

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MICHELLE SMITH,)
)
Employee,)
Claimant,)
)
v.) FINAL DECISION AND ORDER
)
) AWCB Case No. 202215121
WALMART ASSOCIATES, INC.,)
)
) AWCB Decision No. 24-0016
Employer,)
and)
) Filed with AWCB Anchorage, Alaska
) on March 18, 2024
AIU INSURANCE COMPANY,)
)
)
Insurer,)
Defendants.)
)

Michelle Smith's (Employee) March 13, 2023 claim was heard on February 13, 2024, in Anchorage, Alaska, a date selected on December 28, 2023. A December 5, 2023 hearing request gave rise to this hearing. Attorney Adam Franklin appeared and represented Employee, who appeared and testified by Zoom. Attorney Vicki Paddock appeared and represented Walmart Associates, Inc. and AIU Insurance Company (Employer). Witnesses included James Smith, who appeared and testified by Zoom. The record was kept open to receive Employee's supplemental attorney fees and costs affidavit and Employer's response and closed on February 21, 2024.

ISSUES

Employee contends Employer controverted medical and temporary total disability (TTD) benefits, and as a result of Franklin's prosecution of her claim, Employer withdrew its

conversion and paid benefits. She contends \$500 per hour is fully compensatory considering the *Rusch* factors.

Employer does not dispute Franklin's representation resulted in payment of benefits to Employee. Rather, it objects to the hourly rate billed by Franklin and contends the *Rusch* factors justify a lower hourly rate of \$415.

1) Is Employee entitled to attorney fees and costs?

Employee contends it is not clear if Employer paid interest on payments made to medical providers. She contends penalties and interest are owed on the attorney fees and costs Employer admitted it owed Franklin but failed to pay. Employee requests an order awarding interest to medical providers and penalties and interest on attorney fees and costs Employer admitted it owed.

Employer contends it paid all benefits under the Alaska Workers' Compensation Act (Act) to Employee and her medical providers. It contends Employee failed to produce evidence that further interest is owed. Employer contends penalty and interest is not owed on attorney fees and costs because there was no award. It requests an order denying penalty and interest.

2) Is Employee entitled to penalty and interest?

FINDINGS OF FACT

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

1) On October 5, 2022, Employer reported Employee she caught her wrist between the back of a meat slicer and an exposed bracket meant to hold an articulating cutting board while working for Employer on October 1, 2022. (First Report of Injury, October 5, 2022).

2) On February 16, 2023, Kirk Hippensteel, MD, examined Employee for an Employer's Medical Evaluation (EME) and diagnosed a healed preexisting right wrist distal radius fracture status post open reduction and internal fixation (ORIF), preexisting ulnar styloid nonunion from fracture, symptomatic preexisting right wrist posttraumatic arthritis secondary to distal radius fracture, preexisting symptomatic right thumb carpometacarpal (CMC) arthritis, medically stable right wrist contusion secondary to the work injury and right wrist de Quervain tenosynovitis

secondary to the work injury that was not medically stable. He opined the work injury was the substantial cause of her disability and need for medical treatment for the right wrist de Quervain tenosynovitis but the substantial cause of her need for medical treatment for her wrist arthritis and thumb CMC arthritis is her preexisting arthritis. (Hippensteel EME report, February 16, 2023).

3) On February 23, 2023, Dr. Hippensteel issued an addendum EME report after reviewing the February 6, 2023 medical report recommending right wrist surgery. He opined the work injury is not the substantial cause of Employee's need for the recommended right wrist surgery:

The claimant had a contusion injury in October and there is no objective evidence on the MRI in November that there was edema in the bone or soft tissue in the distal radius region from the work injury that one would suspect would cause related symptoms requiring removal of hardware. Commonly, patients after distal radius ORIF surgery do require removal of hardware and the development of post-traumatic arthritis in the wrist joint is also due to her prior distal radius fracture. She also has thumb CMC arthritis that requires an arthroplasty with [ligament reconstruction and tendon interposition] LRTI procedure and once again, this is pre-existing arthritis that was chronic and took years to develop and would not have resulted from the work injury on October 1, 2022.

Dr. Hippensteel stated Employee had positive findings in the first dorsal compartment in the radial wrist when he evaluated her and a positive Finkelstein's test, indicating de Quervain tenosynovitis. The work injury is the substantial cause for producing pain symptoms in the radial aspect of her wrist and the first dorsal compartment. Dr. Hippensteel said it is medically reasonable and appropriate to undergo removal of the hardware and the thumb CMC LRTI procedure at the same time of surgical decompression of her right wrist to avoid increased risk from two surgeries. (Hippensteel addendum EME report, February 23, 2023).

4) On March 1, 2023, Owen Ala, MD, responded to questions from a medical nurse case manager; he diagnosed a "traumatic carpal metacarpal arthritis and wright thumb s/p crush injury on October 1, 2022." Dr. Ala responded "yes" when asked if the work injury was the substantial cause of all currently diagnosed conditions. He recommended "carpal metacarpal arthroplasty ligament reconstruction tendon interposition," which was schedule for March 8, 2023. (Ala responses, March 1, 2023).

5) On March 7, 2023, Employer denied medical treatment -- specifically the surgery to remove the prior right wrist distal radius fracture hardware and CMC joint arthroplasty with LRTI and

associated postsurgical care and related TTD benefits based upon Dr. Hippensteel's EME report. (Controversion Notice, March 7, 2023).

