ALASKA WORKERS' COMPENSATION BOARD

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

MAURICIO MORALES, Employee, Claimant, v. KEVIN J. MCELHENY & TABITHA A. HUGHES, DBA HOWLING BAY KENNELS, Employer, and WORKERS' COMPENSATION BENEFITS GUARANTY FUND, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202208063 AWCB Decision No. 24-0054 Filed with AWCB Fairbanks, Alaska on September 30, 2024

Mauricio Morales's May 25, 2022 claim was heard in Fairbanks, Alaska on July 11, 2024, a date selected on March 19, 2024. A March 19, 2024 hearing request gave rise to this hearing. Attorney Robert Bredesen appeared and represented Maricio Morales (Morales). Tabitha Hughes (Hughes) appeared and represented Howling Bay Kennels (Howling Bay). McKenna Wentworth, adjuster for the Workers' Compensation Benefits Guaranty Fund (Fund), appeared and represented the Fund. Witnesses included Employee, who testified on his own behalf, and Hughes, who testified on Howling Bay's behalf. The record closed upon receipt of Morales's supplemental attorney fee affidavit on July 15, 2024, and reopened again on July 24, 2024 to receive the deposition transcripts of Hughes and her former business partner, Kevin McElheny (McElheny). The record again closed upon receipt of those transcripts on July 25, 2024.

ISSUES

Morales contends McElheny paid for his travel from Chile to Alaska, where he worked for Howling Bay as its employee. He contends text messages show an express contract for hire was formed between himself and Howling Bay and show Howling Bay contended he had breached the employment contract after he was injured. Morales contends he was doing the "core work" of the business when he was injured, and he seeks a finding that he was an employee for purposes of coverage under the Alaska Workers' Compensation Act (Act).

Howling Bay disputes Morales was an employee of the business. It contends Morales was a family friend who came to McElheny's and Hughes's residence to volunteer for a three-month stint taking care of their family dogs and denies there was ever an employment contract between itself and Morales. Howling Bay contends its business had been closed and Morales was just living on McElheny's and Hughes's premises when he was injured, so he was not an employee covered under the Act. It's answer to Morales's claim also suggests that Morales was not an employee because his 90-day visitor visa did not permit him to be employed in the United States.

The Fund acknowledges that Morales came to Alaska with the understanding he would be performing some type of activity around the home but Howling Bay's business was closed at the time of injury, so Morales is not a person covered under the Act because he was not engaged in a productive activity of the business when he was injured. It alternatively contends Morales is statutorily exempted from coverage under the Act since he was part-time, transient help.

1) Was Morales an employee covered under the Workers' Compensation Act?

Morales contends Howling Bay operated a dogsled and aurora viewing tour business, and six or seven weeks into his employment, McElheny and Hughes went on vacation and left him in charge of the business, which primarily consisted of taking care of a couple dozen dogs. He contends, while McElheny and Hughes were away, one of the dogs got loose and bit him. Morales seeks authorization to return to McKinley Orthopedics, where he previously treated, for additional care as his injury may require.

Howling Bay and the Fund do not dispute that Morales might need additional medical care, rather they rely on their contentions and defenses set forth above and maintain that Morales was not an employee, or he was excepted from coverage under the Act.

2) Is Employee entitled to medical and related transportation benefits?

After McElheny and Hughes returned from vacation, Morales contends he went to another kennel and tried to work around dogs for a while, but he could not because he was afraid of dogs. He contends his refusal to do this type of work was justified given his fear of dogs. Morales contends he was unable to find work until five to six weeks after the injury and he seeks an award of disability benefits.

Howling Bay contends Morales left McElheny's and Hughes's premises within two hours of their return and went to another kennel where he continued working, and then he worked at General Tire, so there was no time loss for which Employee should be compensated.

The Fund relies on its contentions and defenses set forth above and maintains that Morales was not an employee, or he was excepted from coverage under the Act.

3) Is Employee entitled to disability benefits?

Morales seeks interest on benefits that were not paid when due.

Howling Bay and the Fund contend, since no benefits were due, interest should not be awarded.

4) Is Employee entitled to interest?

Morales contends he was aided by the services of his attorney, and he seeks an award of reasonable attorney fees and costs.

Howling Bay and the Fund contends, since no benefits should be awarded, neither should attorney fees and costs.

5) Is Employe entitled to attorney fees and costs?

FINDINGS OF FACT

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

1) On February 20, 2022, Morales texted McElheny, "Hey bro how r you? I'm thinking to go for a couple of months to see the beginning of SPRING and the rivers melting." McElheny replied, "Busy come now we have lots of work." Morales also texted McElheny, "Its ok with you guys if I'm going to Fairbanks for March, [A]pril? I'll love to see the melting rivers. Also AURORAS!!!" McElheny replied, "Of course we can really use the help we are super busy." (Morales text messages, February 20, 2022).

2) Between February 25, 2022 and March 1, 2022, Morales's texts messages evidence McElheny making Morales's airline reservations for flights from Santiago, Chile to Fairbanks, Alaska, departing March 13, 2022, which cost $942.37. During these exchanges, Morales also informed McElheny he needed a ticket "out from USA in 3 months at max." McElheny also provided Morales with airfare for a flight on June 7, 2022, from Fairbanks, Alaska to Toronto, Canada, which cost $283.93. (Morales text messages, February 25, 2022 to March 1, 2022; Howling Bay's Answer, August 17, 2022).

3) On March 5, 2022, Morales texted McElheny and informed him that he needed new photos on Howling Bay's website. McElheny replied, "No I need help." (Morales text messages, March 5, 2022).

4) On March 6, 2022, McElheny texted Morales a photo of a calendar page for the month of March. (Morales text messages, March 6, 2022). He explained at his deposition that the photo depicts Howling Bay's "tour stuff." (McElheny dep., November 11, 2022 at 13-14). Blocks for most days on the calendar are entirely filled with handwritten annotations. (Observations).

5) On March 11, 2022, Morales texted McElheny, "Also bro you can do a post like 'if you want to learn some Spanish with a very special guy from Chile you can come over [to] Howling Bay Kennels and get some practice or maybe you want to know about the [C]arretera [A]ustral in Chile or Ushuaia in the end of the American continent come over and say hi to my friend Mauricio.'" McElheny replied, "What about we offer Spanish Aurora tours?" Morales was also planning on meeting an acquaintance in Seattle on his way to Alaska to drink beer. McElheny

texted him, "remember you don't land until almost 1 am and we have tours all day." Morales replied, "Will be just one beer for me." (Morales text messages, March 11, 2022).

6) Morales's text messages show he and McElheny also communicated via telephone and video chat. (Morales text messages, February 24, 2022 to March 14, 2022).

7) On March 15, 2022, Morales arrived in Fairbanks, Alaska. (Morales text messages, March 15, 2022).

8) On April 29, 2022, a malamute broke its collar and bit Morales on his left forearm while he was feeding it at Howling Bay. (First Report of Injury (FROI), May 26, 2022; Physician's Report, January 12, 2023). Morales was transported by ambulance to the Emergency Department (ED), where he was treated with an antibiotic and received a tetanus immunization. A three-centimeter laceration that involved a superficial muscle tear was repaired with three sutures and Morales was discharged with instructions to follow-up with his primary care provider. (ED Record, April 29, 2022).

9) On May 9, 2022, Hughes texted Morales, "Thank you for your help here, we appreciate it. For sure! Please refer to [McElheny's] message about leaving with no notice." She also wrote, "Mauricio, we are very appreciative of your help and you did a great job while here. Please continue to talk to [McElheny] about leaving with no notice." (Morales text messages, May 9, 2022).

