ALASKA WORKERS' COMPENSATION BOARD

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

GLORIA EYON, Employee, Claimant, v. TLINGIT HAIDA REGIONAL HOUSING AUTHORITY, Employer, and ALASKA TIMBER INSURANCE EXCHANGE, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201912188 AWCB Decision No. 24-0029 Filed with AWCB Juneau, Alaska on May 23, 2024

Tlingit Haida Regional Housing Authority's and Alaska Timber Insurance Exchange's (Employer) February 6, 2024 petition to dismiss under AS 23.30.110(c), and Gloria Eyon's (Employee) February 7, 2024 petition for an extension under §110(c), and her April 2, 2023 petition for a hearing continuance, were heard in Juneau, Alaska, on April 23, 2024, a date selected March 21, 2024. A February 7, 2024 affidavit of readiness for hearing gave rise to this hearing. Employee appeared by Zoom, represented herself and testified. Attorney Martha Tansik appeared in person and represented Employer. The record closed at the hearing's conclusion on April 23, 2024.

ISSUES

Employee contended her petition for a hearing continuance should be granted because she diligently pursued her case to the best of her abilities. She contended a work-related traumatic brain injury (TBI) with post-concussive syndrome, post-traumatic stress disorder (PTSD), multiple disabilities, an arson fire at her apartment building and her college courses are good cause to grant her hearing continuance. Employee requested the hearing be continued until May 2024.

Employer contended good cause is required to grant Employee's petition for a hearing continuance and Employee failed to prove good cause. It contended Employee failed to prove due diligence and irreparable harm would result from a failure to grant her petition. An oral order denied Employee's petition for a hearing continuance.

1) Was the oral order denying Employee's petition for a hearing continuance correct?

Employer contends Employee's claim should be dismissed under §110(c) because she failed to strictly or substantially comply with its requirements. It contends Employee never requested a hearing on her claim and requested an extension of the time under §110(c) after the deadline passed. Employer contends there is no case law allowing injured workers to request a hearing extension after the §110(c) deadline has passed. It contends the Division properly informed Employee of the actual date for the §110(c) deadline twice in prehearing conference summaries. Employer contends Employee is not mentally incompetent. It contends there was no tolling of the time period §110(c) because Employer did not agree to a second independent medical evaluation (SIME), there was no order for an SIME, and Employee failed to request a hearing on her petition for an SIME as directed by Division staff. Employer requests an order dismissing Employee's claim.

Employee contends she diligently pursued her claim to the best of her abilities as an unrepresented litigant. She contends she tried to retain an attorney but none of them would take her case because it involves a TBI, and such cases are usually long and drawn-out and attorneys only receive a small amount of money in fees. Employee contends she has disabilities which require accommodations, which were not provided, and she was the victim of arson, all of which affected her ability to pursue her claim. Employee contends the goal of the Alaska

Workers' Compensation Act (Act) is to restore injured workers to preinjury status. She contends her failure to timely request an extension of the §110(c) deadline should be excused because she focused on healing from her work injury to return to preinjury status and one of the ways she focused on healing is to take college courses. Employee contends the workers' compensation adjudications process impaired her ability to heal from the work injury because she was threatened to have her case closed if she did not sign releases or attend a deposition or employer's medical evaluations (EME) after the arson fire. She requests the §110(c) deadline be extended to the end of the year.

2) **Should Employee's petition for an extension of time under §110(c) be granted?**

3) **Should Employee's claim be dismissed under §110(c)?**

FINDINGS OF FACT

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

1) On September 3, 2019, Employee fell and struck her head on a counter when she stood up to move a table, sat back down and her chair had moved. (First Report of Occupational Injury, September 6, 2019).

2) On November 15, 2019, Employee visited the Juneau Division office in-person for assistance with the protective order process. (ICERS, Walk-In, November 15, 2019). Employee petitioned for a protective order, contending releases sought information too far back in time. (Petition November 15, 2019).

3) On December 11, 2019, the Board designee ordered Employee to sign and return the releases to Employer. She was informed of possible sanctions should she unreasonably or willfully refuse to comply with the discovery order, including suspension and forfeiture of benefits and claim dismissal. Employee was also informed how to appeal the discovery order and to seek reconsideration or modification of the discovery order. The prehearing conference summary also included the following standard notice:

> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis

> Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, December 11, 2019).

4) On December 12, 2019, Employee visited Tasha Powell, MD, a neurologist, for "head trauma" following a September 3, 2019 blow to her head at work when she struck her head against a solid counter. Employee reported post-concussive symptoms, including poor sleep, heightened anxiety, irritability, dizziness/disequilibrium, and short-term memory difficulties. Dr. Powell discussed the symptoms could continue for six to twelve months after the event; she diagnosed chronic intermittent post-traumatic headache, cervical myofascial pain syndrome, post concussive syndrome and left side occipital neuralgia. She thought Employee would benefit from prolotherapy and if Employee failed that treatment, she might benefit from a trial occipital nerve block. (Powell medical report, December 12, 2019).

5) On December 26, 2019, Employer controverted all benefits due as Employee failed to sign and return the releases. (Controversion Notice, December 26, 2019).

6) On December 30, 2019, Employer withdrew its December 26, 2019 controversion. (Withdrawal, December 30, 2019).

7) On December 30, 2019, a workers' compensation officer emailed Employee a claim form, medical summary form, attorney list and "Workers Compensation and You" pamphlet as Employee requested. (Email, December 30, 2019).

8) On January 6, 2020, Employer controverted all benefits as of October 18, 2019 based upon EME reports. The controversion notice included the following information:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?
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> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years. (Controversion Notice, January 6, 2019).

9) On February 6, 2020, Employee followed up with Dr. Powell for prolotherapy. Dr. Powell diagnosed chronic intermittent post-traumatic headache, concussion history, post concussive syndrome and cervical myofascial pain syndrome and provided prolotherapy. (Powell medical report, February 6, 2020).

10) On February 12, 2020, Employee asked a workers' compensation officer whether her employer "has rights to my medical records":

> I had asked the human resource person should I have my medical provider provide another letter regarding my healing time since I had been told it would be 3-6 months most likely a year. This would be in relation to the letters I provided to my employer from my medical providers about symptoms of a head injury since I had had an outburst at work shortly after the injury.
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> Curious response after this discussion was he said I should keep him and ATIE informed. He told me he knew my workers comp case has been closed, and I said yes but I am not fully healed and still getting treatment for the injury. I said they said my cut should have been healed after six weeks yet they did not address the rest of the injury which he nodded his head. I told him he knows I am still getting treatment for the loose ligaments/tendons from the whiplash of hitting my head so hard. He said to keep ATIE or he informed yet they closed my case. Why would that be necessary? (Email, February 12, 2020).

11) On February 13, 2020, the workers' compensation officer responded to Employee's email:

> I think the employer is referring to work-ability notes, which let them know if you are unable to work, or if you have any work restrictions due to your injury. It is normal for the employer and the adjuster to get work-ability notes. They are also part of the evidence relied on to determine dates of disability at a formal board hearing.
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> If you intend to appeal the controversion, part of that process requires filing all the medical records related to your work injury before your case goes to a formal board hearing. Medical records filed with the board need to be filed with a Medical Summary form, which is attached. When you file a medical summary with us, we require you to show that you sent a copy to the adjuster, but not the employer, as the adjuster represents them.
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> I've previously sent you a WCC packet for appealing a denial, but I'm going to include another one here. I've incorporated all the information from the previous one, but I'm also including forms and information for requesting a Second Independent Medical Evaluation (SIME). I'm including those because the more recent controversion dated 1/6/20 is based on an IME opinion. Please see more information below regarding the WCC and SIME processes.
> . . . .
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> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and

> Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties
> . . . .
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> The pamphlet, "Workers' Compensation and You – Information for Injured Workers" contains information about the Workers' Compensation process, the different benefit types, and a helpful glossary of terms.
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> The board has a process for requesting an examination by a physician chosen by the board (a Second Independent Medical Evaluation or SIME) when an employee's physician and the employer/insurer's physician disagree on the nature or extent of the injury or illness. Either party may request an examination by a physician chosen by the board by filing with the board a petition requesting an SIME. The parties may also agree to an SIME by filing with the board an SIME form signed by both parties.
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> The SIME form is used to demonstrate that there is a medical dispute between the parties. Your doctor's opinion is listed on one side, while the IME doctor's opinion is listed on the other. You then attach all the medical documentation you referred to in the doctor's opinions, showing the dispute. . . .

The pamphlet "Workers Compensation and You," and claim, medical summary, petition and SIME forms were attached to the email. (Email, February 13, 2020).

12) On March 2, 2020, Employee requested neuropsychological testing. Dr. Powell completed the first step, the Montreal Cognitive Assessment, and Employee scored "29/30." (Powell medical report, March 2, 2020).

13) On March 31, 2020, Dr. Powell provided Employee repeat prolotherapy. She diagnosed chronic intermittent post-traumatic headache, left side occipital neuralgia, cervical myofascial pain syndrome, concussion history and mild TBI. (Powell medical report, March 31, 2020).

14) On January 6, 2022, Employee sought temporary partial disability and permanent partial impairment benefits, transportation costs, a finding of unfair and frivolous controversion and "vocational rehabilitation" benefits for TBI, whiplash and post concussive disorder from slamming her head against an old, rounded countertop which split her head open and caused a large lump. (Claim for Workers' Compensation Benefits, January 6, 2019).