6) On March 8, 2023, Dr. Ala performed a right wrist arthroscopy with debridement of the triangular fibrocartilage complex, carpometacarpal arthroplasty with ligament reconstruction tendon interposition and removed distal radius hardware. (Ala operative report, March 8, 2023).

7) On March 13, 2023, Franklin entered his appearance for Employee. (Notice of Appearance, March 13, 2023).

8) On March 13, 2023, Employee filed a claim for an injury to her right wrist on October 1, 2022, seeking TTD benefits, medical costs, penalty for late-paid compensation, interest and attorney fees and costs. (Claim for Workers' Compensation Benefits, March 11, 2023).

9) On March 31, 2023, Employee requested a second independent medical evaluation (SIME), and identified the disputes as causation, compensability, treatment, degree of impairment and medical stability as stated in Dr. Ala's March 1, 2023 responses and Dr. Hippensteel's February 16 and 23, 2023 EME reports. (Petition, March 31, 2023; SIME form, March 31, 2023).

10) On March 31, 2023, Employer denied TTD, temporary partial disability (TPD) and medical benefits resulting from the March 8, 2023 wrist surgery upon Dr. Hippensteel's EME reports. It admitted responsibility for TTD and medical benefits for de Quervain tenosynovitis. (Controversion Notice; Answer, March 31, 2023).

11) On April 7, 2023, Employer filed a non-opposition to Employee's March 31, 2023 petition for an SIME. (Employer's Non-opposition to Petition for SIME, April 7, 2023).

12) On May 5, 2023, the parties stipulated to an SIME. Employee was advised, "a letter from their treating physician will be required if travel accommodations will be necessary (i.e. travel assistance, extra leg room, etc.)" and to notify the Board in writing if an accommodation request was overlooked. (Prehearing Conference Summary, May 5, 2023).

13) On July 6, 2023, Franklin emailed Paddock a copy of a July 3, 2023 benefit letter from Social Security stating beginning January 2023, Employee's monthly retirement benefit is \$2,119.60 and asked, "will this letter suffice from social security?" Paddock emailed back, "Only if she first became eligible for Social Security retirement benefits in December 2022. If it was earlier than December 2022, we need the notice which provides the monthly benefit she was to receive as her initial entitlement." (Social Security Administration letter, July 3, 2023; Emails, July 6, 2023).

14) On July 21, 2023, the Workers' Compensation Division (Division) notified the parties an SIME was scheduled for September 7, 2023, with Adam Brooks, MD. (Letters, July 21, 2023).

15) On August 1, 2023, Franklin emailed Paddock a copy of the February 7, 2022 Social Security letter stating Employee was entitled to monthly retirement benefits beginning February 2022, and the amount was \$1,937.40. (Email, August 1, 2023; Social Security Administration letter, February 7, 2022).

16) On August 2, 2023, Paddock's office staff emailed Franklin SIME travel arrangements. (Email, August 2, 2023). Franklin emailed back and included Paddock,

Hello, thank you sending these arrangements. Unfortunately, these are not acceptable. These have her flight arriving at midnight into Oakland airport then requiring her to travel through the night to Antioch for a 9am appointment.

I ask that you reconsider. If not, please advise so there I can pursue whatever action I can with the Board and still retain the appointment. (Email, August 3, 2023).

17) On August 3, 2023, Paddock emailed Franklin,

The first flight out of Kenai in the morning on 9/6 is at 9AM. This pushed the departure time out of Anchorage to later in the morning and the connecting flight to Oakland even later. We also considered the return flight home and opted to for an additional overnight stay to avoid her having to sit in the Anchorage airport all night waiting for the flight to Kenai. We do not have control over flight schedules and worked to identify an itinerary that would have minimal impact on your client. This is reasonable under the Board's regulations. (Email, August 3, 2023).

Franklin replied, "The problem is that the town where the SIME appointment is is an hour and a half from Oakland. If she arrives at midnight, it takes at least an hour to get her stuff, then 2 hours to her hotel. That is, at best, 3am for a 9am appointment. (Email, August 3, 2023).

Paddock emailed Franklin back, "The estimated times in your email do not make sense. If Ms. Smith checks a bag, she will have it within 30 minutes of her arrival. The drive from the airport to her hotel is 45 minutes. The itinerary is not unreasonable. I suggest you contact the Board and see if an appointment is available later in the day. (Email, August 3, 2023).

18) On August 4, 2023, Franklin emailed Paddock,

I'm not sure where you are getting that the drive from the airport is 45 minutes. All the trip planners I have seen show it as 45 miles and 1.5 hours. Mr. Smith has

volunteered to drive Ms. Smith to Anchorage if she can catch an earlier flight so she doesn't arrive in Oakland at midnight.

incidentally, the medical records show that there are some dementia/confusion concerns for Ms. Smith. She will not be renting a car and driving. Unsure if you plan to arrange her ground travel as well. (Email, August 4, 2023).

19) On August 7, 2023, Paddock replied by email to Franklin, "Google Maps and Apple Maps both have that trip being 45-49 minutes. Please confirm that Mrs. Smith has transportation to Anchorage for her flights before we change her itinerary. Please also confirm whether she has transportation on the return to trip between Anchorage and Kenai." (Email, August 7, 2023).

20) On August 9, 2023, Franklin emailed Paddock, "Mr. Smith will pick her up in Anchorage following the SIME, so please book travel from Anchorage to and from the SIME." (Email, August 9, 2023).