10) On May 16, 2022, Morales texted Hughes:

> I want to ask you this very politely, you are the one to make the decisions in your business so I want to know how much you are willing to pay me for this two months that I spent and worked at your place? Doesn't matter the 3 months back in 2019 when I was helping with Forrest and he had to leave hiz job with you guys because I was there helping [McElheny]. Look at that pavilion and think about it. We can meet next week in person at [G]allos, lunch is on you because I am BROKE[.]

(Morales text messages, May 16, 2022).

11) On May 17, 2022, Hughes texted Morales, "Thank you for your assistance when you were helping out at our place. You did a great job. Unfortunately[,] our agreement was verbal[,] and you did not fulfill your portion. We got 1 month and 3 weeks exactly of your time, not three months." (Morales text messages, May 17, 2022). Morales would subsequently contend, "The board should find that an express contract arose, in light of the statement that there was a verbal

agreement *of some kind* that was expected to last three months, and the contention that Morales had breached it." (Morales Hearing Brief, June 15, 2023) (emphasis added).

12) On May 25, 2022, Employee's attorney entered his appearance on Employee's behalf and claimed temporary total disability (TTD) benefits, temporary partial disability (TPD) benefits, permanent partial impairment (PPI) benefits, medical and related transportation benefits, penalty, interest and attorney fees and costs. (Entry of Appearance, May 25, 2022; Claim for Workers' Compensation Benefits, May 25, 2022).

13) On May 27, 2022, the Fund answered Morales's May 25, 2022 claim, denying all benefits on the basis that statutory requirements for the payment of benefits by the Fund had not been met. (Fund's Answer, May 27, 2022). It also controverted all benefits on the same basis. (Controversion Notice, May 27, 2022).

14) On August 17, 2022, McElheny answered Morales's claim, contending Morales was a volunteer travelling on a visitor's visa and Howling Bay never paid Morales a salary. (Howling Bay's Answer, August 17, 2022).

15) On August 26, 2022, Morales began psychotherapy. (Joseph notes, August 26, 2022). His therapist referred him for a mental health assessment and diagnosis because the therapist thought a diagnosis would assist her in providing continuing care to Morales. (Assessment, September 14, 2022). During the assessment, Morales reported:

> [Morales] reports he originally came to Alaska because he had connected with a local dog kennel owner in Fox who told [Morales] he could become 'The world's first Chilean dog musher,' a thought that was highly appealing to [Morales]. [Morales] reports, after arriving in Alaska, he began working for his contact [McElheny] at his kennels. [Morales] reports [McElheny] continually promised [him] a large paycheck, but it never came. [Morales] reports early this summer, [McElheny] and his family went on vacation and left [him] in charge of all the dogs (around 35 in total). [Morales] reports during this time, one of the dogs got loose and started attacking him. [Morales] reports the attack was vicious enough to require an ambulance to pick him up, followed by a period of hospitalization. [Morales] reports he would have died had the neighbors not intervened. [Morales] reports ever since this event he has been experiencing significant concerns with acute trauma related to the attack, and major depression involving his residency at The Rescue Mission and his lack of funds due to never being paid.

Morales was diagnosed with post-traumatic stress disorder and (PTSD) and reported "lasting pain" from the attack. (*Id.*).

16) On November 11, 2022, Hughes testified she is one of the owners and operators of Howling Bay Kennels, which has been in business since 2018. (Hughes dep., November 11, 2022 at 4). The other owner is McElheny. (*Id*. at 5). They offer aurora viewing and dogsled tours. (*Id*. at 6). The tours are seasonal. (*Id*.). Aurora viewing tours are "solid" by the first week of September and go until April 1st. (*Id*.). The dogsled tours fluctuate depending on the snow, but on average, they are provided from late November until the second week of March. (*Id*. at 6-7; 28). The business is located on a five-acre parcel with a 24 by 30-foot cabin, which is their primary residence, and a 16-foot dome, as well as a couple of outbuildings. (*Id*. at 7). The dome is considered their "tour shack" and is primarily used for business. (*Id*. at 8). It serves as a warming station where customers can change clothes. (*Id*. at 24). At the time of her deposition, Hughes and McElheny had 28 dogs. (*Id*.). Daily tasks for the business include general upkeep, housing the animals and maintaining the temperature in the dome with a wood stove during winter months for the guests. (*Id*. at 8-9). Morales contacted them in 2019 via the internet and said he was interested in coming to Alaska. (*Id*. at 10). He stayed with them for about three months and helped them with basic things around the place like making log furniture. (*Id*. at 11). He helped brush and feed the dogs and clean up after the dogs. Morales would also take trips, meet people and have fun. (*Id*.). She was not part of the discussions about Morales coming back to Alaska in 2022, but Morales wanted to come back in the wintertime. (*Id*. at 13-14). She and McElheny decided March was the best month and McElheny "took it from there." (*Id*.). McElheny was the person who had the conversations with Morales about coming back to Alaska. (*Id*. at 14). When Morales stayed with them in 2019, it was summertime, and he left at the end of September. (*Id*.). Because it was summertime, Howling Bay was not offering tours. (*Id*. at 15). When Morales came back in 2022, "he'd feed the dogs every once in a while, and he'd clean up, but he was never committed to anything." (*Id*. at 16). "He was expected to come and pretty much do his own thing." (*Id*. at 29). When Hughes and McElheny left for vacation, Hughes gave Morales $400 for incidentals, like gas for the generator or propane. (*Id*. at 17). It was expected that Morales would be financially able to take care of himself while he was there. (*Id*. at 18). Hughes explained the verbal agreement mentioned in her text message meant, since Morales was going to be staying on their property for three months, Morales agreed to "give them a break" if she and McElheny took a vacation, which they did. (*Id*. at 20). She stated, "We're like, okay, we're going to expect three months, I can plan some type of vacation, I can do

something." (*Id*.). When Morales came back in March 2022, Howling Bay was ending its season for aurora viewing tours, and it was still offering dogsledding tours. (*Id*. at 28). The dogsledding tours that year ended at the end of March. (*Id*.). She and McElheny went on vacation from April 27, 2022 through May 10, 2022. (*Id*. at 29). There was no expectation that Morales would be an employee of the business. (*Id*. at 30). "There was never any talk of a contract. (*Id*.). There was never any talk of a wage or salary. There was nothing in place like that." (*Id*.). Hughes and McElheny have never had anyone help them with tours. (*Id*.). They do not hire employees and cannot easily have volunteers on the property without experience to care for the animals. (*Id*.). Morales is no longer a friend of Hughes. (*Id*. at 38). She would have formerly considered Morales a family friend. (*Id*.). Feeding and watering the dogs takes roughly 15 minutes. (*Id*. at 44).

17) On November 11, 2022, Kevin McElheny testified he and Hughes started Howling Bay Kennels in 2018, shortly after he came to Alaska. (McElheny dep., November 11, 2022 at 4-5). It was a seasonal business operating only in the wintertime that provided dogsledding and aurora viewing tours. (*Id*. at 5). The dogsledding tours last one-and-a-half to two hours and are done during the day, and the aurora viewing tours last five to six hours and are done at night. (*Id*. at 7-8). Usually, there are two dogsledding tours scheduled per day. (*Id*. at 8). Daily tasks performed for operating the tours include accepting and rejecting bookings, taking photos of guests, driving for the aurora viewing tours, starting a fire in the dome, preparing the dome and making hot chocolate. (*Id*. at 9). In the wintertime, they can work 10 to 12 hours per day. (*Id*.). McElheny met Morales when Morales contacted him through their business page online. (*Id*. at 10). Morales liked what McElheny and Hughes were posting online and wanted to come to Alaska. (*Id*.). Morales came to Alaska in the fall of [2019] because he wanted to learn about and enjoy Alaska life. (*Id*.). Morales did not work for the business at that time. (*Id*.). After Morales's visit, McElheny and Morales stayed in touch for three years and would communicate about once a month. (*Id*. at 12). They discussed Morales coming back to Alaska and seeing more of the dogsledding because Morales wanted to learn more about it. (*Id*. at 11). McElheny paid for Morales's flight to Alaska. (*Id*. at 12). He considered Morales a family friend. (*Id*. at 12; 30). He and Morales did not talk about Morales working for the business, but they talked about possibly trying to develop that. (*Id*.). Morales was coming on a visitor's visa like he did in 2019, and they were unsure of how they could get him a seasonal or work visa. (*Id*. at 12-13).