15) On February 1, 2022, Employer controverted all benefits sought in Employee's January 6, 2019 claim. The controversion notice was served upon Employee by certified mail, return receipt requested and it included the following information:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?
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> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years. (Controversion Notice, February 1, 2022).

16) On February 18, 2022, Employee petitioned for a protective order against signing releases. (Petition, February 18, 2022).

17) On February 28, 2022, Employee emailed a workers' compensation officer and asked whether box 16 on the petition form was used to join two workers' compensation cases "because similar injuries and same employer" and whether a petition to join could be submitted now. (Email, February 28, 2022).

18) On March 2, 2022, a workers' compensation technician replied to Employee's email and stated box 16 was used to request to have persons or a party joined. (Email, March 2, 2022). Employee followed up with two additional emails to the technician asking again whether she could join a prior similar injury case using the petition form. (Emails, March 2, 2022).

19) On March 2, 2022, the Board designee informed Employee:

> . . . she must serve and file an ARH requesting a hearing or written notice she has not completed all discovery but still wants a hearing within two years of Employer's February 1, 2022 Controversion to avoid possible dismissal of her claim. AS 23.30.110(c). **Employee must file an ARH or written notice she has not completed all discovery but still wants a hearing by February 5, 2024** (February 1, 2022 + 2 years + 3 days under 8 AAC 45.060(a) = Sunday, February 4, 2024 = Monday, February 5, 2024 under 8 AAC 45.063(a)).

Employee was advised "to obtain a medical opinion regarding issues relating to her claims, including causation, compensability, treatment, degree of impairment, and medical stability prior to a hearing on her WCC and to provide Employer evidence of her transportation expenses. Employee [was] also advised it is her responsibility to file with the board and serve on all parties copies of evidence she intends to rely upon. AS 23.30.095(h)." She was informed an affidavit

of readiness for hearing is a formal request for a hearing and is filed once discovery is complete and she is fully prepared for hearing, a petition is the form used to request the Board to take a particular action, how to use a notice of intent to rely form to accompany non-medical documents and a medical summary form for medical documents filed with the Board and served upon Employer. Employee was further informed:

> Should Employee wish to retain an attorney and the attorney agrees to take Employee's case, Alaska workers' compensation statutes and regulations provide for the payment of Employee's attorney if Employee prevails at hearing. If Employee does not prevail at hearing, the attorney is precluded by regulation from charging more than $300 in fees for representation of Employee. Most attorneys on the board's list do not charge an initial consultation fee or waive the fee if employees are unable to pay.
> . . . .
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> The board designee explained the process for requesting an examination by a physician chosen by the board (a Second Independent Medical Evaluation or SIME) when an employee's physician and the employer/insurer's physician disagree on the nature or extent of the injury or illness. Either party may request an examination by a physician chosen by the board by filing with the board a petition requesting an SIME. The parties may also agree to an SIME by filing with the board an SIME form signed by both parties.

The prehearing conference summary also included the following standard notices:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.
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> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis

> Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, March 2, 2022).

The March 2, 2022 prehearing conference notice was served on Employee that same day along with the "Workers Compensation and You" pamphlet, and ARH, petition, medical summary, and notice of intent to rely forms and claimant attorney list. (Prehearing Conference Summary Served, March 2, 2022).

20) On March 2, 2022, Employer answered Employee's February 18, 2022 petition for a protective order. (Answer, March 2, 2022).

21) On March 3, 2022, the workers' compensation technician replied to Employee's March 2, 2022 emails and informed Employee she could use box 16 on the petition to join two cases together and she should explain in the details section that she is wanting to join two cases. (Email, March 3, 2022).

22) Employee did not file a petition to join two cases. (Agency record).

23) On March 16, 2022, a workers' compensation technician emailed Employee the updated claimant attorney list. (Email, March 16, 2022).

24) On March 16, 2022, Employer filed and served Employee by certified mail, return receipt requested with an amended controversion, contending Employee voluntarily removed herself from the work force when she resigned her position over a dispute about "work scope" on February 4, 2022. The controversion notice included the following information:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?
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> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years. (Controversion Notice, March 16, 2022).

25) On March 18, 2022, the Board designee ordered Employee to sign and return the three medical releases, mental health records release, employment records release, insurance records release, Social Security Consent for Release of Information, Request for Social Security Earning Information release and Alaska Workers' Compensation Request for Release of Information and return the signed releases to Employer by close of business on April 4, 2022, ordered Employer to modify the two pharmacy releases to limit the information sought to prescribing provider's

names, and ordered Employee to sign and return the modified pharmacy releases to Employer 10 days after Employer provides her the modified release. Employee was informed of possible sanctions should she unreasonably or willfully refuse to comply with the discovery order, including suspension and forfeiture of benefits and claim dismissal. She was also informed how to appeal and request reconsideration or modification of the discovery order. The prehearing conference summary also included the following standard notices:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.
>
> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, March 18, 2022).

26) On March 23, 2022, the March 18, 2022 prehearing conference summary was served on Employee along with an ARH and petition form. (Prehearing Conference Summary Served, March 23, 2022).

27) On March 30, 2022, Employee called and spoke with a workers' compensation officer about the process for change of physician as her previous physician sent her to collections. The officer "explained the process" and suggested she notify the claims adjuster of the physician change in writing. (ICERS, Phone Call Entry, March 30, 2022).

28) On March 31, 2022, a workers' compensation technician emailed Employee the following letter:

> Dear Ms. Eyon and Medical Provider,

> This office has been informed your medical provider has referred a claimed debt for medical services arising from a potential workers' compensation injury to a third party collection service. Please be advised that AS 23.30.097(f) bars collection of a fee or charge for medical treatment or service in a pending workers' compensation claim from the injured worker. Efforts to collect such a fee from an employee may also constitute an unlawful trade practice under AS 45.50.471(a) and AS 45.50.471(b)(14) by the person referring the alleged debt to a collection service and by the collection service attempting to collect on the debt.
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> The medical provider's assurance of voluntary compliance and correction of the referral for collection is requested. Should the medical provider wish to take additional steps to protect its financial interest, the Alaska Supreme Court has held a medical provider may file a claim for compensation with the Alaska Workers' Compensation Board. *Barrington v. ACS Group, Inc.,* 198 P.3d 1122 (Alaska 2008). The Alaska Workers' Compensation Board may be contacted at (907) 269-4980 (Anchorage), (907) 465-2790 (Juneau), (907) 451-2889 (Fairbanks) or toll free at (877) 783-4980.
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> Should the medical provider fail to remedy this situation, the employee may contact the State of Alaska, Department of Law, Consumer Protection Unit, Commercial and Fair Business Practices Section at (907) 269-5200. The Consumer Protection Unit of the Alaska Attorney General's Office investigates unfair or deceptive business practices and files legal action on behalf of the State of Alaska to stop such practices. (Email, letter, March 31, 2022).

29) On April 4, 2022, Employee requested reconsideration or modification of the March 18, 2022 discovery order. (Petition, April 4, 2022). She also filed an ARH requesting an oral hearing on her petition. (ARH, April 4, 2022).

30) On April 11, 2022, Employee followed up with Brian Trimble, MD, a neurologist:

> Patient is a 55 year-old, left handed Tlingit woman returns for follow up. Patient suffered a head injury on 9/3/2019 that has brought on several problems. The one that concerns her the most is the fact that she was in a student without any accommodations prior to her injury. Right after her injury she had to audit classes because she could not do the work. This last fall she took classes for credit but she needed accommodations. Her first class that she took this last fall was in Alaska native studies. She did get an AA in the class but she needed assistance from the writing center in order to write her papers. This is something that she has not needed help with in the past. She is currently taking a class in Northwest culture and art but needs accommodations in order for her to take the class and she is doing well in the class. She also endorses continued mood changes and she gets easily overwhelmed, problems that she had not experienced before her injury. I have been treating the patient for the past 2 years for ligament injuries to her neck and upper back as a result of her injury. She still needs some further

> treatment but she is responding well to the treatment. Patient did have a Montreal cognitive assessment test done 6 months after her injury and she scored 29/30 which is within normal limits. She did not have a Montreal cognitive assessment or any other neuropsychological testing before and after her injury. It is possible that she was functioning at a much higher level before her injury and now she is functioning at a lower level but still within normal limits, but this will be difficult to prove. The only evidence of this is her performance in college where she excelled taking classes before her injury without any accommodations or assistance and now she needs accommodations even though she has improved and it has been almost 3 years since her injury. I think the patient did suffer a significant concussion in 2019 and she is getting better. There is no evidence that she is experiencing progressive decline which would suggest a chronic traumatic encephalopathy. However, I think she is functioning at a lower level, although within normal limits, than she was before this injury in 2019. I will continue to see the patient regarding her chronic headaches and neck pain from her injury. (Trimble chart note, April 11, 2022).

31) On April 14, 2022, Employer petitioned to dismiss Employee's claim due to her failure to comply with the March 18, 2022 discovery order. (Petition, April 14, 2022).

32) On April 27, 2022, Employee petitioned for a protective order against an April 29, 2022 deposition, contending she was trying to find an attorney that would take her case. She attached a letter from Jack Campbell, LCSW, recommending Employee have legal representation during the deposition and expressing concern Employee's mental health symptoms could exacerbate without legal representation. (Petition, April 27, 2022).