21) On August 10, 2023, Franklin emailed Paddock, "Given the delays and issues with travel, Ms. Smith has booked her own travel to the SIME. You can cancel whatever arrangements you have made and we will include the transportation costs in our claim." (Email, August 10, 2023). Paddock emailed Franklin, "There was no reason for Ms. Smith to arrange her own travel. Under 8 AAC 45.090(d), my client had until 8/28/23 to provide travel arrangements. If she would like to cancel her arrangements, my client will resume their efforts to provide travel as required under the Act and Board regulations. Please let me know what Ms. Smith decides." (Email, August 10, 2023). Franklin replied, "Go ahead and make the arrangements." (Email, August 10, 2023).

22) On August 16, 2023, Franklin emailed Employee a letter from Employer containing a settlement offer to cover all medicals, including anything paid by Medicare and anything else outstanding, about 16 weeks of TTD benefits and a two percent permanent partial impairment (PPI) payment. (Email, August 16, 2023).

23) On August 25, 2023, Employer withdrew its March 7, 2023 and March 31, 2023 controversions, stating it would pay TTD benefits from March 8, 2023 to June 14, 2023, and request bills from medical providers that provided medical treatment for the work injury. (Employer's Notice of Controversion Withdrawal, August 25, 2023).

24) On August 30, 2023, a stipulation to cancel the SIME was approved. (Stipulation to Cancel Second Independent Medical Evaluation, August 30, 2023).

25) On October 24, 2023, Jared Kirkham, MD, examined Employee and provided a one percent whole person impairment “as a result of her work injury” for a right wrist sprain. He also diagnosed a “right TFCC tear and right thumb CMC arthritis, chronic and degenerative in etiology, not substantially caused by the work injury” and “status post right wrist arthroscopy with TFCC debridement, removal of distal radius hardware, and CMC arthroplasty. . . .” Dr. Kirkham opined “the TFCC tear and right thumb CMC arthroplasty are not ratable diagnosis as related to the work injury.” (Kirkham report, October 24, 2023).

26) On November 18, 2023, Employee emailed Franklin regarding Employer’s settlement offer stating “we both feel we should not agree to any settlement until we have the PPI that Dr. Ala is going to arrange, we want to know where the arm truly stands. . . .” (Email, November 18, 2023).

27) On November 18, 2023, Franklin emailed Paddock itemized attorney fees and costs and a copy of his resume and stated, “now that Ms. Smith has her PPI I believe I would like to resolve my attorney fees.” (Email, November 18, 2023).

28) On November 29, 2023, Paddock replied to Franklin’s November 18, 2023 email stating,

My client is interested in resolving your fees. I’ve reviewed the itemized time and the hourly rate against what other attorneys have been awarded by the Board in 2023. Based on those awards and the litigation experience of the claimant attorneys involved, my clients will agree to resolve your fees at a rate of \$400 per billable hour. The \$400 rate is higher than the Board’s awards to JC Croft, Jung Yeo (a former hearing officer), and Andrew Wilson. Applying the \$400 rate to the itemization, this would be \$7,680.00 for 19.2 hours. (Email, November 29, 2023).

Franklin responded,

I will accept \$10,000 for my fees and costs. No offense to either of those attorneys, but I'm more experienced than either one.

JC Croft works for the AG and has worked there since before 2023. The Board recently gave a paralegal with only a few years experience \$425 (attached) and Bob Bredeson \$525 and I believe Franich is billing at \$600. I charge \$350 in criminal and family cases where my pay is guaranteed. (Email, November 29, 2023).

Paddock emailed,

My clients' assessment of your hourly rate is based on a review of the other claimant attorneys and their experience. A little background on the attorneys who have been awarded fees in the last year might be helpful.

JC Croft practiced as a claimant's attorney from 2017-2023. This includes successful litigation at the Appeals Commission and Alaska Supreme Court.

Eric Croft has been in practice since 1994 and was last awarded \$450 per hour. Patricia Huna has been in practice since 1994 and is a former hearing officer. She was last awarded \$415 per hour.

Keenan Powell has been in practice since 1983 and was last awarded \$425 per hour.

Lee Goodman has been in practice since 1990. The most recent Board decision addressing his fees reflected a rate of \$425 per hour.

Andrew Wilson has practiced as a claimant's attorney since 2017. His bar license begins in 2014.

Bryan Haugstad worked in Mike Jensen's office as a paralegal for 10 years before going to law school. He is now a licensed attorney operating his own practice. The Board awarded him \$425 per hour.

Bob Bredesen has worked as an attorney in workers' compensation matters since 1999. He was last awarded \$520 per hour.

Joe Kalamarides and John Franich have each been in practice for over 40 years. On 5/3/23, the Board addressed a billable rate of \$425 for Kalamarides. On 11/16/23, the Board awarded Franich a rate of \$520/hour. (Email, November 29, 2023).

Franklin replied, "My offer remains. Eric and Joe should be asking for more." (Email, November 29, 2023).

29) On December 5, 2023, Paddock emailed Franklin,

My client declines your offer to resolve your fees at a rate of \$500/hour. They have authorized me to provide you with a counter offer at rate of \$415 per hour. This is commensurate with other claimant's attorneys who have more experience as attorneys and in Alaska workers' compensation cases. This hourly rate is consistent with the *Rusch* factor addressing what is customarily charged that the Board applies when evaluating the reasonableness of fees.

My client's offer is for 19.2 hours @ \$415, or \$7968, plus itemized costs for a total of \$8,037.91. (Email, December 5, 2023).

Franklin replied, “I will absolutely not settle at \$415. That is insulting. I will take \$9500 total, offer ends COB today” and then followed up another email, “Actually, I take back that offer. I will file for fees.” (Emails, December 5, 2023).