He and Hughes did not offer Morales an "official position," or wage, or "nothing along those lines." (*Id*. at 13). With regards to money, McElheny gave Morales $100 for his birthday and Hughes gave Morales $400 for incidentals while they were on vacation. (*Id*. at 15-16). McElheny never promised to pay Morales any amount of money for his work. (*Id*. at 21). McElheny had texted Morales a picture of a calendar of their "tour stuff" to show Morales they had "stuff operating" and were busy, and to show him they could have somebody around to help with some of the tasks that they would need to do. (*Id*. at 13-14). Any day that Morales was "hanging around" the house, he would help with feeding and "scooping" the dogs, usually before or after the tours. (*Id*. at 15). McElheny and Hughes have about 30 dogs. (*Id*. at 16). Morales would take a day off here and there to go to town, go to a friend's house, or go to a party. (*Id*. at 17). Before he and Hughes went on vacation, they gave Morales "lots of different instructions." (*Id*. at 18). McElheny's understanding of the agreement mentioned in Hughes's text message was Morales would stay with them and they would "help each other out." (*Id*. at 23). He considered Morales a family friend, and during the COVID pandemic he and Morales would video chat, and Morales's nephew and his daughter would video chat. (*Id*. at 29-30). McElheny and Morales had verbal discussions about Morales obtaining a work visa to work for Howling Bay Kennels in the future guiding dogsled tours. (*Id*. at 37; 39-41).

18) On November 28, 2022, the Fund amended its May 27, 2022 answer, contending that Morales was not person covered under the Act because he was part-time, transient help. (Fund's Answer, November 28, 2022).

19) At a January 9, 2023 prehearing conference, the Fund agreed to authorize payment for Morales to be evaluated to ascertain what medical treatment he might need. (Prehearing Conference Summary, January 9, 2023).

20) On January 12, 2023, Employee sought treatment at McKinley Orthopedics for ongoing pain and weakness since the April 29, 2022 dog bite injury. X-rays taken that day of Morales's left forearm were normal. A magnetic resonance imaging study (MRI) was ordered to assess for soft tissue injuries. (Holt chart notes, January 12, 2023).

21) On February 3, 2023, Morales's left forearm MRI did not show a muscle tear, bone fracture or infection. Employee began osteopathic manipulation treatment (OMT) to address adhesions in his forearm. (Wright chart notes, February 3, 2023).

22) On April 4, 2023, Morales reported receiving temporary relief from previous OMT sessions but was having pain and neuropathy on his left forearm, which was not responding to osteopathic manipulative medicine (OMM) and physical therapy. Nerve damage from the dog bite was suspected and he was referred for a nerve consultation and electromyography (EMG) study. (Wright chart notes, April 4, 2023). He was unable to attend the nerve consultation and EMG because "workers comp did not approve the exam." (Wright chart notes, July 10, 2023).

23) On October 30, 2023, Morales was continuing with OMT and physical therapy. (Wright chart notes, October 23, 2023).

24) November 27, 2023, is the last date OMT chart notes appear in the record. (Observations).

25) December 18, 2023, is the last date physical therapy notes appear in the record. (*Id.*). Morales's attorney represented at hearing that the Fund stopped authorizing treatment in December 2023. (Record).

26) On December 19, 2023, a Superior Court judge awarded Hughes "all responsibility and liability for Alaska Workers' Compensation case titled *Maurici* [sic] *Morales v. Howling Bay Kennels*, Injury Number 202208063," and designated Hughes solely responsible for any liability incurred in that matter. (Order Regarding Property and Workers' Compensation Claim, December 19, 2023; Order Regarding Property and Debt Distribution, December 19, 2023).

27) On February 7, 2024, the Fund updated its controversion based on the dispute over Morales's employee status. It also based its controversion on the lack of a Board order to pay benefits to the injured worker and the lack of a default on such an order. (Controversion Notice, February 7, 2024).

28) On July 9, 2024, Morales filed an affidavit of attorney fees documenting 2.2 hours work at a rate of $520 per hour, for a total of $1,144. It avers that Morales's attorney has over 20 years' experience as a lawyer, which has "overwhelmingly" involved workers' compensation cases arising under Alaska law, and cites *Martino v. Alaska Asphalt Services, LLC*, AWCB Decision No. 23-0440 (August 10, 2023), and *Alaska Asphalt Services, LLC v. Martino*, AWCAC Order for Attorney Fees and Costs (July 13, 2023) to substantiate prior awards by the board and Commission for time billed at an hourly rate of $520 per hour. (Attorney Fee Affidavit, July 9, 2024).

29) On July 11, 2024, Morales testified he is from Chile, where he is a physical therapist. He first came to Alaska in August 2019 and volunteered to help McElheny and Hughes with the

dogs. Morales stayed on McElheny's and Hughes's property, helped train the dogs for the tourist season, and returned to Toronto in October 2019. He came to Alaska a second time on March 14, 2022 because he became friends with McElheny while texting and McElheny started talking about him working for the kennel and him becoming the first Chilean musher in Alaska. Morales and McElheny discussed a work visa so he would be able to stay longer and help with the kennel. McElheny said they were "really busy," and the kennel had tours every day - a dog sled tour and a Northern Lights tour. McElheny said typical pay was $400 to $500 per week, and the more work they do, the more money McElheny was able to give him because McElheny knew he was a hard worker. McElheny offered to provide him with flights from Chile to Atlanta to Alaska. He stayed the first couple of days with McElheny and Hughes in their cabin, then they moved him to the "dome." Morales explained there is a geodesic dome on the property where McElheny and Hughes would hang out with guests and drink coffee as part of the tours. Sometimes, he had meals with McElheny and Hughes, sometimes they would give him $20 for pizza and sometimes he would buy his own food. Every day was busy with work: feeding the dogs, cleaning the dogs after they ate, getting the dog teams out for the dog sled tour, and after that they would hang out with the guests, and he would watch the dogs so they wouldn't get into a fight. There were two or three tours per day. The dome was not insulated, and he would carry logs to the dome to keep it heated all day long and to keep a bonfire going outside for the guests until 1:00 a.m. There were a couple of times where he participated in tours with Spanish speaking guests and would drive them around on the dog sleds. Before McElheny and Hughes left on vacation, they gave him a couple of hundred dollars to buy groceries or to go eat somewhere and Hughes said they would give him his money when they came back from vacation. While they were gone, Employee was instructed to feed and clean the dogs and clean the property. On the date of injury, he was feeding the dogs and a big malamute broke his collar, got loose, jumped and bit him. He ran to the highway and flagged down a car. The driver called 911 and an ambulance took him to the hospital. Ten days passed before McElheny and Hughes returned from vacation. During that time, he still did his work with one arm because his other arm was in a sling. He left McElheny's and Hughes's property on May 8th because he was afraid of the dog that bit him and he went to a dog musher in Salcha, named "Mike." There, he fed Mike's dogs, but he was not paid. Morales left Mike's after about a week because he was afraid of dogs. Morales then went to the airport to return to Chile and stayed at the airport a couple of