33) On April 27, 2022, Employer opposed Employee's April 27, 2022 petition for a protective order. (Opposition to Petition for Protective Order Regarding Deposition, April 27, 2022).

34) On April 29, 2022, Employee filed two medical summaries; the summaries included the April 11, 2022 note from Dr. Trimble and Dr. Powell's December 12, 2019 and February 2, March 2, and March 31, 2020 reports. (Medical Summaries, April 29, 2022).

35) On May 3, 2022, Employer requested a hearing on its April 14, 2022 petition to dismiss. (ARH, May 3, 2022).

36) On May 3, 2022, the parties agreed Employee's April 26, 2022 petition for a protective order was moot because she attended the deposition. They also agreed to set an oral hearing on June 14, 2022 to address Employee's April 4, 2022 petition and Employer's April 13, 2022 petition to dismiss. The prehearing conference summary also included the following standard notices:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.
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> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716.
> (Prehearing Conference Summary, May 3, 2022).

37) On May 4, 2022, Employee answered Employer's April 14, 2022 petition to dismiss, contending she signed and returned four of the releases after the prehearing conference. (Response to Petition to Dismiss 04.13.22, May 4, 2022).

38) On June 6, 2022, Employee testified at deposition that "delayed processing" has been an issue. (Employee Deposition at 64). She was taking two college classes, Advanced Formline and Northwest Coast Art History and Culture. *Id*. at 65. Employee has a six-page paper to write, it was due that day, but she focused on "this stuff" and had not started writing it; she is way behind and thought she was going to have to ask for an extension on her class. (*Id*. at 86). She was waiting on scholarships for which she applied and will be in school full-time in the fall. (*Id*.). Employee got accommodations for one of the two classes she is taking so she has extra time to take tests and for writing assignments, "or any other thing that's required that may take extra time." (*Id*. 65). She forgets words, has outbursts and she exploded at a work meeting, impulsively drove and got a ticket, experienced brain fog and gets really overwhelmed. (*Id*. at 69 - 71, 74, 76). Once the prolotherapy started working consistently, most of Employee's symptoms went away. (*Id*. at 77). But when it wears off, she experiences symptoms and needs prolotherapy again. (*Id*. at 77 - 78). Employee usually gets prolotherapy every two months. (*Id*. at 78). She also experiences constant headaches when she does not have prolotherapy. (*Id*. at

79). Employee has a bachelor's degree in business administration with an emphasis in accounting; she is 69 percent complete with a bachelor's degree in social sciences with a primary emphasis in psychology and secondaries in anthropology and sociology. (*Id*. at 86, 88 - 89). The university just started a bachelor's degree in indigenous studies and she is considering it as an secondary emphasis instead of sociology. (*Id*. at 89). Employee plans on going to graduate school. (*Id*.). She was able to achieve an "A" in Alaska Native studies with the help of the writing center. (*Id*.). Employee quit her job on February 4, 2022. (*Id*. at 100). She began receiving unemployment benefits in March; she did not get unemployment payments for four weeks as she did realize she had two myAlaska accounts the first week, the next week was a waiting week and then the week after she traveled for prolotherapy and you cannot travel the week after your wait week. (*Id*. at 99 - 100). Employee tried to read the Alaska workers' compensation booklet to fill out paperwork to appeal the controversion and she could not do it because of the head injury. (*Id*. at 163). She knew she needed to but could not do it. (*Id*. at 164 - 164).

39) On June 13, 2022, Employee wrote that she had decided to sign and return all Employer's releases at this time. She also explained she lost her brother week before, and the mother of her childhood best friend a few weeks ago. Employee stated she was in Anchorage for prolotherapy and contended she was discriminated against while working for Employer. (Email, June 13, 2022).

40) On June 13, 2022, the parties' stipulation to cancel the June 14, 2022 hearing was approved. Employee agreed to withdraw her April 4, 2022 petition seeking reconsideration or modification of the March 18, 2022 discovery order with prejudice and that she "will not assert in future that the release order in question was erroneous." (Stipulation to Cancel Hearing, June 13, 2022).

41) On September 7, 2022, Employee emailed the Division informing them she had been the victim of an arson and asked for the SIME form. (Email, September 7, 2022). A workers' compensation technician emailed a petition and SIME form to Employee. (Email, September 7, 2022).

42) On September 12, 2022, Employee petitioned for an SIME, stating "Please see attached letter dated 09/02/2022 from SEARHC - primary provider opposing January 2020 controversion. Also note: 04.11.22 ANMC Neurology Brief Note provided via email 06.13.22 12:51 supports ongoing care; 04.04.22 SEARHC Note provided email 04.29.22 12:52 am is supportive

documentation of continued care." (Petition, September 12, 2022). She attached to the petition a November 2, 2022 letter from Bradelle L. Padon, ARNP, stating:

> Miss Gloria Eyon has been under our care for both primary care and specialty care for many years, including since the date of her head injury on 09/3/2019. She has been seen and followed by neurology since 12/2019 and diagnosed with mild TBI, post-traumatic headache, and post-concussive syndrome from this injury. The controversion references a 4-6 week time frame for healing, and the documentation by her neurologist refutes this timeline. Based upon reviewing her follow up with neurology, and her reported continued symptoms that began after the date of injury, and have continued but improved over time, I would suggest that the controversion from January of 2020 be rescinded, and her case be further evaluated. (Padon letter, September 2, 2022).

43) On September 12, 2022, Employee filed a medical summary with an August 4, 1989 medical record from John Totten, MD. (Medical Summary, September 12, 2022).

44) On September 27, 2022, Employee spoke with a workers' compensation technician:

> EE stated that she is having upcoming hearing for arsonist who burned down apt complex she was living in but does not know when and it will be hard to resched PHC. Told EE that the 10/6 PHC @3 is still scheduled until both parties can agree on new date & time. EE stated she consulted w/ David Grashin re WC laws and legal advice however, I explained that I could not speak on that b/c I am not an attny. EE stated she has the right to bring someone to IME b/c she is having trouble attending on her own. Explained that it would be up to phys if anyone else can enter room, and she would have to ask adjs to see if they can provide the travel expenses for the other person. EE will email when she is aware of what dates she will be available for rescheduled PHC. (ICERS, Phone Entry, September 27, 2022).

45) On September 28, 2022, Employee petitioned for a protective order against a panel EME with a neuropsychologist on October 19, 2022 in Seattle, Washington, psychiatrist on October 21, 2022 in Seattle, Washington and a neurologist on October 22, 2022 in Anchorage, Alaska. She contended it was "unjust and inhumane" to expect her to attend three evaluations in four days across two states as she was still healing from her work injury. Employee also contended the neurologist was hostile to her at the last EME and she has a prolotherapy appointment in Anchorage on October 20, 2022. Employee attached the September 27, 2022 letter sent by Employer informing her of the appointments:

> Travel arrangements, including air, ground, and lodging will be made by the claims examiner at no cost to you. You will receive an expense check to cover meals and ground transportation, if necessary. Please keep all receipts and provide them to the claims examiner, along with any unused funds, on your return home. Also note that ancillary expenses such as alcoholic beverages, in-room movies, and the like, are not covered or reimbursable. You will be provided with your itinerary closer to date. (Petition, September 28, 2022; Letter, September 27, 2022).

46) On September 29, 2022, Employer petitioned for an order compelling Employee to attend the EMEs. (Petition, September 29, 2022).

47) On September 30, 2022, Employer opposed Employee's September 28, 2022 petition for a protective order. (Opposition to Petition for Protective Order Regarding IME, September 30, 2022).

48) On September 30, 2022, Employer answered Employee's September 12, 2022 petition for an SIME stating:

> Employer agrees in theory that disputes exist between employees treating providers and employers independent medical examiners. In order to fully investigate the extent of these disputes, the employer has scheduled upcoming EIMEs for the employee. . . . The employer should have the opportunity to conduct updated discovery to evaluate the extent of these disputes before a second independent medical examination is ordered.
>
> It will be impossible to determine the needed evaluation areas or the required subspecialties for an SIME until the IMEs and her physicians opportunity to evaluate those has been completed.
>
> This pleading should not be interpreted as causing the parties to be "in the SIME process" for purposes of tolling .110(c). Employer/Insurer do not believe the parties can be "in the process" until there are clarified disputes. (Answer to Petition for SIME, September 30, 2022).

49) On October 12, 2022, the Board designee ordered Employee to attend the EMEs, finding the timing and location to be reasonable. Employee was informed of possible sanctions should she unreasonably or willfully refuse to comply with the discovery order, including suspension and forfeiture of benefits and claim dismissal. The Board designee also informed Employee that she should file an ARH from to request a hearing on her September 12, 2022 petition for an SIME and recommended Employee complete and file an SIME form demonstrating the medical

disputes and attaching the referenced medical records. Employee was also informed of the three requirements that must be met before an SIME can be ordered:

> There are three requirements before a SIME can be ordered. *Bah*. First, there must be a medical dispute between an employee's attending physician and an EME. Second, the dispute must be significant. Third, whether a SIME physician's opinion will assist the factfinders to resolve the dispute is considered. *Seybert.*

Employee was also reminded:

> . . . she must serve and file an ARH requesting a hearing or written notice she has not completed all discovery but still wants a hearing within two years of Employer's February 1, 2022 Controversion to avoid possible dismissal of her claim. AS 23.30.110(c). **Employee must file an ARH or written notice she has not completed all discovery but still wants a hearing by February 5, 2024** (February 1, 2022 + 2 years + 3 days under 8 AAC 45.060(a) = Sunday, February 4, 2024 = Monday, February 5, 2024 under 8 AAC 45.063(a)).