30) On December 5, 2023, Employee requested a hearing on her claim. (Affidavit of Readiness for Hearing, December 5, 2023).

31) On December 28, 2023, the issues identified for hearing on February 13, 2024, included TTD and PPI benefits, medical costs, penalty, interest and attorney fees and costs. (Prehearing Conference Summary, December 28, 2023).

32) On January 26, 2024, Employer filed a history of disability and medical payments made in this case, including transaction dates, service dates, amount billed, amount allowed, check number, medical provider payee and the “cleared date.” Employer paid Employee TTD and PPI benefits and interest. There were eight entries for payments made to medical providers after Employer withdrew its controversions on August 25, 2023. It is unclear whether the “amount allowed” was the amount paid by check to the providers, and if interest was paid to the providers. (Affidavit of Service, January 26, 2024; observations).

33) On February 7, 2024, Employee filed an affidavit of attorney fees and costs for 29.03 hours spent from February 24, 2023, until February 7, 2024, billed at \$500 per hour, totaling \$14,515 in fees, and \$69.91 in costs. Franklin currently works as an attorney in his own law office without support staff trained in workers’ compensation. He currently represents injured workers in approximately 30 open cases and has active cases involving personal injury, family law and criminal defense. Franklin is paid \$350 per hour in family law, contract and criminal defense matters and is guaranteed payment in those matters regardless of outcome. He turned down family and criminal defense cases on a daily basis because of his commitments to his current workers’ compensation clients, including Employee. Franklin would not be motivated to accept workers’ compensation clients unless there is a significantly higher fee award than the cases where his pay is guaranteed, with a retainer due at outset. When Franklin is not successful in workers’ compensation cases, he loses expenses such as deposition fees, and travel and filing costs, in addition to the time spent on the case. Franklin was licensed to practice law in New York and he worked in Washington, D.C. He clerked for the Honorable Michael Spaan in 2008 in Alaska Superior Court. Franklin has been licensed in Alaska since 2009 and litigated criminal

and civil matters. He was an Assistant Public Advocate for seven years, litigating criminal matters and completed over 30 jury trials, including approximately 25 felony level cases. Franklin worked for one and a half years as a private insurance defense firm representing insurance companies in civil and maritime matters. He was an assistant attorney general from the Division for three years, independently responsible for handling dozens of workers' compensation claims. Franklin litigated workers' compensation matters before the Board in over 25 cases, and litigated several cases before the Alaska Workers' Compensation Appeals Commission, and before the Alaska Supreme Court in *Alaska State Commission for Human Rights v. United Physical Therapy*, 484 P.3d 599 (Alaska 2021). He was a senior assistant attorney general for the State of Alaska, Torts Division. Franklin has been representing injured workers for over one year and has mediated and resolved approximately 10 cases in the last year. (Attorney Fee Affidavit of Adam R. Franklin, February 7, 2024).

34) At hearing on February 13, 2024, Employee contended PPI benefits were not at issue because Employer paid PPI benefits consistent to the Board's ruling in *Stagno v. ABS Alaskan, Inc.*, AWCB Dec. No. 23-0085 (January 10, 2024) and medical costs and TTD benefits were not at issue because Employer paid those benefits. (Employee).

35) At hearing, Employer contended PPI and TTD benefits and medical costs were not at issue because it paid those benefits pursuant to the Act. It contended all benefits payable under the claim had been paid to Employee and her medical providers and there is no evidence if Employer paid interest to medical providers and the providers have not filed a claim. Employer contended the interest on medical costs paid to providers was not posed until Employee's brief. (Employer).

36) At hearing, Employer contended Franklin made several mistakes, including failing to provide the initial award letter from Social Security for retirement benefits, and with SIME travel issues. It contended this shows Franklin lacks familiarity with Social Security offset statutes and regulations and SIME regulations. Employer contended the \$500 hourly rate Employee requested is \$250 more per hour than what is charged by defense counsel. It contended \$500 exceeds the historic awards of attorney fees for highly experienced attorneys adjusted with the United States (US) Department of Labor consumer price index (CPI), and Employee's case was not novel or difficult; it provided www.bls.gov/data/inflation_calculator.htm as the website it used to make the CPI calculations. Employer contended the CPI calculator is not evidence

because it is publicly available information. It contended the rate Employee requested exceeds the fee customarily charged for similar services and cited many cases going back to 1991 through the present and applied the CPI calculator to the hourly rates previously awarded in those cases. Employer contended the benefit amount involved and results obtained and Franklin's experience and ability do not justify the \$500 hourly rate sought. It contended it paid \$8,600 in benefits, which was \$1,400 less than the \$10,000 offer it made in August 2023, which Employee rejected. (Employer).

37) At hearing, Employee objected to consideration of the CPI on historic awards of attorney hourly rates, contending Employer failed to file CPI evidence and she did not have the opportunity to review it and present her own evidence on the issue. (Employee).

38) At hearing, Employee testified she obtained an attorney because Employer denied benefits. She contended her need for treatment was due to preexisting medical conditions. Employee could not deal with it anymore. She had trouble remembering and was unable to travel by herself and relied on her husband. Employee did not provide a letter from her physician to Franklin stating she could not travel by herself. Her husband mostly communicated with her attorney. Employee did not remember Employer offering a lump-sum to settle her claim; he would be the one to know if there were any settlement offers. (Employee).