days waiting for his family to get money for his ticket because McElheny had cancelled his return flight. A police officer sent him to the Rescue Mission. He stayed at the Rescue Mission for about five months. Morales cleaned and washed dishes at the mission as a condition for staying there. One month later, he found work from a posting at the Rescue Mission doing painting and drywall at a house. He started that work on June 16th and did that work for five weeks, but not every day. Rather, he would work three or four days per week. After that, Morales found a job cleaning the backyard at Giant Tire, Monday through Saturday, five hours per day. He could only work a few hours per day because carrying the tires caused him pain. People from the Rescue Mission found Morales crying a couple of times in the bathroom, so they recommended he contact the Fairbanks Native Association for mental health treatment because he was depressed. He attended treatment once or twice a week for "many weeks." Morales's treatment at McKinley Orthopedics consisted of deep tissue massage and exercises for his forearm. He was pain-free for a few weeks following treatment, but he was still having problems, and he could not grip and lift as high he used to. After he stopped work at Giant Tire in January 2023, Morales started working at Gallos as a dishwasher and now as a cook, but he has problems grabbing and lifting. He lives in pain every day and does stretching and massage to fall asleep. He would like to return to McKinley to get further treatment. On cross examination, Morales testified he came to Alaska in 2022 on a 90-day travel visa. McElheny bought his plane ticket from Chile. He never had a work visa. McElheny and Morales talked on the phone in February 2022 about getting a work visa so he could stay in the USA longer than three months. In 2019, he was on a travel visa and volunteered at Howling Bay for two months but just for a few hours in the morning. In 2022, Morales travelled on the same visa, but they put him to work "right away." He would work until 1:00 in the morning and wake-up at 7:30 to 8:00. He worked every single day. The difference between 2019 and 2022 was the amount of work Morales did. Howling Bay promised, the more work it did, the more money it would be able to pay him. He was working 10 hours per day, taking care of the bonfire, keeping tourists happy, and taking photos of the Northern Lights. It was completely different than his visit in 2019. When Morales came in 2022, his intentions were to become the first Chilean musher in Alaska and to do tours in Spanish for Spanish speaking people and to get more people to come to the business. McElheny approached him by calling him and said they were "really busy," and they needed a hard worker around like him. The last tour was a couple of days or a week before

McElheny and Hughes went on vacation. Then, Morales was feeding the dogs, cleaning up after the dogs, cleaning the property, getting water from the spring, cleaning the house, and cleaning snow off the roof of the pavilion. He was not free to come and go, and when he would leave to take a shower or do his laundry, McElheny and Hughes would call and ask him where he was at and when was he coming back. With regards to obtaining a work visa, McElheny told Morales "Everything was under control" and "we'll get you to stay with us." McElheny told him $500 per week is the regular pay in town but he was a hard worker, and they were busy, so the more jobs he did, the more money they would be able to give him. McElheny said he would pay Morales at least $500 per week because he knew Morales was a hard worker. McElheny and Hughes said they would pay Morales more than $500 per week and would pay him at the end of the season. McElheny and Hughes did not pay him when the season ended on April 20th and said they would pay Morales after they got back from vacation. McElheny and Hughes never paid Morales because he left the property. (Morales).

30) Morales's recollection of dates is credible because he related case events to other memorable dates, such as his and his father's birthdays. (Experience, judgment, unique facts of the case, and inferences drawn therefrom).

31) On July 11, 2024, Hughes testified Morales contacted them in 2019 because he was interested in learning about sled dogs and coming to Alaska to visit. Morales came on a visitor visa for three months, stayed with them, and could come and go on his free will and travel. It was expected that he could support himself and be responsible for himself. Morales met people and travelled around the state. In 2022 Hughes and McElheny communicated again with Morales. Morales wanted to experience Alaska in the wintertime, and he came back on the same visitor visa. The assumption was the same as in 2019, when Morales helped with the feeding and the cleaning of the dogs. There was no employment contract, no specific schedule, no specific tasks. They expected Morales to be self-sufficient. McElheny approached Hughes about helping Morales with paperwork so he could stay indefinitely, and she said "no," so McElheny "stepped out of it" it as well. Morales was not responsible for Howling Bay's guests, tours or any aspect of Howling Bay's business. Hughes thinks Morales rode on the back of a dogsled one time. Everyone helped fed and clean the dogs and Hughes never heard of paying Morales $500 per week. Her understanding of a visitor's visa is that it is valid for 90 days and no money is to be exchanged, and people are not allowed to gain employment during that time.

Someone can do unpaid volunteer work on a visitor's visa. The hosting dome on the property was used for business and as a living quarter. The dome was heated with firewood and the fire would have to be restarted each day. Work at the kennel is "pretty consistent" "all across the board." Dogs are fed and cleaned between one and three times per day, regardless of the season, "24/7/365 days a year." The workload during tours is 75 percent talking and 25 percent being on the back of a dogsled and taking someone for a dogsled ride. The number of hours worked per day does not change based on the season. During the off-season, the dogs are still being run and there is general care for the dogs, fixing dog houses, and general maintenance. Morales did not assist with tours. Morales was not responsible for running tours, running a dogsled, bookings, or advertising. Morales did not do anything to assist with the tours. Hughes and McElheny ran a business together and shared a home together. In December 2022, her and McElheny's domestic partnership was dissolved, and the business was closed. Hughes was not involved with Morales coming to the United States. She and McElheny never hired anyone to take care of the dogs. The dogs are fed one or two times a day. It takes five to 10 minutes to prepare the dog food, and 10 to 15 minutes to feed the dogs. Feeding can be done in less than an hour. It takes 15 minutes to clean the kennels. It is "not accurate at all" when Morales says he worked ten hours per day. Howling Bay had less than $100,000 income in 2022. Hughes paid herself a salary but could not recall how much. March 2022 was the end of their season. Aurora tours end April 1st and dogsledding tours end around the third weekend in March. Any dogsled tours past that date are considered a "bonus." Morales would have started feeding and cleaning the dogs within 24 to 48 hours after his arrival. Morales was friendly and Hughes and McElheny invited him back. Concerning the amount of work required during the season, the dogsledding tours are no longer than an hour and a half. In 2022, they were doing one to two tours a day, so that would involve no more than 3 hours of direct working time. Anything more than that would be considered "normal life." The aurora tours are three to four hours, but those tours were not consistent. Hughes thinks the dog that bit Morales was "Curly Q." That dog was used for tours and has never bitten anyone else. (Hughes).

32) On July 15, 2024, Morales supplemented his attorney fees and costs, documenting an additional 11.37 hours of work, and $727.77 in costs, for a grand total of $7,782.44. (Attorney Fee Affidavit, July 15, 2024).

33) Neither Howling Bay nor the Fund objected to Morales's attorney fees. (Observations).

PRINCIPLES OF LAW

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

> **AS 23.30.020. Chapter part of contract of hire.** This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.

An employer-employee relationship can only be created by a contract, which may be express or implied. *Selid Construction Co. v. Guarantee Insurance Co.*, 355 P.2d 389; 393 (Alaska 1960). Unless an employer-employee relationship exists, "the provisions of the Alaska Workers' Compensation act are not applicable." *City of Seward v. Wisdom*, 413 P.2d 931; 935 (Alaska 1966).

In *Alaska Pulp Corp. v United Paperworkers International Union*, 791 P.2d 1008; 1012 (Alaska 1990), the Alaska Supreme Court held:

> APC argues . . . the Board erred by not applying the 'relative nature of the work' test to determine . . . employee status. We adopted this test to distinguish between employees and independent contractors for the purpose of determining whether an individual is an "employee," and thus eligible for workers' compensation benefits, under the Act. (Citation omitted). However, both relationships presuppose a contractual undertaking. Therefore, in the absence of a contract for hire, the Board was not required to make this distinction. *Id*. at 1012.

Formation of a contract for hire "generally requires mutual assent and consideration." *Id*. at 1010.