The prehearing conference summary also included the following standard notices:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.
>
> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, October 12, 2022).

50) On October 12, 2022, Employee filed a medical summary with a medical record dated September 28, 2022 for a visit with ANP Padon requesting a letter for a support person for travel for the EME appointments. (Medical summary, October 12, 2022).

51) On October 14, 2022, the partes agreed to change the EME neurologist to different one located in Seattle, Washington. (Email, October 13, 2022).

52) On October 14, 2022, the October 12, 2022 prehearing conference summary was served on Employee along with an SIME form and ARH. (Prehearing Conference Summary Served, October 14, 2022).

53) On November 17, 2022, Employer filed a medical summary containing the three EME reports from the October appointments. (Medical summary, November 17, 2022). Employer controverted all benefits for psychological disorders after 2019, all benefits for neuropsychological conditions and all benefits for cervical/neurologic conditions after October 2019 based upon the three EME reports. The controversion notice included the following information:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?
>
> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years. (Controversion Notice, November 17, 2022).

54) On January 25, 2023, Employee emailed Employer asking for a copy of the November 17, 2022 controversion and EME reports as they were "not showing up" in her email. (Email, January 15, 2023).

55) On June 12, 2023, Employee petitioned for a protective order objecting to releases going back to 1989. (Petition, June 12, 2023).

56) On June 16, 2023, Employer opposed Employee's June 12, 2023 petition for a protective order. (Opposition to Petition for Protective Order, June 16, 2023). It controverted all benefits based upon Employee's failure to sign and return releases. The controversion notice included the following information:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?

> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years. (Controversion Notice, June 16, 2023).

57) On July 6, 2023, the Board designee ordered Employee to sign and return three medical releases, two pharmacy releases and one mental health release by July 21, 2023. Employee was informed of possible sanctions should she unreasonably or willfully refuse to comply with the discovery order, including suspension and forfeiture of benefits and claim dismissal. She was also informed how to appeal the discovery order and seek reconsideration or modification of the discovery order. The prehearing conference summary also included the following standard notices:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.
>
> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, July 6, 2023).

58) On July 21, 2023, Employee emailed Employer and the Division copies of the signed releases. (Email, July 21, 2023).

59) On November 6, 2023, a workers' compensation technician emailed Employee a file copy request form to enable her to receive a copy of her whole case file and informed her that there will be no fee for the first request and her file would be sent by email in a secured link. (Email, November 6, 2023).

60) Employee did not complete and return a file copy request. (Agency record).

61) On February 6, 2024, Employer petitioned to dismiss Employee's claim under AS 23.30.110(c), contending Employee failed to timely request a hearing on her claim or an extension. (Petition, February 6, 2024).

62) The November 6, 2023 email is the last communication Division staff had with Employee until February 7, 2024, after Employer filed and served its petition to dismiss. (Agency record, observations).

63) On February 7, 2024, Employee filed a petition for "Other: Appeal dismissal 02.06.24" stating "Requesting consideration for time to work on extension and appeal the dismissal. In response to the appeal went into the junk email and I have been under a significant amount of distress from the arson fire which I can provide medical document if needed. I responded as soon as this was found." (Petition, February 7, 2024).

64) On February 7, 2024, Employer requested an oral hearing on its February 6, 2024 petition to dismiss. (ARH, February 7, 2024).

65) On February 7, 2024, Employer opposed Employee's February 7, 2024 petition for an extension, contending there is no legal basis allowing the Board to grant an extension requested after the §110(c) deadline already passed and it would be an abuse of discretion to do so. (Opposition to Petition for Extension, February 7, 2024).

66) On February 7, 2024, the Division served Employer and Employee with notice of a March 7, 2024 prehearing conference. (Prehearing Conference Notice Served, February 7, 2024).

67) On February 8, 2024, staff from Employer's attorney's office called to reschedule the prehearing conference to March 21, 2024 at 2 p.m., "Linda said she spoke to EE and was given the date & time of 3/21/24 @ 2:00 as a preferred date & time. Linda said she will be calling EE tomorrow to confirm PHC notice was sent. Will email to all parties." (ICERS, Phone Entry, February 8, 2024).

68) On February 8, 2024, the Division served Employer and Employee with notice of a March 21, 2024 2:00 p.m. prehearing conference. (Prehearing Conference Rescheduled Notice Served, February 8, 2024).

69) On March 18, 2024, Employee emailed a workers' compensation technician stating, "I am not sure when the upcoming hearing is. Can you please provide?" (Email, March 18, 2024).

70) On March 19, 2024, the workers' compensation technician emailed Employee stating a prehearing conference was scheduled on March 21, 2024 at 2:00 p.m. (Email, March 19, 2024).

71) On March 21, 2024, Employee did not attend the prehearing conference. The Board designee attempted to contact Employee at the telephone number in the file and left a message. The designee proceeded with the prehearing conference without Employee's participation. The designee scheduled a hearing on April 23, 2024 on Employer's February 6, 2024 petition to dismiss and added Employee's February 7, 2024 petition for an extension as an issue. Employer did not object. Employee was informed:

> Employee has the right to file evidence for hearing and it must be served on Ms. Tansik. If there are medical records Employee would like the board to consider that have not been filed with a medical summary form, Employee can file them with the board and serve Employer with a medical summary form. Non-medical documents must be filed with the board and served on all parties with a notice of intent to rely form. **The deadline to submit evidence for hearing is April 3, 2024.**
>
> A hearing brief is a document stating the facts of the case and the arguments that you plan to present at hearing to support your position and may not exceed 15 pages. 8 AAC 45.114. **The deadline to submit a hearing brief is April 16, 2024.**
>
> Employee has the right to call witnesses for hearing. Employee is informed a witness list provides notice to the board and the other parties of the persons a party claims to have knowledge relevant to a matter at issue and plans to have testify at hearing. The witness list must:
> 1) Include each witness's name, address and phone number,
> 2) Include a brief description of the subject matter and substance of the witness's expected testimony, and
> 3) Indicate whether the witness will testify in person or telephonically. 8 AAC 45.112. **The deadline to submit a witness list for hearing is April 16, 2024.**
>
> The Alaska Supreme Court said in *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445, 449 (Alaska 1963), the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation. Employee is advised pursuant to *Richard* she bears the burden of proof to establish with substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline. Below is important case law information that is relevant to dismissal under AS 23.30.110(c):
>
> Certain "legal" grounds may excuse noncompliance with AS 23.30.110(c), such as mental incapacity or incompetence, and equitable estoppel against a

governmental agency by a self-represented claimant. *Tonoian v. Pinkerton Security*, AWCAC Dec. No. 029 (January 30, 2007).

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

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

Kim v. Alyeska Seafoods, Inc., 197 P.3d 193 (Alaska 2008) noted §110(c), though different, is "likened" to a statute of limitations and "provisions absent from subsection .110(c) should not be read into it." *Kim* said: . . .

> The board has discretion to extend the deadline for good cause. (*Id*. at 194). Subsection .110(c) is a procedural statute that "sets up the legal machinery through which a right is processed" and "directs the claimant to take certain action following controversion." A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then "substantial compliance is acceptable absent significant prejudice to the other party." . . . .
>
> We conclude that the language of subsection .110(c) satisfies these criteria and
> hold its provisions are directory. . . .
>
> On remand, the Board should fully consider the merits of Kim's request for additional time and any resulting prejudice to Alyeska. If in its broad discretion the Board determines that Kim's reasons for requesting additional time have insufficient merit, or that Alyeska would be unduly prejudiced, the Board can set a hearing of its own accord or require Kim to file an affidavit of readiness within two days -- the amount of time remaining before the original two-year period expired. (*Id*. at 199).

Although substantial compliance does not require filing a formal affidavit, it nevertheless still requires a claimant to file, within two years of a controversion, either a request for hearing, *id.*, or a request for additional time to prepare for one.

> *Denny's of Alaska v. Colrud*, AWCAC Dec. No. 148 (March 10, 2011). *Pruitt v. Providence Extended Care*, 297 P.3d 891, 985 (Alaska 2013), cited *Kim*'s holding, "But we also said that we did 'not suggest that a claimant can simply ignore the statutory deadline and fail to file anything.'"

The parties were directed to serve and file exhibits or other documentary evidence by close of business on April 3, 2024. The parties were directed to serve and file witness lists and hearing briefs by close of business on April 16, 2024. The parties were advised, "A party may request a hearing continuance by filing and serving a petition requesting a continuance and providing the reason for the requested continuance. Any request for a continuance, postponement, cancellation or change of the hearing date will be reviewed in accordance with 8 AAC 45.074." The prehearing conference summary also included the following standard notice:

> The American with Disabilities Act (ADA) allows for reasonable accommodations. The Workers' Compensation Division makes every attempt to provide access for people with disabilities whether in-person, telephonically or online. For all ADA requests please contact Administrative Officer II Alexis Hildebrand at (907) 465-2790 or the State of Alaska's ADA Coordinator David Newman at (907) 375-7716. (Prehearing Conference Summary, March 21, 2024).