39) At hearing, Smith, Employee's spouse, testified he remembered discussing settlement in emails in August 2023. He declined Employer's offer because they were not certain what was going to happen with Employee and "things were not headed in a good direction with Walmart as far as dealing with them." Smith wanted Employer to pay for the medical care Employee needed and to restore her back to how she was before the accident. He did not know what Employee's future medical benefits were going to be, and he was not going to accept any settlement until he knew that. Smith contacted Franklin after searching on the web for an attorney experienced in dealing with workers' compensation. He contacted several attorneys; some attorneys did not want to take the case and others had other cases to handle. Franklin has done "a very good job taking care of our worries and concerns" throughout the case. Smith did not believe he would have gotten the benefits obtained without an attorney. He started seeing some "cognitive health issues" in Employee and tests were completed as Employee's mother had Alzheimer's; testing showed stress was the predominate issue. Smith remembered Employer's

two percent PPI rating settlement offer and that the PPI rate from Dr. Kirkham was lower than two percent, and Employer's offer to resolve medical bills. (Smith).

40) On February 14, 2024, Employee filed a supplemental attorney fee affidavit for an additional 2.9 hours spent from February 12 to February 14, 2024, at \$500 per hour, totaling \$1,450. (Supplemental Attorney Fee Affidavit of Adam R. Franklin, February 14, 2024).

41) On February 21, 2024, Employer responded to Employee's supplemental attorney fee affidavit, stating it did not oppose the itemization and time entries. It contended the \$500 per hour rate is unreasonable. Employer objected to any award of penalty and interest on attorney fees and costs because there was no Board award as required in 8 AAC 45.180(c); thus the attorney fees and costs were not due. (Employer's Response to Employee's Attorney's 2/14/24 Supplemental Attorney Fee Affidavit, February 21, 2024).

42) The questions involved in Employee's claim were not novel or difficult. (Experience, knowledge, observation).

PRINCIPLES OF LAW

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." That some persons "may disagree with a subjective conclusion does not necessarily make that conclusion unreasonable." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987)(further citations omitted).

AS 23.30.012. Agreements in regard to claims. (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order.

(b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the

beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

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.

AS 23.30.145. Attorney fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

Attorney fees in workers' compensation cases should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging*, 787 P.2d 103, 108 (Alaska 1990). An employee is entitled to attorney fees when the attorney is

instrumental in inducing an employer to pay benefits voluntarily but belatedly. *Childs v. Copper Valley Elec. Ass'n*, 860 P.2d 1184, 1190 (Alaska 1993). *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 975 (Alaska 1986) reiterated, “As we have noted, the objective of awarding attorney’s fees in compensation cases is to ensure that competent counsel are available to represent injured workers.” It added:

If an attorney who represents claimants makes nothing on his unsuccessful cases and no more than a normal hourly fee in his successful cases, he is in a poor business. He would be better off moving to the defense side of the compensation hearing room where attorneys receive an hourly fee, win or lose. . . .

In *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019), the Court held the Board must consider all an attorney’s experience, not just the attorney’s compensation experience. The Court held the Board must consider all factors in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney fee. Those factors are:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
2. the likelihood, that the acceptance of the employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

In *Hernandez v. Ocean Beauty Seafoods, LLC and Liberty Insurance Corporation*, AWCAC Memorandum Dec. 300 (February 21, 2023), the Commission ruled the Board abused its discretion in reducing an attorney’s hourly fee based on his limited experience before the Board. It stated the Board may not base its determination solely on the attorney’s workers’ compensation experience. Citing the Alaska Supreme Court, the Commission added that “an attorney’s experience in related legal fields . . . should be relevant as well.”

Rusch v. Southeast Alaska Regional Health Consortium, AWCAC Memorandum Dec. No. 298 (December 15, 2022) (*Rusch II*), awarded Franich \$450 per hour for work before the

Commission. In *Koberg v. Everts Air Fuel, Inc.*, AWCB Dec. No. 23-0017 (March 10, 2023), the Board awarded Patricia Huna \$415 per hour for attorney fees. In *Geerhart v. Yukon Kuskokowim Health Corporation*, AWCB Dec. No. 23-0020 (April 4, 2023), the Board awarded Powell \$425 per hour for attorney fees. In *Wrice v. Carlile Transportation*, AWCB Dec. No. 23-0022 (May 3, 2023), the Board awarded Kalamarides \$425 per hour for attorney fees. In *Vaillancourt v. State of Alaska*, AWCB Dec. No. 23-0042 (August 3, 2023), the Board awarded Haugstad, an attorney who worked as a paralegal in workers' compensation cases for ten years before becoming licensed in November 2021, \$425 per hour for attorney fees at his first appearance before the Board. In *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 23-0044 (August 10, 2023), the Board awarded Bredesen, an attorney with over 20 years' experience representing parties in workers' compensation cases, \$520 per hour for attorney fees based upon the Commission's approval of \$520 per hour. Bredesen argued \$450 awarded in January 2020 had the same buying power based upon the US Bureau of Labor Statistics CPI inflation information as \$521.87 in January 2023. In *Dickson v. State of Alaska*, AWCB Dec. No. 23-0066 (November 16, 2023), the Board awarded Franich, an attorney with over 40 years' experience representing parties in workers' compensation cases, \$520 per hour.

AS 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.

. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional

amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 percent of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.008 and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid.

(p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

A workers' compensation award accrues legal interest from the date it should have been paid.

Land and Marine Rental Co. v. Rawls, 686 P.2d 1187, 1192 (Alaska 1984).