In *Childs v. Kalgin Island Lodge*, 779 P.2d 310 (Alaska 1989), the Court set forth the appropriate tests for a contract for hire, express or implied. An express contract requires 1) an offer encompassing its essential terms, an unequivocal acceptance of the terms by the offeree,

consideration and intent to be bound. *Id*. at 313. Price is an essential term of a contract. *Matter of Estate of Rodman*, 498 P.3d 1054; 1067 (Alaska 2021). While a "formalization of a contract for hire is not the controlling factor" in determining whether an employment contract exists, a hiring contract is still necessary. *Childs* at 313-14.

An implied employment contract is formed by a "relation resulting from 'the manifestation of consent by one party to another that the other shall act on his behalf and subject to his control, and consent by the other to so act.'" *Childs* at 314. Determination of whether an implied contract was formed should include consideration of all the factors in light of the surrounding circumstances. *Id*. The parties' words and acts should be given such meaning "as reasonable persons would give them under all the facts and circumstances present at the time in question." *Id*.

According to Professor Larson, the fact that nothing is said about pay before services are undertaken is generally immaterial, since the law will imply an obligation to pay a reasonable amount for services performed and accepted. 5 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 65.02 (2013). Additionally, payment need not be in money, but may be in anything of value, including room and board or training. *Id*. at § 65.03.

> **AS 23.30.045. Employer's liability for compensation.** (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215.
> . . .

Searfus v. Northern Gas Company, 472 P.2d 966 (Alaska 1970), involved whether the "master-servant" control test or Professor Larson's "relative nature of the work" test should be used to determine employee status for application of the exclusive remedy provision of the Act. Beginning its analysis, the Court observed:

> Most jurisdictions define 'employee' as a servant in the master-servant sense. Alaska's present compensation act treats some persons as 'employees' who are not servants and excludes some servant from the category of employee. For example, an uninsured subcontractor's employees are considered employees of the contractor, though they are not servants of the contractor; [citing AS 23.30.045(a)] part-time babysitters, cleaning persons, and harvest help are not

> treated as employees, though they may be servants in the common law sense [citing AS 23.30.230].

Id. at 968. The Court consulted Professor Larson's treatise on workers' compensation law for guidance:

> Professor Larson states that the theory of compensation legislation is that the costs of all industrial accidents should be borne by the consumer as part of the costs of the product. From this principle, Professor Larson infers that 'the nature of the claimant's work in relation to the regular business of the employer' should be the test for the applicability of workmen's compensation, rather than the master-servant test of control . . . .

Id. at 969. It then quoted directly from Professor Larson:

> It follows that any worker whose services form a regular and continuing part of the cost of that product, and whose method of operation is not such an independent business that it forms in itself a separate route through which his own costs of industrial accident can be channeled, is within the presumptive area of intended protection.

Id. (citing 1A A. Larson, The Law of Workmen's Compensation s 43.51, at 633 (1967)). The Court held that Professor Larson's "relative nature of the work" test should be applied instead of the "master-servant" control test to determine whether an injured worker is an "employee" for workers' compensation purposes.

Subsequent to *Searfus*, the Court again applied Professor Larson's "relative nature of the work test" to affirm board's finding that an injured worker was an independent contractor, and not an employee entitled to workers' compensation benefits. *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d 1061 (Alaska 1973).

> The 'relative nature of the work' test has two parts: first, the character of the claimant's work or business; and second, the relationship of the claimant's work or business to the purported employer's business. Larson urges consideration of three factors as to each of these two parts. With reference to the character of claimant's work or business the factors are: (a) the degree of skill involved; (b) the degree to which it is a separate calling or business; and (c) the extent to which it can be expected to carry its own accident burden. The relationship of the claimant's work or business to the purported employer's business requires consideration of: (a) the extent to which claimant's work is a regular part of the

> employer's regular work; (b) whether claimant's work is continuous or intermittent; and (c) whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of the particular job.

Id. at 1063.

Kroll v. Reeser, 655 P.2d 753 (Alaska 1982), involved a property owner, Kroll, who was a serviceman with a cable TV company. In his spare time, he was constructing a four-plex apartment building on a lot he owned. The building was to consist of three one-bedroom apartments and living quarters for Kroll and his family. When the original building contractor fell behind schedule, Kroll hired an unlicensed general contractor and his sons to do the framing and exterior work. One of the sons, Reeser, inured himself on the job and filed a claim for workers' compensation benefits. The workers' compensation board ruled Reeser had been Kroll's employee as defined by the Act. The Superior Court affirmed. *Id*. at 754-55.

On appeal to the Court, the parties disputed whether the Board had properly applied Professor Larson's "relative nature of the work test," which to Court adopted in *Searfus* and elaborated upon in *Ostrem*. However, the Court noted the "relative nature of the work" test is to distinguish between an employee and an independent contractor, but that test was not useful here, where the question was not whether Reeser was an employee, since he is "obviously an employee," but rather whether he was employed by his father or Kroll. *Id*. at 755-56. *Id*. at 756.

> The determination of whether [Reeser] was an "employee" under the *Searfus-Ostrem* test requires a threshold determination of whether Kroll was an "employer" within the ambit of the Workers' Compensation Act. . . . Thus, only if it is determined that Kroll acted as an employer in the course of his construction activities may [Reeser] reasonably be said to have been engaged in work which was a 'regular part of the employer's regular work.'

Id. at 756-57. The Court held the board had failed to give proper weight to the statutory limitation "in connection with a business or industry." *Id*. at 757 (quoting a portion of statutory definition of "employer").

> In Larson's terms, the policy question is whether Kroll's construction activity, either by itself or as an element of his rental activities, was a profit-making

> enterprise which ought to bear the costs of injuries incurred in the business, or was the construction activity simply a cost-cutting shortcut that was basically a *consumptive* and not a *productive* role played by Kroll.

Id. (emphasis in original). It concluded, "the threshold issue of whether Kroll's construction activity was sufficient to establish his status as an employer must also be remanded to the Board for further clarification." *Id*.

In *Nichols v. Napolilli*, 29 P.3d 242 (Alaska 2001), the Napolillis owned a 40-acre farm, which they operated as a small business, though both of the Napolillis worked full-time jobs unrelated to the farm. The farm sold animals, eggs, hay and farm equipment. The Napolillis deducted farm related business expenses on their federal income tax return and listed the business in the phone book and a farm products directory. *Id*. at 245.

Mr. Napolilli built a two-story log cabin on the property near the Napolillis' primary residence. To obtain assistance with farm labor, the Napolillis established a "rent-for-chores" exchange. Various tenants would live rent-free in the cabin in exchange for performing various chores. One of those tenants, Nichols, injured her arm and back while living in the cabin. The Napolillis did not have workers' compensation insurance. *Id*.

A trial was held to determine whether Nichols was an employee for the purposes of the Alaska Workers' Compensation Act. *Id*. at 246. The Napolillis characterized the arrangement as a "rental agreement," while the Nichols characterized it as an employment relationship. *Id*. at 252. The trial court concluded Nichols was an employee under the Act. *Id* at 246.

The Alaska Supreme Court found the parties written agreement, which specified the number of hours of labor required each month, a compensation rate for hours worked in excess of the agreement, specific tasks for Nichols to perform and the Napolillis' right to terminate the agreement if the work was not performed to Mr. Napolilli's expectations, was an employment contract, even though it also contained terms commonly found in a residential rental agreement. *Id*. at 252. It also applied the "relative nature of the work test," which considers the nature of the "employee's" work and the relationship of work to the "employer's" business.

> In evaluating the character of the claimant's work, the trier of fact is to consider the degree of skill involved, the degree to which it is a separate calling of business, and the extent to which it can be expected to carry its own accident burden. Concerning the relationship of the claimant's work to the purported employer's business, the trier of fact is to consider how much it is a regular part of the employer's regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job.

