a permanent physical impairment because of the work injury or a PPI rating. (Observations).

PRINCIPLES OF LAW

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

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.
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> **AS 23.30.041. Rehabilitation and reemployment of injured workers.**
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> (e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job . . . for
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> (1) the employee's job at the time of injury; or
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> (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury . . . .
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> (f) An employee is not eligible for reemployment benefits if . . . .
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> (4) at the time of medical stability, no permanent impairment is identified or expected.

The statutory compensability presumption applies to reemployment benefits. *Kirby v. Alaska Treatment Center*, 821 P.2d 127; 129 (Alaska 1991). For an injured worker to be eligible for reemployment benefits, the employee must have a permanent partial impairment and the permanent partial impairment must preclude the employee from returning to suitable gainful employment. *Id*. When an employee did not have a permanent partial impairment greater than zero at medical stability, her reemployment benefits were properly denied. *Rydwell v. Anchorage School District*, 864 P.2d 526; 531 (1993 Alaska). Citing *Rydwell*, the Alaska Workers' Compensation Appeals Commission instructed a board panel on remand to find an employee ineligible for reemployment benefits if it decided her PPI rating was zero percent. *Stonebridge Hospitality Associates, LLC v. Settje*, AWCAC Dec. No. 153 (June 14, 2011).

> **AS 23.30.095. Medical treatments, services, and examinations**. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires . . . .

Medical benefits, including continuing care, are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991).

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

"The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute," *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original).

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the "claim" and her employment. In less complex cases, lay evidence may be sufficiently probative to make the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Whether or not medical evidence is required depends on the probative value of available lay evidence and the complexity of the medical facts involved. *Id*. An employee need only adduce "some," minimal

relevant evidence, *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987), establishing a "preliminary link" between the "claim" and the employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, once an employee attaches the presumption, the employer must rebut it with "substantial" evidence that either, (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability ("affirmative-evidence"), or (2) directly eliminates any reasonable possibility that employment was a factor in causing the disability ("negative-evidence"). *Huit v. Ashwater Burns, Inc*., 372 P.3d 904; 919 (Alaska 2016). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion in light of the record as a whole. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). The mere possibility of another injury is not "substantial" evidence sufficient to rebut the presumption. *Huit* at 920, 921. The employer's evidence is viewed in isolation, without regard to an employee's evidence. *Miller* at 1055. Therefore, credibility questions and weight accorded the employer's evidence are deferred until after it is decided if the employer produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994); *citing Big K Grocery v. Gibson*, 836 P.2d 941 (Alaska 1992).

Employment must be the substantial cause of the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011) (reversed on other grounds by *Huit*). If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (*citing Miller v. ITT Services,* 577 P 2d. 1044, 1046). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the factfinders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **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 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

The statutory compensability presumption applies to claims for TTD. *Wien Air Alaska v. Kramer*, 807 P.2d 471; 474 (Alaska 1991).

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . .

The statutory compensability presumption applies to claims for PPI. *See Parker v. Safeway, Inc.*, AWCAC Decision No. 144 (December 28, 2010) (affirming the board's presumption analysis for a PPI benefit); *see also Murphy v. Fairbanks North Star Borough*, 494 P.3d 556; 565 (Alaska 2021) (writing in dicta that it was doubtful the legislature intended to exclude impairment claims from the coverage presumption). A claim for PPI based on aggravation of a preexisting condition is a highly technical claim so medical evidence is necessary to attach the presumption. *Parker*. A claimant does not attach the presumption when he does not present medical evidence his PPI was related to the work injury. *Id*. Where a claim for PPI is contested, the employee is required to obtain a PPI rating if he does not agree with a rating by the employer's physician or a PPI rating has not already been obtained. *Settje.* "Stated simply, a PPI rating is necessary to obtaining an award of PPI benefits." *Id*.

ANALYSIS

1) Is Employee entitled to disability benefits?

In the absence of substantial evidence to the contrary, Employee is presumed entitled to the disability benefits he seeks. *Meek*. Employee attached the presumption he was disabled from work with the SIME physician's opinions that the work injury had aggravated his preexisting advanced lumbar spine pathology, that he was restricted from lifting over 10 pounds and from bending or twisting at the torso, and that the aggravation did not resolve until August 27, 2021. *Wolfer*. Employer rebutted the presumption with the April 10, 2021 work release, without restrictions, from Employee's physician, Dr. Dillon. *Miller*. Employee is now required to prove the work injury is the substantial cause of his disability by a preponderance of the evidence. *Koons*.

In accordance with AS 23.30.185, if the SIME's opinions were accepted, Employee would be entitled to TTD until August 27, 2021, the date of medical stability. Oftentimes in workers' compensation cases, an SIME's opinion is given the most weight under the rationale that the SIME physician is impartial. *Rogers & Babler*. However, in this case, there is no reason to think Employee's own physicians, who declined to take Employee off work numerous times notwithstanding his repeated solicitations for them to do so, were being partial towards Employee. *Id*. During the five months following the work injury, Employee's physicians, including Dr. Dillon, P.A. Walters, Dr. Leistikow, and Dr. Day, all declined to restirct Employee from work or restrict his work activities. In fact, P.A. Walters twice declined to take Employee off work during that short period.

Fundamentally, for Employee to be entitled to disability compensation, he must first be disabled. However, all of Employee's own physicians did not find him so, although Dr. Leistikow did question whether mental health issues were interfering in Employee's ability to work. Furthermore, because Employee's physicians arrived at their opinions more proximate in time to the injury than the SIME, they were in the best position to evaluate his physical capacities at the time and their opinions are given the most weight. AS 23.30.122. Since a preponderance of the evidence does not support Employee's disablement, his claim for disability benefits will be denied.