AS 23.30.260. Penalty for receiving unapproved fees and soliciting. (a) A person is guilty of a misdemeanor and, upon conviction, is punishable for each offense by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, if the person

(1) receives a fee, other consideration, or a gratuity on account of any services rendered for representation or advice with respect to a claim, unless the consideration or gratuity is approved by the board or the court; or

(2) makes it a business to solicit employment for a lawyer or for the person making the solicitation with respect to a claim or award for compensation.

(b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is not required if

(1) the fee does not exceed \$300 and is a one-time-only charge to an employee by an attorney licensed in this state who performed legal services with respect to the employee's claim but did not enter an appearance; or

(2) the parties who reach an agreement in regard to a claim for injury or death under this chapter agree to the payment of attorney fees, and the agreement in regard to a claim for injury or death does not require board approval under AS 23.30.012.

AS 44.62.480. Official notice. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of a generally

accepted technical or scientific matter within the agency’s special field, and of a fact that is judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority. The agency shall determine the manner of this refutation.

In *Alaska State Commission for Human Rights v. United Physical Therapy*, 484 P.3d 599 (Alaska 2021), Franklin represented Alaska State Commission for Human Rights. The Court held the Board did not abuse its discretion or violation procedural regulation by taking administrative notice that the *American Medical Association Guides to the Evaluation of Permanent Impairment* recognized that diagnosis of non-specific chronic recurrent neck pain could be basis of permanent impairment as the Board is required by statute to use the *Guides* when making impairment determinations. *Id.* at 608-09.

8 AAC 45.050. Pleadings. . . . (f) For stipulations under this subsection,

(1) a stipulation of facts signed by all parties may be filed if the parties agree that there is no dispute as to any material fact and agree to the dismissal of a filed claim or petition or the dismissal of a party; by filing a stipulation of facts under this paragraph, the parties agree to the immediate filing of an order based upon the stipulation of facts;

(2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing;

(3) stipulations of fact or to procedures are binding upon the parties named in the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation; a stipulation waiving an employee’s right to benefits under AS 23.30 is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board;

. . . .

8 AAC 45.065. Prehearings. . . . (c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

....

8 AAC 45.070. Hearings. . . . (g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.

....

8 AAC 45.071. Hearing officer as a commissioner's designee. (a) A hearing officer shall serve as a commissioner's designee to hear and decide procedural and stipulated matters without a panel. An action of a hearing officer under this section is an action of the full board.

(b) For purposes of this section,

(2) a stipulated matter is limited to

(A) an award of attorney's fees and costs;

8 AAC 45.090. Additional examination. . . . (d) Regardless of the date of an employer's injury, the employer must

....

(2) arrange, at least 10 days in advance of the examination date, for the employee's transportation expenses to the examination under AS 23.30.095(e), AS 23.30.095(k), AS 23.30.110(g), or this section, at no cost to the employee if the employee must travel more than 100 road miles for the examination or, if the employee cannot travel on a government-maintained road to attend the examination, arrange for the transportation expenses by the most reasonable means of transportation; and

(3) arrange, at least 10 days in advance of the examination date, for the employee's room and board at no cost to the employee if the examination under AS 23.30.095(e), AS 23.30.095(k), AS 23.30.110(g), or this section, requires the employee to be away from home overnight.

....

8 AAC 45.120. Evidence. . . . (f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless

a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing.

....

8 AAC 45.180. Costs and attorney's fees. . . . (c) Except as otherwise provided in this subsection, an attorney fee may not be collected from an applicant without board approval. A request for approval of a fee to be paid by an applicant must be supported by an affidavit showing the extent and character of the legal services performed. Board approval of an attorney fee is not required if the fee

(1) is to be paid directly to an attorney under the applicant's union-prepaid legal trust or applicant's insurance plan; or

(2) is a one-time-only charge to that particular applicant by the attorney, the attorney performed legal services without entering an appearance, and the fee does not exceed \$300.

8 AAC 45.225. Social security and pension or profit sharing plan offsets. (a) An employer may reduce an employee's or beneficiary's weekly compensation under AS 23.30.225(a) by

(1) getting a copy of the Social Security Administration's award letter showing the

(A) employee or beneficiary is being paid retirement or survivor's benefits;

(2) computing the reduction using the employee's or beneficiary's initial Social Security entitlement, and excluding any cost-of-living adjustments; and

(d) An employee or beneficiary who is receiving weekly compensation benefits shall

(1) send the employer a copy of the award letter from the Social Security Administration or a copy of the first payment documents from a pension or profit sharing plan; . . .

ANALYSIS

1) Is Employee entitled to attorney fees and costs?

Employee seeks full and actual attorney fees and costs on her March 13, 2023 claim, which sought TTD and medical benefits, interest and penalty. Employer withdrew its controversions and paid the TTD and medical benefits, interest and penalty. Therefore, Employee is entitled to

attorney fees and costs because Employer voluntarily paid benefits. *Childs*. Employer does not contend that Franklin is entitled to no fees, but rather the parties dispute what a reasonable fee is for an attorney with Franklin's experience; the statutory presumption analysis does not apply. *Rusch*. *Rusch* requires review of the eight factors in Alaska Rule of Professional Conduct 1.5(a) in determining a reasonable fee.

a. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;

Employer did not object to the time Franklin included in his fee affidavits. The questions involved in Employee's claim were not novel or difficult. *Rogers & Babler*.

b. the likelihood, that the acceptance of the employment will preclude other employment by the lawyer;