72) On March 21, 2024, after the prehearing conference, Employee emailed a March 21, 2024 letter from ANP Padon, stating, "Ms. Gloria Eyon is currently under my primary care services, and is unable to participate in school, work, or meetings today due to illness." (Email, Letter, March 21, 2024).

73) On March 28, 2024, Employee emailed a workers' compensation technician asking whether there was a telephonic option for the April 23, 2024 hearing. The technician emailed back there was a telephonic and Zoom option. (Emails, March 28, 2024).

74) On March 28, 2024, Employee emailed a workers' compensation technician:

> This has not been good for my wellbeing and I do not handle stress anymore.
>
> It has not been healing nor has it restored me back prior to injury.
>
> It has not facilitated in my healing process at all.
>
> People with head injuries should not be representing themselves and is TBI-PCDs are disabilities and there should be a line of protection in the worker's comp system.

> Lawyers who sign up to be worker's comp should be required to take a head injury on and take turns required to take one on. I was told head injury claims can take up to eight years. There is no healing timeline for TBI-PCD.
>
> I have been left up to my own accord healing while getting beat up by bullies because it is not an equal playing field and the state does not take objective sides.
>
> I am not under significant stress because of this case that is a losing battle and the system is truly broken for people that have TBI-PCDs.
>
> It is immoral and unethical and without any compassion at all whatsoever. (Email, March 28, 2024).

75) On April 2, 2024, Employee requested a hearing continuance stating, "Wellbeing already comprimised[sic] from preparing for the arson fire hearing preparing a victim statement and restitution and working with DAs and Victim Lawyer; need to complete my semester at UAS and impacts of the arson fire and other recent traumas have made life challenging. The arson fire hearings, meetings, healing, etc. has been overwhelming enough." (Petition, April 2, 2024).

76) On April 10, 2024, Employer opposed Employee's petition for a hearing continuance. It contended Employee's petition must be denied because she failed to provide good cause as required under 8 AAC 45.074(b). (Opposition to Petition for Continuance, April 10, 2024).

77) The "Workers Compensation and You" pamphlet contains the following language:

> You may change your treating doctor once. However, before you change doctors, tell the insurer that you are making a change. If you change doctors more than once without the insurer's written consent, you may have to pay the doctor's bills.
>
> **Choice of Doctors**. You may choose a licensed doctor to treat your injury (including a licensed medical doctor, surgeon, chiropractor, osteopath, dentist, or optometrist). You may change your treating doctor once, but tell the insurer before you change. If your doctor sends you to a specialist, the referral does not count as a change of doctors. If you want to change physicians a second time, you MUST obtain the insurer's written approval. If you change doctors more than once without the insurers' written approval, you may have to pay the doctor's bills.
>
> You may change your treating doctor once. However, before you change doctors, tell the insurer that you are making a change. If you change doctors more than once without the insurer's written consent, you may have to pay the doctor's bills.
>
> If you file a WCC and the insurer controverts the claim, you must request a hearing before the Board within two years of the date of the controversion or your

> right to the benefits will be denied. If you ask for a hearing and then later ask for a continuance of the hearing, the two-year time limit starts to run again from where it stopped when the hearing was originally requested. (Workers Compensation and You).

78) Employee contended at hearing she would be ready for a hearing on Employer's petition for dismissal and her petition for an extension of time on May 21, 2024. She contended she was provided no accommodations for her multiple disabilities. Employee contended she diligently pursued her case to the best of her ability taking into consideration her college schedule, PTSD, disabilities and the arson case. She contended a continuance should be granted because the intent of the Act is to restore injured workers to pre-injury status and she has not fully recovered from the work injury. Employee contended a previous injury case from 2016 with Employer should have been joined to this case. Employee contended she faced creditor threats from her chiropractor for medical costs. Employee contended she still needs treatment from a neurologist but was unsure if she was able to obtain such treatment because she did not know if she could change her physician or how to change her physician. Employee contended she did not understand the SIME process. (Employee hearing arguments).

79) Employer contended at hearing that Employee failed to request accommodations with the Division and with Employer. It contended Employee would not be irreparably harmed if the April 23, 2024 hearing was not continued because there is no harm for which there is no plain, adequate and complete remedy at law since Employee can appeal the resulting decision if it is not in her favor. (Employer hearing arguments).

80) Employee contended she should be granted an extension through the end of the year under §110(c). She contended she needs "people to gather information or provide testimony." Employee contended it would be reasonable to grant an exception in her case because she is *pro se*, has TBI, PTSD and disabilities and she was the victim of arson. She contended she was under duress because she was threatened to have her case closed if she did not sign releases or attend a deposition or EMEs when she was experiencing life threatening events. (Employee hearing arguments).

81) Employer contended at hearing that it would be highly prejudicial to Employer to join this claim with Employee's 2016 work injury so late. It contended Employee was not threatened by Employer or the Division during the workers' compensation discovery process. Employer

contended Employee failed to submit medical records since 2022, when she filed 2021 medical records. (Employer hearing arguments).

82) Employee testified at hearing she is a full-time student taking five classes and her semester ends next Saturday; her project is not complete so she will probably "float the class." She missed class to attend today's hearing. Her focus has been on the criminal arson case, rather than her classes. Employee was the victim of arson on August 1, 2022, when the apartment building she lived in was set on fire and she was displaced for seven and a half months. All of her possessions, including her workers' compensation documents, had to have smoke professionally extracted and she had to go through boxes to find things as the items were cleaned. She went through the paperwork after the fire and found the 1989 surgical record and submitted it. Employee has had PTSD her entire life from trauma. She has several disabilities, including a post-concussive disorder. Employee tried to get an attorney but no one would take her case because it takes too much time and they are capped at the amount of money they will get paid. She experiences a delay in her "processing" ability due to her disability, which means she needs to process information she hears or reads before talking about it. Employee can follow a syllabus from school with deadline and dates but when she relies on her own self drive, it is "chaos and forgetfulness." She requested accommodations with the university and the State of Alaska for her disabilities. Employee was in a brain fog after the work injury without medical treatment for quite a few months; she had to take responsibility for herself and readjust and relearn to do things. She thought the SIME had to be agreed to by both parties and the board and it was not approved; she did not understand there needed to be a second request after a denial. Employee suggested her 2016 work injury case should have been combined with this case as she fell in an icy parking lot at work and sustained a concussion. She wants to have her friend testify regarding changes to her behavior and abilities after the work injury and she wants further neurological evaluation before a hearing on the merits of her claim, but she does not know if she can change her physician or how she can change her physician. She has a funeral service to attend in Anchorage in May 2024. (Employee).

PRINCIPLES OF LAW

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

> (1) this chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute; . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

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

No fiduciary relationship exists between a workers' compensation claimant and the employer's workers' compensation insurer because the Act created an adversarial system, such that claimants' and insurers' interests are in conflict. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1095 (Alaska 2008). Parties have a constitutional right to defend against claims or petitions. *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999). The Board has long recognized a thorough investigation of workers' compensation claims allows employers to verify information provided by the claimant, properly administer claims, effectively litigate disputed claims, and detect fraud. *Id*.

In *Burke v. Raven Electric, Inc.*, 420 P.3d 1196 (2018), the Board dismissed a claim seeking death benefits and damages filed by the mother of a worker killed on the job. The Alaska Workers' Compensation Appeals Commission (Commission) affirmed and ordered the mother to pay the employer's attorney fees and costs, and the mother appealed. The Alaska Supreme Court (Court) affirmed the dismissal of the claim and held the exclusive remedy of the Act did not violate the mother's right to due process and equal protection. It noted:

> The workers' compensation system consists of a trade-off, sometimes called the "grand bargain," in which workers give up their right to sue in tort for damages for a work-related injury or death in exchange for limited but certain benefits, and

> employers agree to pay the limited benefits regardless of their own fault in causing the injury or death. This system has been in place in the United States for over a century and has withstood constitutional challenge. New York's workers' compensation statute was found constitutional under the United States Constitution in 1917. New York's compensation law became the model for the federal Longshore and Harbor Workers' Compensation Act, which in turn served as the model for Alaska's Act.
>
> As *Larson's Workers' Compensation Law* observes, workers' compensation in the United States is similar to "social insurance" because "the right to benefits and amount of benefits are based largely on a social theory of providing support and preventing destitution, rather than settling accounts between two individuals according to their personal deserts or blame," even though the funding mechanism for the system is "unilateral employer liability." *Larson's* observes that "[a] compensation system, unlike a tort recovery, does not pretend to restore to the claimant what he or she has lost." Instead, the goal of workers' compensation is to "give[ ] claimant a sum which, added to his or her remaining earning ability, if any, will presumably enable claimant to exist without being a burden to others." (Citations omitted). *Id*. at 1202-03.

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

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

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the employer at a prehearing conference provided a §110(c) deadline that was about two weeks earlier than the accurate date. The Division staff failed to correct this error. The Court found the uncorrected error may have dissuaded the injured worker from failing to file a hearing request timely, thinking the deadline had already passed when it had not. *Bohlmann* stated, based on the record, had the Division corrected this wrong date, the injured worker likely would have filed a hearing request timely as he had done with his other pleadings. The Court said:

> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

The Alaska Supreme Court has held that *pro se* litigants are held to a lesser standard than attorneys. *Dougan v. Aurora Electric, Inc.*, 50 P.3d 789, 795 (2002). A judge must inform a *pro se* litigant "of the proper procedure for the action he or she is obviously attempting to accomplish." *Id*. (citation omitted). Specifically, a judge must notify a *pro se* litigant of defects in his or her brief and give the party an opportunity to remedy those defects. *Id*.