2) Is Employee entitled to additional medical benefits?

In the absence of substantial evidence to the contrary, Employee is presumed entitled to the medical benefits he seeks. *Carter*. Lifting a heavy dental chair and shoveling heavy snow are obvious mechanisms of a low back injury and Employee attached the presumption with his April 7, 2021 injury report. *Cheeks*. Employer rebutted the presumption with the opinions of its EME, Dr. Bauer, who thought Employee's back pain and his current need for medical treatment are caused by preexisting degenerative changes and not the work injury. *Miller*. Employee is now required to prove that the work injury is the substantial cause of his need for medical treatment by a preponderance of the evidence. *Koons*.

There is no medical evidence linking the work injury to Employee's current need for medical treatment. Although Dr. Day referred Employee to a neurosurgeon, and although P.A. Britt discussed treatment options, including surgery, neither opined the work injury was the substantial cause of his need for treatment. On the other hand, Dr. Bauer is joined by the SIME physician, Dr. Roland, who also attributes Employee's need for treatment to his preexisting degenerative pathology, noting at his deposition that surgery had been recommended to Employee since 2013.

Employee's own reporting and testimony also support Dr. Bauer's and Dr. Roland's opinions. When Dr. Bauer asked Employee if he had made a complete recovery after his 2013 back injury with a former employer, Employee candidly answered, "There is always pain, you know." Employee similarly reported to Dr. Roland that he continued to remain symptomatic after the 2013 work injury. When Employee was asked about the 2013 work injury at hearing, he frankly answered, "There's always been an injury there," although he thought his symptoms were now more consistent following the instant work injury. Employee also testified at his deposition that he has had back problems ever since he injured it picking up a laundry basket in 2010.

However, the most compelling evidence in support of Dr. Bauer's and Dr. Roland's opinions are the four remarkably similar MRI studies performed over an eleven-year period beginning in 2010. All four were interpreted to show either a large or medium central and left-sided disc herniation at L5-S1 that was compressing the left S1 nerve root. Taken together, the evidence shows Employee's preexisting degenerative pathology rather than the work injury is the

substantial cause of his need for medical treatment so Employee's claim for medical benefits will be denied.

3) Is Employee entitled to a PPI benefit?

In the absence of substantial evidence to the contrary, Employee is presumed entitled to the PPI benefit he seeks. *Parker*; *Murphy*. A claim for PPI based on aggravation of a preexisting condition is a highly technical claim so medical evidence is required to attach the presumption. *Parker*. A PPI rating is also necessary to obtain an award of PPI benefits. *Settje*. Since Employee did not produce medical evidence his PPI was related to the work injury, *contra Parker*, or the requisite PPI rating, *contra Settje*, he is unable to attach the presumption of coverage. However, even if Employee could attach the presumption with his own testimony, Employer would rebut it with the opinions of both Drs. Bauer and Roland, who concluded Employee did not incur any PPI because of the work injury. *Miller*. Given that Employee is unable to attach the presumption, or prove his claim be a preponderance of the evidence, his claim seeking a PPI benefit will be denied.

4) Is Employee entitled to vocational rehabilitation benefits?

In the absence of substantial evidence to the contrary, Employee is presumed entitled to the reemployment benefits he seeks. *Kirby*. For an injured worker to be eligible for vocational rehabilitation, the employee must have a permanent partial impairment and that permanent partial impairment must preclude the employee from returning to suitable gainful employment. *Id.* The above analysis on PPI is also dispositive here. Without a PPI from the work injury, Employee is unable to attach the coverage presumption and his claim must fail. *Id*. Similarly, neither is there any evidence that Employee cannot return to suitable employment. To the contrary, his own testimony shows that he has returned to suitable employment. In the meantime, Dr. Bauer opined Employee can return to work without restrictions, and Dr. Roland opined, considering Employee's extensive preexisting pathology, the instant work injury would be a "minority factor" in any inability to work. Furthermore, as pointed out above, many of Employee's own physicians did not restrict his work activities. Therefore, even if Employee could attach the presumption with his own testimony, or Dr. Roland's original November 11, 2022 opinion on work restrictions, Employer would rebut it with Dr. Bauer's opinion, Dr.

Roland's revised March 14, 2023 opinion, and the opinions of Employee's physicians. Given that Employee is unable to attach the presumption, or prove his claim by a preponderance of the evidence, and his claim seeking reemployment benefits will be denied.

CONCLUSIONS OF LAW

1) Employee is not entitled to disability benefits.
2) Employee is not entitled to additional medical benefits.
3) Employee is not entitled to a PPI benefit.
4) Employee is not entitled to reemployment benefits.

ORDERS

1) Employee's September 29, 2021 claim is denied.
2) Since this decision and order addressed Employee's September 29, 2021 claim on its merits, Employer's petition to stay answering Employee's serial petitions is moot, and the hearing scheduled for February 1, 2024 on that petition is cancelled.

Dated in Fairbanks, Alaska on December 8, 2023.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Robert Weel, Member

/s/
Lake Williams, 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 Steve Schoppenhorst, employee / claimant v. Property Pros. Inc., employer; Pennsylvania Manufacturers Association, insurer / defendants; Case No. 202105734; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 8, 2023.

/s/
Whitney Murphy, Office Assistant II