Employee contended that the preclusion of fixed basis work when workers' compensation cases are accepted by Franklin should be considered when determining a reasonable hourly attorney fee rate. Franklin affied the time spent pursuing a workers' compensation case precluded acceptance of work for other clients in other areas of law, such as family and criminal defense cases, where his attorney fees are fixed at \$350 per hour. He further affied he turned down family and criminal defense cases on a daily basis because of his commitments to his current workers' compensation clients, including Employee. Franklin affied he would not be motivated to accept workers' compensation clients unless there is a significantly higher fee award than the cases where his pay is guaranteed, with a retainer due at outset. Franklin's preclusion of fixed basis work when accepting workers' compensation cases will be considered in determining a reasonable hourly fee.

c. the fee customarily charged in the locality for similar services;

Employee contended \$500 per hour is a customary rate charged for similar services. Employer disagreed and proposed \$415 per hour is customary. It contended Employee is seeking \$250 more per hour than employer attorneys are generally paid. However, employer attorneys are typically paid on a fixed basis, not a contingent basis like claimant attorneys in workers' compensation cases are paid. *Bignell*. Employer contended \$500 exceeds historic awards of attorney fees for highly experienced attorneys adjusted with the US Department of Labor CPI. It

requested the panel take administrative notice of the application of the US Department of Labor CPI to fees awarded in decisions and orders issued since 1991.

Employee objected to taking such notice, contending Employer failed to file CPI evidence and she did not have the opportunity to review it and present her own evidence on the issue. The panel can take notice of “a generally accepted technical or scientific matter” within the panel’s “special field.” AS 44.62.480. Unlike in *Alaska State Commission for Human Rights* where a panel took notice of a portion of the *Guides*, which it is required by the Act to use, a panel is not required to consider the US Department of Labor CPI under any statute or regulation. While CPI information was provided as evidence in *Vaillancourt* and *Martino* when determining an hourly rate for Haugstad and Bredesen, administrative notice was not taken. The US Department of Labor CPI is not a generally accepted technical or scientific matter within the panel’s special field. AS 44.62.480. Administrative notice will not be taken of the application of the US Department of Labor CPI to fees awarded in decisions and orders issued since 1991. As Employer failed to file the CPA information 20 or more days before the hearing, it will not be considered. 8 AAC 45.120(f). The hourly rate awarded in past decisions to other claimant attorneys will be considered.

d. the amount involved and the results obtained;

Franklin was successful in obtaining an agreement to an SIME. Due to Franklin’s efforts, Employer withdrew its controversions and voluntarily paid benefits pursuant to the Act, and the SIME was cancelled per the parties’ agreement. Employer’s implied contention that Franklin’s fees should be reduced because Employee did not accept a \$10,000 lump-sum offer in exchange to waive all benefits under the Act, which was \$1,400 higher than the benefits it paid under the Act is given no weight. Smith credibly testified Employee and he did not want to settle the case; rather, they wanted Employer to pay benefits under the Act. AS 23.30.122. Because the result obtained was the outcome Employee wanted, Franklin’s attorney fees should not be reduced based upon Employee’s rejection of Employer’s settlement offer. *Rogers & Babler*. Furthermore, the fact that the benefits paid under the Act were only \$8,600 does not justify reducing the hourly rate awarded Franklin when benefits Employer paid were benefits Employee sought in her claim.

e. the time limitations imposed by the client or by the circumstances;

Franklin did not identify any time limitation imposed by the client or the circumstances.

f. the nature and length of the professional relationship with the client;

Franklin entered his appearance on March 13, 2023; the length of the professional relationship with Employee has not been protracted. However, the short time resulted in efficient resolution of Employee's claim. *Rogers & Babler*.

g. the experience, reputation and ability of the lawyer or lawyers performing the services; and

Employer contended Franklin should not receive an hourly fee rate similar to those of more experienced attorneys, such as Huna, Powell, Goodman, Bredesen, Kalamarides or Franich, because they have many more years of workers' compensation experience than Franklin. It is true that Franklin is not as experienced as Huna, Powell, Goodman, Bredesen, Kalamarides or Franich in workers' compensation cases. *Rusch II; Koberg; Geerhart; Wrice; Martino; Dickson*. However, his workers' compensation legal experience is not the only consideration. *Rusch; Hernandez*. In his fee affidavit, Franklin contended he has over five years' experience as claimant and defense counsel in workers' compensation cases and currently has approximately 30 open workers' compensation cases. He contended he practices in other areas of law, such as family and criminal defense cases, where his attorney fees are fixed at \$350 per hour. Franklin's legal experience in other areas of law is relevant to a reasonable fee determination. *Rusch; Hernandez*. He should be awarded more than his regular, fixed basis fee of \$350 per hour in other areas of law as the objective in awarded attorney fees in workers' compensation cases is to ensure competent counsel are available to represent injured workers. *Bignell*. Without a higher fee in contingent workers' compensation cases, Franklin would not be incentivized to take workers' compensation cases. *Bignell; Cortay*.

Employer contended Franklin demonstrated lack of familiarity with Social Security offset statutes and regulations and SIME regulations when he made several mistakes, including failing to provide the initial award letter from Social Security for retirement benefits until Employer

explained it was necessary, and SIME travel issues demonstrated in emails. Cost-of-living adjustments are not included when calculating a Social Security offset; the initial award letter is required to properly calculate the offset and the claimant is required to provide it to the employer. 8 AAC 45.225. Franklin should have understood it would not be appropriate to use the July 3, 2023 benefit letter. *Rogers & Babler*. His July 6, 2023 email demonstrated his lack of understanding of Social Security offset statutes and regulations at that time.