> **AS 23.30.095. Medical treatments, services, and examinations**. . . . (k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

> **AS 23.30.110. Procedure on claims**. . . . (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. After completion of the hearing the board shall close the hearing record. . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

AS 23.30.110(c) requires an injured worker to timely prosecute a claim once the employer controverts. *Jonathan v. Doyon Drilling, Inc*., 890 P.2d 1121, 1124 (Alaska 1995). *Tipton v. ARCO Alaska, Inc.,* 922 P.2d 910, 912-13 (Alaska 1996) noted a statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it." The Court also noted that drastic and harsh procedural provisions such as §110(c) are disfavored and construed narrowly by the courts and held a timely request for a hearing definitively and permanently tolls the statute of limitation under §110(c). *Id.*

Certain "legal" grounds may excuse noncompliance with §110(c), such as mental incapacity or incompetence, and equitable estoppel against a governmental agency by a self-represented claimant. *Tonoian v. Pinkerton Security,* AWCAC Dec. No. 029 (January 30, 2007). The Court held the Board owes a duty to every claimant to fully advise him of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right under law. *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445, 449 (Alaska 1963). *Bohlmann v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska 2009), held the board has a duty to inform a *pro se* claimant how to preserve his claim under §110(c) with specificity when warranted by the facts, but did not delineate the full extent of the duty. Consequently, *Richard* is applied to excuse noncompliance with §110(c) when the board failed to adequately inform a *pro se* claimant of the two-year time limitation. *Dennis v. Champion Builders*, AWCB Decision No. 08-0151 (August 22, 2008).

The Commission, in *Omar v. Unisea, Inc.*, AWCAC Decision No. 053 (August 27, 2007), remanded a matter to the Board to consider whether "the circumstances as a whole constitute compliance with the requirements of [AS] 23.30.110(c) sufficient to excuse any failures." The Commission found that the SIME process had tolled the running of the statute of limitations and that the two ARHs considered by the Board were filed after the time had run in §110(c). However, the Board had failed to consider a previously and timely filed ARH; hence, the remand. The Commission directed the Board to consider the following on remand:

> If the board determines that the August 2003 affidavit of readiness for hearing was not a valid request for a hearing, the board shall make specific findings whether the circumstances require dismissal of Omar's claims or whether some other action is appropriate. In engaging in this inquiry, the board shall give due attention to the effect of Mr. Gerke's communications to the parties with respect to the requirements and time bar of AS 23.30.110(c) as well as to Omar's AS 23.30.110(c) obligations and to any substantive deficiencies in Omar's August 2003 affidavit of readiness for hearing. The board should evaluate the circumstances surrounding staff efforts made to communicate with Omar, whether Omar was self-represented, and whether Omar was instructed as to how any defects or errors could be remedied.

> . . . . Do the circumstances as a whole constitute compliance with the requirements of AS 23.30.110(c) sufficient to excuse any failures by Omar to comply with the statute? *Omar* at 7-8.

In *Narcisse v. Trident Seafoods Corp.*, AWCAC Decision No. 242 (January 11, 2018), the SIME process began and ended prior to the two year §110(c) deadline. *Narcisse* began tolling the §110(c) time period on the date of the prehearing conference when the parties further discussed the SIME and the employee's attorney promised to file SIME questions, medical binders, and an SIME form. It ended the tolled period on the date of the SIME examination and added that tolled time period to the original §110(c) deadline. *Id*. at 21. Narcisse noted the two-year time period is tolled when some action by the employee shows a need for additional time before requesting a hearing, and request for an SIME is a demonstration that additional time is needed before a hearing is held. *Id*. at 22. An employee has only the remainder of the §110(c) time period to request a hearing. *Id*.

In *Davis v. Wrangell Forest Products*, AWCAC Dec. No. 256 (January 2, 2016) the Commission noted the employee called to ask the Board what he should do after an SIME report was received before the §110(c) deadline, and Division staff directed the employee to talk to the employer's attorney to see what it might do next instead of informing him had the right to request a hearing and that the time to do so may be running out. Instead, the employee filed a petition for an SIME months later, which was denied in a Board decision and order, before Employer petitioned to dismiss, which the employee opposed. The Commission reversed a claim dismissal and held a second SIME request, filed after the expiration of time under §110(c), in conjunction with an opposition to the employer's petition for dismissal, filed after the expiration of time under §110(c), "could be considered an implicit request for an extension of time," since the evidence demonstrated the claimant was "not sitting on his rights, but was actively pursuing his claim." The Commission stated:

> In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time. It would also be prudent for anyone at the Board assisting a self-represented litigant to know the date by which an ARH needs to be filed. If the date changes for any reason, such as tolling during the

> SIME process, the new date for requesting a hearing should be clearly communicated to the self-represented litigant." *Id*. at 25-26.

Roberge v. ASRC Construction Holding Co., AWCAC Decision No. 269 (September 24, 2019), addressed the tolling effect of an SIME. The employee petitioned for an SIME on November 17, 2015, and at a February 11, 2016 prehearing conference, the parties agreed to it. Their stipulation was recorded in the prehearing conference summary. *Roberge* held §110(c)'s time limitation tolling begins when parties stipulate to an SIME and remains in place until a final SIME report is received. The time to file a hearing request remains tolled until the final SIME report is completed and finalized. *Roberge* noted there had been delay and obstruction by both parties. In reversing the Board's decision dismissing a claim based on an untimely hearing request, *Roberge* stated:

> Yet the idea of a hearing not being held on the merits of a claim is strongly disfavored by the Court and the Board has an obligation to determine if there is a way around the running of the .110(c) defense. *Id*. at 15.

McKitrick v. Municipality of Anchorage, AWCB Decision No. 10-0081 (May 4, 2010), found the §110(c) two-year time period was tolled when the employer petitioned for and the Board ordered an SIME; it also ordered the time was tolled until the SIME process was complete. The SIME process completion included any discovery or deposition requested from the SIME physician after the report. *McKitrick* noted it would be illogical to require the employee to request a hearing on his claim's merits while awaiting an SIME examination, report, deposition, or other discovery related to the SIME.

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

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

> The first and last sentences of AS 23.30.110(c) govern the manner by which hearings are requested before the Board and the consequences of failure to prosecute a claim:
>
> > Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied (citation omitted)
>
> The first sentence of the subsection sets out prerequisites for scheduling a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing (citation omitted). The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if "the employee does not request a hearing within two years" of controversion, "the claim is denied" (citation omitted). The Commission recognized that "[t]he lack of reference to the affidavit in the last sentence of section 110(c), coupled with the use of the verb 'request,' hints that filing a hearing request without an affidavit will toll the time-bar." The Commission nonetheless held that a Board regulation requiring an affidavit to request a hearing was a reasonable interpretation of subsection .110(c) and that the Board could reasonably require an affidavit to toll the time-bar of subsection .110(c) (footnote omitted). But because a statutory dismissal results from failing to *request* a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar (italics in original). We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory.
>
> Subsection .110(c) is a procedural statute that "sets up the legal machinery through which a right is processed" and "directs the claimant to take certain action following controversion" (citation omitted). A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then "substantial compliance is acceptable absent significant prejudice to the other party" (citation omitted). . . .
>
> . . . . The first sentence of the statute directs a party to file a request for a hearing with an affidavit of readiness to schedule a hearing, but it does not say what a party or the Board should not do. The last sentence of the subsection also gives an affirmative directive, rather than a prohibition, simply stating that a claim is denied if the employee does not request a hearing within two years following a notice of controversion.
> . . . .

> Finally, this case aptly demonstrates the serious consequences of a conclusion that the affidavit requirement is a mandatory component of a request for a future hearing -- a party who wants to request a future hearing, but is for legitimate reasons unable to truthfully state readiness for an immediate hearing, faces denial of workers' compensation benefits.
> . . . .
>
> In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything (footnote omitted). A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance (footnote omitted). We construe subsection .110(c) to require filing a request for hearing within two years of the date of the employer's controversion of a claim. If within that two-year period the claimant is unable to file a truthful affidavit stating that he or she actually is ready for an immediate hearing, as was the case here, the claimant must inform the Board of the reasons for the inability to do so and request additional time to prepare for the hearing. Filing the hearing request and the request for additional time to prepare for the hearing constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim (footnote omitted). . . .

Pruitt v. Providence Extended Care, 297 P.3d 891, 985 (Alaska 2013), cited *Kim*'s holding, but also said "we did 'not suggest that a claimant can simply ignore the statutory deadline and fail to file anything.'" *Pruitt* said the claimant in that case "did not file anything indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired."

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony . . . 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 are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **8 AAC 45.060. Service**. . . . (b) . . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

> **8 AAC 45.063. Computation of time**. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last

day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. . . .