Id. at 252 (citing *Searfus*). The Court concluded, the Napolillis' control of the Nichol's work, Mr. Napolilli's extensive supervision of Nichol's work and Mr. Napolilli's provision of tools to Nichols, "[a]mple evidence" to support the trial court's findings that the Nichols was an employee. *Id*. at 252-53. It also cited Professor Larson's treatise with approval, which draws a distinction between consumptive activities, which should not bear the burden of workers' compensation insurance, and productive business activities, which should. "A homeowner who hires someone to perform an odd job for his own benefit is not appropriately considered an employer under the workers' compensation statute. A business, unlike a homeowner, can pass the cost of workers' compensation insurance on to the consumer of the business's service or product." *Id*. at 253. Because the Nichol's work for the Napolillis' farm furthered the farm's business, her work fell within the workers' compensation system. *Id*.

Gaude v. Saunders, 53 P.3d 1126 (Alaska 2002), involved a couple, the Saunderses, who hired workers to build an addition to their home. One of the workers, Gaude, fell from a ladder and was injured. Gaude's claim for workers' compensation benefits was denied by the Board on the ground that Gaude was not an employee within the meaning of the Act. The Superior Court affirmed.

The Court began by observing "not all persons who are employees within the usual meaning of that term are employees covered by the act." After consulting the statutory definitions of "employee" and "employer," it concluded, the "act thus excludes private common law employees who are employed other than 'in connection with a business or industry.'" *Id*. at 1126-27. Citing its remand in *Kroll*, where it adopted "Professor Larson's distinction between consumptive activities, which should not bear the burden of workers' compensation insurance,

and productive business activities, which should," the Court concluded there was no "business or industry" aspect to the Saunders' building project, but rather it was consumptive in nature, since the house was intended to be used only as their family residence. *Id*. at 1127.

Adams v. Workers' Compensation Benefits Guarantee Fund, 467 P.3d 1053 (Alaska 2020), involved a property owner who lived in a house, rented part of it and used part of it as a recording studio. The property owner also had a duplex rental in Bronx, New York and had previously owned a trailer in Anchorage. In addition to his Permanent Fund Dividend, the only income sources listed on the property owner's tax return were rental income, "trailer payments," a small amount of interest income and a cancelled debt. A carpenter fell from the roof of the house and was severely injured. He sought workers' compensation benefits. Because the property owner did not have workers' compensation insurance, the Alaska Workers' Compensation Benefits Guaranty Fund was joined as a party. It argued the property owner was not an "employer" as defined by the Act. The Board found that he was an employer since he was in the "business or industry" of "buying, managing, and selling of real estate." The Alaska Workers' Compensation Appeals Commission, relying on *Kroll*, reversed the board's decision on the basis the work on the property owner's house was a consumptive rather than productive activity. On appeal to the Court, the Benefits Guaranty Fund contended the Court recognized in *Kroll* "that owning and renting a handful of residential units does not necessarily amount to a productive business that can pass the cost of workers' compensation insurance to consumers." The Court disagreed and declined to adopt a judicially created rule designating a specific number of rental units as per se consumptive activity. *Id*. at 1162. "There Is No De Minimus Rule Distinguishing, As A Matter Of Law, Consumptive From Productive Roles In Real Estate Rentals," the Court wrote. *Id*. at 1060. The property owner's status as an employer was a question of fact, *id*. at 1062, and the Court found substantial evidence supported the board's decision. *Id*. at 1062-64. It reversed the Commission.

Professor Larson has observed, some states have provided express statutory coverage for illegal aliens, and others have not. In summary, his treatise notes:

> In states that do not, by express statutory language, provide for or exclude workers' compensation coverage to illegal aliens, employers and carriers have

> attempted utilize a variety of arguments in the effort to undermine the status of illegal aliens' claims. Most such attempts have been unsuccessful.

5 A. Larson, The Law of Workers' Compensation § 66.03 (2017).

> **AS 23.30.082. Workers' compensation benefits guaranty fund.**
> . . .
>
> (c) . . . an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. . . .

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

Injured workers must weigh many variables when deciding whether to pursue a certain course of medical or related treatment. An important treatment consideration in many cases is whether a physician's recommended treatment is compensable under the Act. *Summers v. Korobkin*, 814 P.2d 1369, 1372 (Alaska 1991). Thus, an injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Id.* at 1373-74.

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

It is presumed an injury is work-connected in the absence of substantial evidence to the contrary. *Beauchamp v. Employers Liability Assurance Corp.*, 477 P.2d 993; 997 (Alaska 1970). "The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Medical benefits, including continuing care, are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The Court in *Sokolowski v. Best Western Golden*

Lion, 813 P.2d 286, 292 (Alaska 1991) held a claimant "is entitled to the presumption of compensability as to each evidentiary question."

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the claim and her employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981), and need only adduce "some" relevant evidence to do so. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). A mere showing that the injury occurred at work will often suffice the make the employment connection. *Smallwood*. When a claim is based on "highly technical medical considerations," medical evidence is often necessary to make the connection. *Id.*; *e.g.*, *Thornton v. Alaska Workmen's Compensation Bd.*, 411 P.2d 209; 211 (Alaska 1966) (cause of heart attack). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

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

If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (*citing Miller*). The party with the

burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact-finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

> **AS 23.30.145. Attorney fees**. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . .
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion, actual or in-fact, is required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id*. In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), the Court held attorney fees awarded should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on a claim's merits, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id*. The nature, length, and complexity of services performed, the employer's resistance, and the benefits resulting from the services obtained, are considerations when determining reasonable attorney fees for a claim's successful prosecution. *Id*. at 973, 975.

In *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019), the Court clarified its holding in *Bignell*, and held "the Board must consider of the factors set out in Alaska Rules for Professional Conduct 1.5(a) when determining a reasonable attorney fee." *Id*. at 798-99. It emphasized, "the Board must consider each factor and either make findings related to that factor or explain why that factor is not relevant." *Id*. at 799. The Court simultaneously noted:

> Alaska Rule of Professional Conduct 1.5(a) sets out eight non-exclusive 'factors to be considered in determining the reasonableness of a fee,' specifically:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
>
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily shared in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

Id. at n. 51. An attorney fee award will only be reversed if it is "manifestly unreasonable." This differs from the "substantial evidence" test used for review of factual determinations. *Id*. at 803.

Rule 1.5(a)(2) considers whether a lawyer undertaking specific representation might preclude being able to take on other work. There is no detriment to a lawyer who takes on a case and because of this does not have time to take on a different case that would involve the same amount of work and similar fees. Instead, the rule considers situations such as a lawyer's inability to take on other clients in the present or future because of conflicts of interests, taking "one off" cases that hold no promise of long-term future employment, and taking on unpopular clients who might significantly negatively impact the lawyers practice, such as a terrorist. *Lawyer Fee Basics: Reasonableness*, 3 Legal Ethics and Malpractice Reporter (Michael Hoeflich, ed. 2022)

> **AS 23.30.150. Commencement of Compensation.** Compensation may not be allowed for the first three days of the disability . . . .

> **AS 23.30.155. Payment of compensation.**
> . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. . . .

A workers' compensation award accrues legal interest from the date it should have been paid. *Land and Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1192 (Alaska 1984).

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

Whenever a claimant's case depends on a showing of inability to work, an employer may defend on grounds that the claimant has refused suitable work. If the refusal was reasonable, the rule does not apply. 7 A. Larson, The Law of Workers' Compensation § 85.01 (2017).

> **AS 23.30.230. Persons not covered.** (a) The following persons are not covered by this chapter:

. . .

(3) harvest help and similar part-time or transient help;
. . .