Regulation 8 AAC 45.090(d) required Employer to arrange transportation for Employee at least 10 days before Employee's September 7, 2023 SIME appointment and pay for her transportation expenses and room and board required for the SIME. Employee was advised in the May 2, 2023 prehearing conference summary that a letter from a treating physician is required if travel accommodations were necessary. Employer arranged transportation for Employee on August 2, 2023, 36 days before her September 7, 2023 SIME appointment; Franklin inaccurately stated there were delays in SIME travel scheduling in his August 10, 2023 email as Employer arranged transportation prior to the deadline. While Franklin's August 4, 2023 email mentioned "dementia/confusion concerns" prevented Employee from renting a car and driving, no physician letter so stating was ever provided to Employer. His August 4, 2023 email demonstrated Franklin's lack of understanding of the SIME travel process, even though he had been informed of the physician letter requirement. Franklin's mistakes were minor as they did not cause Employee to lose her case and were eventually resolved when Franklin provided the initial award letter and told Employer to make the SIME travel arrangements; they will be considered when determining an hourly rate. *Rogers & Babler*.

h. whether the fee is fixed or contingent.

Attorney fees for employee attorneys in workers' compensation cases are contingent in virtually all cases. The contingent nature of the work will be considered in determining an appropriate hourly rate.

While Employer is correct that Franklin does not have as much experience as Huna, Powell, Goodman, Bredesen, Kalamarides or Franich in workers' compensation cases, that is not the only consideration. Franklin's other legal experience and his regular, fixed basis fee in other

areas of law are significant factors. It is desirable to have competent claimant counsel available and the contingent nature of the work weighs in favor of awarding Employee full, reasonable attorney fees. However, Franklin committed minor mistakes. After consideration of the above factors, Employee will be awarded \$490 per hour in full, reasonable attorney fees. Employer did not object to the time Franklin included in his fee affidavits. Employer will be ordered to pay Employee \$15,645.70 in attorney fees (29.03 hours + 2.9 hours = 31.93 hours; 31.93 hours x \$490 / hour = \$15,645.70) and \$69.91 in costs.

2) Is Employee entitled to penalty and interest?

Employer voluntarily withdrew its controversions and paid benefits under the Act to Employee and her medical providers. Employee requests an order awarding interest to medical providers. Employer contended it paid all benefits under the Act to Employee and her medical providers. It contends Employee failed to produce any evidence that further interest is owed. Employer provided a history of medical payments in this case; eight payments were made to medical providers after Employer withdrew its controversion notices. It is unclear whether the “amount allowed” was the amount paid by check to providers and if interest was paid to them. At hearing, Employer could not state that interest had or had not been paid. It contended the medical providers have not filed a claim for interest. The medical providers are entitled to the benefits provided under the Act, including interest, when Employer withdrew its controversion notices regardless of whether the providers filed a claim. AS 23.30.155(a), (b), (p). Medical costs and interest were issues set for hearing in the December 28, 2023 prehearing conference summary and it governs the issues for hearing; Employer had notice interest was at issue. 8 AAC 45.065(c); 8 AAC 45.070(g). Employer will be directed to pay interest to Employee’s medical providers pursuant to the Act. AS 23.30.155(p); *Rawls*.

Employer contended an hourly rate of \$415 was reasonable but it did not pay Employee attorney fees based upon that hourly rate. Employee contended he should be awarded penalty and interest on the hourly rate of \$415. Employer contended interest and penalty is not due on the amount of attorney fees and costs it argued was reasonable because there was no award as required in 8 AAC 45.180(c). Under 8 AAC 45.180(c), attorney fees and costs may not be collected from a claimant in excess of \$300 without approval; it does not address collecting fees from employers

or defendants. AS 23.30.145(a) requires attorney fees to be approved unless a settlement agreement that does not require approval under AS 23.30.012 is filed. AS 23.30.260(b)(2). Parties may include attorney fees and costs in a settlement agreement that requires approval. AS 23.30.012(b). Parties may stipulate in writing to facts or procedures; such stipulations are binding upon the parties “to the stipulation” and have “the effect of an order” unless for “good cause” a party is relieved from the terms of the stipulation. 8 AAC 45.050(f). Thus, parties may stipulate to Employee’s attorney fees and costs, which also requires approval. AS 23.30.260; 8 AAC 45.050(f); 8 AAC 45.071(b)(2)(A).

A 25 percent penalty is due on compensation not paid within seven days after it comes “due.” AS 23.30.155(e). Interest is due on compensation not paid when “due.” AS 23.30.155(p). Attorney fees and costs are “due” within 14 days of an award in a decision and order, approval of a settlement agreement requiring approval, approval of an attorney fee and cost stipulation, or filing of a settlement agreement that does not require approval under AS 23.30.012. AS 23.30.155(e), (f); AS 23.30.260. The parties’ settlement discussions were unsuccessful as Employer rejected Employee’s offer and Employee rejected Employer’s counteroffer. There was no settlement agreement or stipulation on attorney fees and costs filed in this case. Consequently, attorney fees and costs are not “due” until an award is made in this decision and order. Therefore, Employee is not entitled to interest or penalties on attorney fees and costs on the hourly rate Employer contended was reasonable. Her request for interest and penalties on attorney fees and costs will be denied.

CONCLUSIONS OF LAW

- 1) Employee is entitled to attorney fees and costs.
- 2) Employee is not entitled to penalty and interest on attorney fees and costs.

ORDER

- 1) Employee’s March 13, 2023 claim is granted in part and denied in part.
- 2) Employer is ordered to pay Employee \$15,645.70 in attorney fees and \$69.91 in costs.
- 3) Employer is ordered to pay interest to Employee’s medical providers pursuant to the Act.