8 AAC 45.070. Hearings. (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

(b) Except as provided in (1)(A) of this subsection and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

8 AAC 45.074. Continuances and cancellations. (a) A party may request the continuance or cancellation of a hearing by filing a

(1) petition with the board and serving a copy upon the opposing party; a request for continuance that is based upon the absence or unavailability of a witness

(A) must be accompanied by an affidavit setting out the facts which the party expects to prove by the testimony of the witness, the efforts made to get the witness to attend the hearing or a deposition, and the date the party first knew the witness would be absent or unavailable; and

(B) will be denied and the affidavit may be introduced at the hearing as the testimony of the absent witness if the opposing party stipulates that the absent witness would testify as stated in the affidavit;
. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

> (M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or
>
> (N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

In *Metcalf v. Felec Services*, 784 P.2d 1386, 1389 (Alaska 1990), an employer contended a statutory interpretation would open the door for employees to purposefully drag out hearings by obtaining unnecessary continuances thus enlarging the time during which benefits were still being paid. *Metcalf* stated:

> This contention is answered by the time limits imposed on Board action by the Alaska Administrative Code. . . . Continuances, postponements, cancellations, or changes of scheduled hearings are not favored by the Board and will not be routinely granted. 8 AAC 45.074(a). They are granted only for carefully delimited 'good cause' (footnote omitted). *Id.* If the Board finds that a request for a delay by an employee is not for good cause, it can and should deny it. *Id.*

"Irreparable harm" is harm for which there is no plain, adequate, and complete remedy at law and for which money damages would be impossible, difficult or incomplete. *Dunning v. Varnau*, 95 N.E.3d 587 (Ohio App. 2017).

ANALYSIS

1) Was the oral order denying Employee's petition for a hearing continuance correct?

Hearings will be held at the time and place fixed by notice served and continuances may only be granted in accordance with the Act. 8 AAC 45.070(a). Continuances are not favored will not be routinely granted. 8 AAC 45.074(b). "Good cause" is required to grant a continuance and the Act provides different situations that constitute good cause. 8 AAC 45.074(b)(1)(A)-(N); *Metcalf*. Employee contended she was missing a college class to attend the hearing. The good cause related to a material witness or party being unavailable does not apply because Employee was available, as she attended the April 23, 2024 hearing by Zoom, and an unintended or

unavoidable court appearance was not the cause of an potential unavailability. 8 AAC 45.074(b)(1)(A), (B), (C), (D).

The grounds for good cause related to an absent legal representative do not apply because Employee never retained an attorney. 8 AAC 45.074(b)(1)(B)-(D). Employee did not demonstrate how irreparable harm may come from proceeding with the April 23, 2024 hearing without legal representation. 8 AAC 45.074(b)(1)(N). Employee was informed of her right to seek an attorney and was provided a list of claimant attorneys on March 2, 2022 and March 16, 2022, over two years before the April 23, 2024 hearing. Employee tried to obtain counsel but was unsuccessful; however, she has been provided ample time to obtain an attorney.

Employee contended her college classes, which require her to attend class and complete course work, and the arson fire is good cause to continue the hearing because she prepared a victim and restitution statement and worked with the district attorney and victims' lawyer. All parties must be afforded due process, a hearing and fair consideration of their arguments and evidence. AS 23.30.001(1), (4). The April 23, 2024 hearing was scheduled during the March 21, 2024 prehearing conference and Employee received notice of the hearing more than ten days before the April 23, 2024 hearing. She was properly informed of her right to and how to file a hearing brief, evidence and witness list and was provided an explanation of issues to be decided and the principles of law on the issues in the March 21, 2024 prehearing conference summary served on March 26, 2024, 28 days before the hearing, and was directed to so by specific deadlines. The hearing notice provided to Employee was satisfactory, pursuant to the law and did not violate her right to basic due process. AS 23.30.110(c); 8 AAC 45.070(a). She had reasonable opportunity to review the evidence and prepare for hearing. She demonstrated the ability to file evidence in her case. Allowing a continuance when good cause does not exist under 8 AAC 45.074 would frustrate the legislature's intent for quick, efficient, fair and predictable delivery of benefits to Employee at a reasonable cost to Employer. AS 23.30.001(1).

A hearing can be continued if the panel determines that despite a party's due diligence irreparable harm may result from a failure to grant the requested continuance. 8 AAC 45.074(b)(1)(N). Neither the Act nor applicable administrative regulations define "irreparable

harm." Other jurisdictions have defined "irreparable harm" as harm for which there is no plain, adequate, and complete remedy at law and for which money damages would be impossible, difficult or incomplete. *Dunning*. Should the April 23, 2024 hearing result in dismissal of Employee's claim under §110(c), she could seek reconsideration within 15 days of issuance of a decision dismissing her claim, seek modification within one year of issuance of a decision dismissing her claim, or appeal to the Commission under §125.

Employee attended the April 23, 2024 hearing by Zoom and provided arguments and testimony supporting her request. She contended she has disabilities and requested ADA accommodations with the State of Alaska. While there is evidence Employee needed assistance for writing papers in the past for her college course on April 11, 2022 from Dr. Trimble and with travel in ANP Padon's October 12, 2022 record, there is no medical evidence in the record documenting she needs assistance with pursuing her workers' compensation case that was not provided by Division staff, such as directions for filling out forms or with questions about the process. Employee visited the Division in person and called and emailed for assistance with her case and assistance was provided on numerous occasions. She filed a claim and evidence, attended prehearing conferences, attended her deposition, attended several EMEs, filed seven petitions and one ARH on a petition, all facts tending to show Employee is able to understand the proceedings and prepare her case. *Rogers & Babler*. Employee did not offer evidence obtained after the ARH was filed. 8 AAC 45.074(b)(1)(K). There is no evidence the record is incomplete on the issues set for hearing. Therefore, Employee could not demonstrate how "irreparable harm" may come from proceeding with oral arguments on the issues set for hearing. *Rogers & Babler*. The oral order denying Employee's continuance request was correct.

2) **Should Employee's petition for an extension of time under §110(c) be granted?**

3) **Should Employee's claim be dismissed under §110(c)?**

Employer contended Employee's claim should be dismissed under §110(c) for her failure to strictly and substantially comply with the deadline. Employee requested to be excused for her failure and for an extension of the §110(c) deadline. A claim must be timely prosecuted once filed and controverted to bring a claim to a hearing so speed and efficiency goals in Board

proceedings are met. AS 23.30.001; *Jonathan*; *Tipton*; *Hessel*. A statute of limitations is generally disfavored and neither the law nor the facts should be strained in aid of it. *Tipton*. An employee is required to request a hearing within two years after the employer files a post-claim controversion. AS 23.30.110(c).

Employee filed her claim on January 6, 2022 and Employer filed its post-claim controversion on February 1, 2022. Therefore, Employee's hearing request or request for additional time was due on February 5, 2024 (February 1, 2022 + 2 years + 3 days = Sunday, February 4, 2024 = Monday, February 5, 2024). AS 23.30.110(c); *Kim;* 8 AAC 45.060(a); 8 AAC 45.063(a). She did not request a hearing and did not request additional time until February 7, 2024, after the deadline passed and Employer petitioned to dismiss her claim on February 6, 2024. Therefore, Employee failed to strictly or substantially comply with the §110(c) deadline. *Kim*.

The Board must determine if there is a way around the running of the §110(c) defense. *Roberge*. Legal grounds may excuse noncompliance. *Tonoian*. A claimant cannot ignore the deadline and fail to file anything. *Pruitt*; *Kim*. If the claimant files a request for additional time and informs the Board of her inability to file a truthful affidavit stating she is ready for an immediate hearing, the request tolls the time-bar until the Board decides whether or not to give the claimant more time. *Kim*. The Board must consider whether the circumstances as a whole constitute compliance with §110(c)'s requirements sufficient to excuse any failures. *Omar*. The §110(c) deadline may be extended for good cause. *Kim*. Employee bears the burden to establish with substantial evidence a legal excuse from the §110(c) deadline and good cause to extend the deadline. *Hessel*; *Kim*.

Equitable estoppel against a governmental agency by a self-represented claimant may excuse noncompliance with §110(c). *Tonoian.* Employee was provided exact date her hearing request was due, February 5, 2024, in the March 2, 2022 and October 12, 2022 prehearing conferences, and instructed that she either needed to request a hearing or an extension of time by the deadline. *Richard*; *Bohlmann*; *Dennis*; *Davis*; *Dougan*. She was also adequately informed of the §110(c) limitation six additional times by prehearing conference summaries and five additional times by Employer's controversion notices. *Hessel*; *Tonoian*. Employee was never provided with an

incorrect date by Division staff. She did not establish grounds to excuse her failure to timely request additional preparation time due to equitable estoppel against a governmental agency by a self-represented claimant.

Having a disability does not automatically qualify as legal excuse to fail to follow a statutory deadline; mental incompetence or incapacity is required to excuse noncompliance with §110(c). *Tonoian*. While Employee contended her disabilities affected her ability to pursue her case, there is no evidence Employee lacked the mental capacity to represent herself. Employee filed a claim and medical evidence, attended prehearing conferences, attended her deposition, attended several EMEs, filed seven petitions and one ARH on a petition, all facts tending to show Employee is able to understand the proceedings and prepare her case. *Rogers & Babler*. She was also able to remember and to attend doctor's appointments, apply for unemployment and scholarships and complete college courses during the pendency of her claim. Employee scored within normal limits on the Montreal Cognitive Assessment after the work injury on March 2, 2020. Substantial evidence shows she is capable of conducting her daily affairs and does not lack the mental capacity pursue her case, including the capacity to fill out and file and serve an ARH form or request or more preparation time before the statutory deadline. *Rogers & Babler*.