(12) a person employed as an independent contractor; a person is an independent contractor for the purposes of this section only if the person

(A) has an express contract to perform the services;

(B) is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom, or entity for which, the services are provided to specify the desired results, completion schedule, or range of work hours, or to monitor the work for compliance with contract plans and specifications, or federal, state, or municipal law;

(C) incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services, except that materials and equipment may be supplied;

(D) has an opportunity for profit and loss as a result of the services performed for the other individual or entity;

(E) is free to hire and fire employees to help perform the services for the contracted work;

(F) has all business, trade, or professional licenses required by federal, state, or municipal authorities for a business or individual engaging in the same type of services as the person;

(G) follows federal Internal Revenue Service requirements by

(i) obtaining an employer identification number, if required;

(ii) filing business or self-employment tax returns for the previous tax year to report profit or income earned for the same type of services provided under the contract; or

(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and

(H) meets at least two of the following criteria:

> (i) the person is responsible for the satisfactory completion of services that the person has contracted to perform and is subject to liability for a failure to complete the contracted work, or maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person's business;
>
> (ii) the person maintains a business location or a business mailing address separate from the location of the individual for whom, or the entity for which, the services are performed;
>
> (iii) the person provides contracted services for two or more different customers within a 12-month period or engages in any kind of business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

In *Olstrem*, the Court elaborated on Professor Larson's "relative nature of the work test" articulated in *Searfus* to distinguish an independent contractor from an employee. Under this approach, the trier of fact would determine employee status through consideration of the character of the claimant's work or business, and the relationship of the claimant's work or business to the purported employer's business. *Olstrem* at 1063. The Court explained:

> The 'relative nature of the work' test has two parts: first, the character of the claimant's work or business; and second, the relationship of the claimant's work or business to the purported employer's business. Larson urges consideration of three factors as to each of these two parts. With reference to the character of claimant's work or business the factors are: (a) the degree of skill involved; (b) the degree to which it is a separate calling or business; and (c) the extent to which it can be expected to carry its own accident burden. The relationship of the claimant's work or business to the purported employer's business requires consideration of: (a) the extent to which claimant's work is a regular part of the employer's regular work; (b) whether claimant's work is continuous or intermittent; and (c) whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of the particular job. (*Id*.).

Utilizing this analysis, the Court affirmed the board's conclusion that Olstrem was an independent contractor. *Id*. at 1065.

> **AS 23.30.395. Definitions.** In this chapter,
>
> . . .
>
> (19) "employee" means a person . . . who, under a contract of hire, express or implied, is employed by an employer.

> (20) “employer” means . . . a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;
>
> . . .
>
> **8 AAC 45.900. Definitions.** . . .
>
> (c) In AS 23.30.230,
>
> (1) “part-time help” means a person who on an intermittent, irregular, noncontinuous basis performs work which is either not an integral part of the regular business of the beneficiary of the work or which is not the regular business, profession, or occupation of the worker.
>
> (2) “transient help” means a person who does not have a permanent work residence and who performs work which is not an integral part of the regular business of the beneficiary of the work.

“Fundamental term” is a contractual provision that specifies an essential purpose of the contract, so that breach of the provision through inadequate performance makes the performance not only defective but essentially different from what had been promised. Black’s Law Dictionary 1608 (9th ed. 2009).

ANALYSIS

1) Was Morales an employee covered under the Workers’ Compensation Act?

Unless an employer-employee relationship existed between Howling Bay and Morales, the provisions of the Act are not applicable. *Wisdom*. It is presumed Morales’s claim comes within the provisions of the Act in the absence of substantial evidence to the contrary. *Beauchamp*. He only needs to adduce “some” relevant evidence he was employed by Howling Bay when he was injured to establish a preliminary link between his claim and employment. *Cheeks*. Without regard to credibility, he attaches the presumption he was an employee of Howling Bay with his testimony that McElheny and Hughes put him to work “right away” when he arrived in 2022, and he worked 10 hours per day tending the bonfire, keeping tourists happy, and feeding and cleaning up after the dogs. *Id*. Again, without regard to credibility, Howling Bay rebuts the presumption Morales was employed by Howling Bay with McElheny’s deposition testimony, and Hughes’s deposition and hearing testimony, disputing Morales was hired as an employee,

and with their alternate explanation that Morales was a family friend and house guest who volunteered to help them around the house with feeding and cleaning up after the dogs. *Huit*. Morales is now required to prove that he was Howling Bay's employee by a preponderance of the evidence. *Koons*.

According to Morales, he came to Alaska a second time on March 14, 2022 because he became friends with McElheny while texting and McElheny started talking about him working for the kennel and him becoming "the first Chilean musher in Alaska." He testified McElheny called him and said that Howling Bay was "really busy", and they needed a hard worker around like him. Morales further testified that McElheny offered to pay him at least $500 per week. Howling Bay vehemently disputes Morales's accounting of these events. According to Hughes, there was no expectation Morales would be an employee of the business, and "There was never any talk of a contract. There was never any talk of a wage or salary. There was nothing in place like that." McElheny similarly testified he did not offer Morales an "official position," or a wage, or "nothing along those lines."

Creation of an employer-employee relationship requires an express or implied contract. *Selid*. An express contract requires an offer encompassing its essential terms, an unequivocal acceptance of the terms by the offeree, consideration and intent to be bound. *Childs*. On May 17, 2022, Hughes texted Morales, "Thank you for your assistance when you were helping out at our place. You did a great job. Unfortunately[,] our agreement was verbal[,] and you did not fulfill your portion. We got 1 month and 3 weeks exactly of your time, not three months." Referring to this text message, Morales contends, "The board should find that an express contract arose, in light of the statement that there was a verbal agreement *of some kind* that was expected to last three months, and the contention that Morales had breached it." (Emphasis added). Morales's contention in this regard hits upon the key impediment to concluding the parties had formed an express contract.

An essential contract term, or "fundamental term" is a contractual provision that specifies an essential purpose of the contract, so that breach of the provision through inadequate performance makes the performance not only defective but essentially different from what had been promised.

Black. Clearly, in this instance, three months of Morales's time was an essential term of whatever agreement the parties had, but the essential purpose of that agreement is still lacking. For example, Morales testified regarding activities he undertook for Hughes and McElheny, like feeding the dogs and cleaning up after them, but his testimony failed to specify what McElheny expected him to do under the terms of an agreement in exchange for him being paid at least $500 per week. In the absence of specific contractual performance obligations, it remains possible that Morales just volunteered to help Hughes and McElheny with these chores since he was their houseguest, as they contend. Neither can the essential purpose of a contract be found elsewhere in the record, including McElheny's text messages. Therefore, while other elements of an express contract, like consideration and Morales's unconditional acceptance, can be readily identified in evidence, Morales cannot meet his burden of proving an essential element of an express contract for hire. *Koons*.

An implied employment contract is formed by a "relation resulting from 'the manifestation of consent by one party to another that the other shall act on his behalf and subject to his control, and consent by the other to so act.'" *Childs* at 314. Determination of whether an implied contract was formed should include consideration of all the factors in light of the surrounding circumstances. *Id*. The parties' words and acts should be given such meaning "as reasonable persons would give them under all the facts and circumstances present at the time in question." *Id*.