Employee was informed how to request accommodations for any disability she may have in seven prehearing conference summaries but she never did so. *Dougan*. She visited the Division in person and called and emailed for assistance with her case and assistance was provided on numerous occasions by Division staff. Had she needed assistance with the §110(c) deadline and its requirement to request additional time or a hearing, Employee could have asked for it, but she never did and Division staff do no need to seek out Employee and urge her to file paperwork on time or to volunteer information she had already been told. There is no medical evidence in the record documenting she needed assistance with pursuing her workers' compensation case that was not provided by Division staff. Employee did not establish grounds to excuse her failure to timely request additional preparation time due to mental incompetence or incapacity or good cause to extend the §110(c) deadline based upon any disability. *Rogers & Babler*.

Employee contended she did not understand the SIME process and thought her September 12, 2022 petition for an SIME had already been denied. Employee was informed either the parties may agree to an SIME or it may be ordered by the Board on February 13, 2020 in an email and in the March 2, 2022 prehearing conference summary. She was properly advised at the October 12, 2022 prehearing conference she needed to file an ARH to request a hearing on her petition for an SIME and she was advised to fill out and submit an SIME form; and she was provided copies of both forms on October 14, 2022 when the October 12, 2022 prehearing conference summary was served. *Richard*; *Bohlmann*; *Dougan*; 8 AAC 45.070(b). She did not file either an ARH or an SIME form; she also did not contact the Division for further assistance or with questions about the forms or the SIME information in the October 12, 2022 prehearing conference summary. Employee successfully filed an ARH on April 4, 2022 on her April 4, 2022 petition seeking reconsideration or modification of the March 18, 2022 discovery order and a hearing was scheduled. She demonstrated she had the ability to understand and prepare an ARH on a petition. *Rogers & Babler*. Employee's testimony that she believed her petition for an SIME had to be agreed to by both parties and the Board and it was "not approved" is not credible. AS 23.30.122; *Smith*. Employee's alleged misunderstanding of the SIME process is not evidence of mental incompetence or incapacity and does not establish grounds to excuse her failure to timely request additional preparation time due to equitable estoppel against a governmental agency by a self-represented claimant or good cause to extend the §110(c) deadline. *Tonoian*; *Kim*.

Employer's September 30, 2022 answer and the October 12, 2022 prehearing conference summary demonstrate Employer did not agree to an SIME. There was also no order granting her petition for an SIME. Because Employer did not agree to conduct an SIME and an SIME was not ordered, the SIME process did not begin. Therefore, the §110(c) two-year time period was not tolled due to an SIME. *Narcisse*; *Roberge*; *McKitrick*.

Employee contended her focus on healing and the arson delayed her pursuit of her claim. She testified that the arson occurred on August 1, 2022, she was displaced for about seven-and-a-half months and she participated in the criminal proceedings against the perpetrator. However, the arson occurred more than one year and six months prior to the §110(c) deadline and Employee

testified she was able to access her documents after the arson to locate a medical record and file it on September 12, 2022. She was also informed how to obtain a copy of her entire file by completing and returning a file copy request in November 2023 but she never made the request. *Richard*; *Bohlmann*; *Dougan*. Employee was able to attend a prehearing conference on October 12, 2022, one month after the arson, three EME appointments about two months after the arson and was able to take college courses. She was also able to file another protective order petition after the arson on June 12, 2023 and attend a prehearing conference on July 6, 2023. The arson is not a justifiable or reasonable reason to excuse Employee's failure to timely request either a hearing or additional time under §110(c) and is not good cause to extend the §110(c) deadline.

Employee contended her failure to timely request an extension of the §110(c) deadline or a hearing should be excused and the deadline should be extended because she focused on healing from her work injury to return to preinjury status. She contended the goal of the Act is to restore injured workers to preinjury status and the workers' compensation adjudications process impaired her ability to heal from the work injury. She contended was threatened to have her case closed if she did not sign releases or did not attend a deposition or EMEs when she was experiencing life threatening events. The goal of the Act is not to restore to the claimant what he or she has lost but is to "give[ ] claimant a sum which, added to his or her remaining earning ability, if any, will presumably enable claimant to exist without being a burden to others." *Burke*. It is the legislature's intent that decisions be made to ensure injured workers receive indemnity and medical benefits quickly, efficiently and at a reasonable cost to employers. AS 23.30.001(1). The Act created an adversarial system, such that claimants' and insurers' interests are in conflict. *Seybert*. The Division's explanation of the discovery process, including the possible sanctions for failing to comply with a discovery order, and the issuance of discovery orders was a normal and required part of the discovery process. AS 23.30.108(c); *Richard*; *Bohlmann*. Furthermore, an employer is permitted to controvert benefits and petition to dismiss an employee's claim due to her failure to comply with a discovery order. *Id*. Division staff properly informed Employee how to appeal each discovery order in the prehearing conference summaries containing the orders, and it was Employee's responsibility to decide whether to comply with the order or to appeal it. *Id*. The "creditor threats" Employee faced from her chiropractor for medical costs may have been stressful to Employee, but the Division provided

her with the assistance it could on March 31, 2022, when she was emailed a letter to provide to the medical provider. While participating in the workers' compensation process may be challenging to Employee due to its adversarial nature, including the discovery process, and dealing with medical providers, neither the adversarial nature nor creditor threats from medical providers are justifiable or reasonable reasons to excuse Employee's failure to timely request either a hearing or additional time under §110(c); nor is it good cause to extend the §110(c) deadline. *Kim*; *Tonoian*.

Employee contended she needed an extension of the §110(c) deadline because she needs to obtain additional evidence, including a neurological evaluation and testimony from her friend regarding changes to her behavior and abilities after the work injury. She testified at hearing she did not know if she could change her physician or how she could change her physician to obtain the evaluation. Employee was informed that she needed to obtain a medical opinion regarding issues relating to her claim, including causation, compensability, treatment, degree of impairment, and medical stability prior to a hearing on her claim and was advised it is her responsibility to file and serve evidence she intends to rely upon to prove her claim at the first prehearing conference on March 2, 2022; she was also instructed how to file medical and non-medical evidence. The Division provided Employee assistance as she requested, including instructions on the change of physician issue Employee brought up at hearing during a phone call on March 30, 2022 with a workers' compensation officer who "suggested she notify the claims adjuster of the physician change in writing." She was also provided the "Workers' Compensation and You" pamphlet three times by March 2, 2022 and it includes an explanation of how to change a physician and that a referral to a specialist by her doctor is not a change of physician. As stated before, Employee demonstrated the ability to follow process and procedures as explained by Division staff. It was within Employee's reasonable control to obtain the medical evaluation she contended was necessary to occur before a hearing on the merits of her claim as she had a reasonable opportunity to obtain the medical evaluation. *Rogers & Babler*. Employee failed to provide good cause to extend the §110(c) deadline even if she had substantially complied with §110(c). *Kim*.

Pro se claimants should be afforded some degree of procedural leniency. *Dougan*. Employee credibly testified she had been focusing on the arson case and taking college courses. AS 23.30.122; *Smith*. Substantial evidence shows Employee simply overlooked the §110(c) deadline and did not file a hearing request or a request for additional time by the deadline. *Pruitt*; *Kim*; *Rogers & Babler*. Since Employee failed to strictly or substantially with §110(c), and she failed to prove a legal excuse and good cause for an extension, her request for an extension should be denied and her claim should be dismissed. *Kim*.

Employee testified she will not be ready for a hearing on the merits of her claim until the end of the year, over 10 months after the §110(c) deadline. This is a significant delay. *Kim*; *Rogers & Babler*. It would contravene the legislative intent to ensure the quick, efficient, fair and predictable delivery of benefits to injured workers at a reasonable cost to employers to grant a 10-month extension when Employee simply overlooked the deadline and failed to request a hearing or additional time by the §110(c) deadline. AS 23.30.001(1); *Hessel*.

Employer would be significantly prejudiced if such an extension was granted by incurring continued litigation costs, including attorney fees and discovery costs regarding additional medical evidence Employee delayed in obtaining, and increased insurances rates due to a lengthy open claim. *Kim*; *Rogers & Babler*. Employee also contended this case should have been joined with a 2016 work injury with the same Employer. Division staff properly informed Employee how to file a petition to join another case on March 3, 2022. *Richard*; *Bohlmann*; *Dougan*. However, Employee never filed a petition to join the other case. It would be highly prejudicial to Employer to join an additional injury case after the §110(c) deadline passed and Employee failed to file a petition to join after being properly instructed how to do so. *Kim*; *Rogers & Babler*. Employee's request for an extension of the §110(c) deadline should be denied and her claim should be dismissed.

CONCLUSIONS OF LAW

1) The oral order denying Employee's petition for a hearing continuance was correct.
2) Employee's petition for an extension of time under §110(c) should not be granted.
3) Employee's claim should be dismissed under §110(c).

ORDER

1) Employee's January 6, 2022 claim is dismissed.

Dated in Juneau, Alaska on May 23, 2024.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Debbie White, Member

/s/
Bradley Austin, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Gloria Eyon, employee / claimant v. Tlingit Haida Regional Housing Authority, employer; Alaska Timber Insurance Exchange, insurer / defendants; Case No. 201912188; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified US Mail on May 23, 2024.

/s/
Lorvin Uddipa, Workers' Compensation Technician