There is no dispute that McElheny paid for Morales's airfare from Santiago, Chile to Fairbanks, Alaska and, at least initially, from Fairbanks, Alaska to Toronto, Canada, when Morales's visitor visa would have been expiring. Although both Hughes and McElheny testified they considered Morales a family friend, and although McElheny might have provided Morales with airfare for this reason, his text messages immediately before and after making the airline reservations indicate he provided Morales with airfare for another reason. Prior to booking Morales's airline reservations, McElheny texted Morales, "Busy come now we have lots of work," and "we can really use the help we are super busy." After booking the reservations, McElheny disputed Morales's contention that Howling Bay needed new photos on its webpage and replied, "No I need help," instead. He also texted Morales a photo of a calendar page that showed Howling

Bay's "tour stuff" to demonstrate to Morales that they had "stuff operating" and were busy, and to show him they could use somebody around to help with tasks that needed to be done. Blocks for most days on the calendar were entirely filled with handwritten annotations. Then, as Morales was making his way to Fairbanks and planning on meeting a friend in Seattle to drink beer, McElheny cautioned Morales, "remember you don't land until almost 1 am and we have tours all day." Morales assured McElheny, "Will be just one beer for me." These texts establish that McElheny expected Morales's help, not with consumptive activities around the house as their guest and a family friend, but with the productive activities of Howling Bay's business. *Kroll; Nichols; Gaude*; *Adams*. Further reinforcing this conclusion is the testimony of Morales, McElheny and Hughes, who all described discussions between McElheny and Morales about Morales obtaining a work visa so he could stay longer than the 30 days permitted under his visitor visa to work for Howling Bay.

Morales is credible because his testimony is consistent with other evidence, such as McElheny's text messages showing his expectations for Morales's help once he arrived in Fairbanks, Hughes's May 17, 2022 text message referencing the parties' verbal agreement and her expectation of three months of Morales's time, and her deposition testimony where she confirmed she expected three months of Morales's time. AS 23.30.122. Morales is also credible because his testimony is consistent with McElheny's regarding the length of a workday at Howling Bay, while Hughes frequently trivialized the amount of work involved in running the business and the amount work Morales performed. *Id*. Amidst these circumstances, the parties' words and acts were such that it is reasonable to conclude that there was an implied contract for hire between Morales and Howling Bay. *Childs*.

Upon his arrival in Fairbanks, Morales testified that McElheny and Hughes" put [him] to work right away," and he described the work he performed: feeding the dogs and cleaning up after them, cleaning the property, carrying logs to the dome heated all day long, and carrying logs to keep the bonfire going for the tourists. Such activities were decidedly in connection with Howling Bay's regular business, as described by not only Morales, but McElheny and Hughes as well. *Kroll*. Caring for and feeding the dogs was essential to Howling Bay's business, which could not have operated without them, and McElheny and Hughes hired Morales to tend to the

dogs in their place. As Morales contended at hearing, he was performing the "core work" of the business. Howling Bay was an employer, AS 23.30.395(20), and Morales was its employee under the Act. AS 23.30.395(19).

Neither the Fund nor Howling Bay contend that Morales was an independent contractor who should have borne his own accident burden; nevertheless, since it has been determined that the parties had an implied contract for hire, that possibility will be explored. *Alaska Pulp*. The Court has adopted Professor Larson's "relative nature of the work" test, which examines the nature of the claimant's work in relation to the regular business of the employer, to determine employee status for application of the Act. *Searfus*. Beginning with the character of Morales's work, feeding dogs and "scooping" up after them, as McElheny puts it, requires no skill and is hardly a separate calling or vocation. *Ostrem*. Neither can one who engages in such humble work be expected to carry his own accident burden. *Id.* Turning next to the relationship of Morales's work to Howling Bay's regular business, as discussed above, the Morales's, McElheny's and Hughes's testimony all connected the activities Morales performed to Howling Bay's regular business. *Id*. Although the parties expected Morales to perform his work activities for a discreet period due to the time limitations of his visa, he performed them continuously until he left McElheny's and Hughes's property after the dog bite. Neither was there a single job that needed accomplished, but rather a continuing series of daily chores. *Id*. Therefore, under the "relative nature of the work" test, Morales was an employee entitled to coverage under the Act. *Searfus*; AS 23.30.395(19).

In 2018, the legislature also set forth its own criteria for determining whether an injured worker was an independent contractor exempt from coverage under the Act. AS 23.30.230(a)(12). Its first requirement, that Morales have an express contract, was decided above and eliminates the possibility that he was. AS 23.30.230(a)(12)(A). Other statutory standards defining an independent contractor are not met either. For example, Morales was not free from direction and control over the means and manner of providing services because McElheny testified he and Hughes gave Morales "lots of different instructions" before they left on vacation. AS 23.30.230(a)(12)(B). Similarly, McElheny and Hughes gave Morales $400 so Morales would not incur the expenses of any operational costs as an independent contractor would while they

were away. AS 23.30.230(a)(12)(C). Morales was not an independent contractor under the legislature's criteria either.

Although McElheny and Hughes testified there were never any discussions about paying Morales for his work, their testimony, even if true, is immaterial to the determination of whether Morales was an employee since the law will imply an obligation to pay a reasonable amount for services performed and accepted. *Larson*. Such pay does not have to be in money. It can be anything of value, such as board and an opportunity to learn about dog mushing, as was the case here. *Id*.

Neither is the Fund's contention that Morales was not an employee because the tour season had ended at the time he was injured persuasive either. At hearing, Hughes acknowledged that work at Howling Bay is "pretty consistent" "all across the board," and the number of work hours does not change based on the season. She further explained that the dogs are fed and cleaned between one to three times per day, regardless of the season, "24/7/365 days a year." She also testified that during the off-season, the dogs are still being run, general care for the dogs continues, the dog houses require repairs and other general maintenance requirements of the business need to be performed. Morales did not cease to be an employee when the tourist season ended since he continued to perform work for the regular business of Howling Bay as described by Hughes.

The Funds contention that Morales was exempt from coverage under the Act because he was part-time or transient help fails as well. For purposes of AS 23.30.230, "part-time help," and "transient help" are defined by regulation. 8 AAC 45.900(c)(1), (2). Both terms require that the worker perform work that is "not an integral part of the regular business" of the beneficiary of the work. As concluded above, Morales was performing the "core work" of Howling Bay so he was neither part-time nor a transient help.

The parties agree that Morales, a Chilean citizen, travelled to Alaska on a visitor visa, which did not allow him to gain employment. McElheny's August 17, 2022 answer suggests that Morales should not be entitled to benefits because of his immigration status. The Act does not expressly provide for or exclude workers' compensation coverage based on immigration status and broadly

defines an “employee” as a “person”, AS 23.30.295(19). Furthermore, coverage extends to “every contract for hire.” AS 23.30.020. Given this broad statutory language, Morales’s immigration status does not bar coverage under the Act. *Larson*. *See also Trudell* (property owners cannot disavow the commercial nature of the transaction when it does not benefit them).

2) Is Employee entitled to medical and related transportation benefits?

An injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Summers*. Here, Morales seeks such a determination and requests authorization to return to McKinley Orthopedics, where he previously treated, for additional medical care as his injury may require. He is presumed to be entitled to continuing medical care, *Carter*, and attaches the presumption with Dr. Wright’s April 4, and July 10, 2023, chart notes that show he referred Morales for a neurological consultation and EMG, and that Morales was unable to attend these appointments because they were not covered under workers’ compensation. *Cheeks*. Since neither the Fund nor Howling Bay offer substantial evidence to rebut the presumption, the medical treatment Morales seeks will be awarded. *Koons*.

3) Is Employee entitled to disability benefits?

Morales is presumed to be entitled to the disability benefits he seeks. *Meek*. He attaches the presumption with his testimony of being bitten while working for Howling Bay and of being unable to continue work because of his fear of dogs. *Cheeks*. Howling Bay rebuts the presumption with Hughes’s testimony that Morales continued to be employed at another kennel after he was bitten, and then worked at General Tire, so he experienced no time loss for which disability benefits should be paid. *Miller*. Morales is now required to prove he is entitled to TTD benefits by a preponderance of the evidence. *Koons*.

A claimant may refuse suitable work when the refusal is reasonable. *Larson*. Morales credibly testified that, after he was bitten, he went to another kennel and worked there feeding dogs but he left after a week because of his fear of dogs. Morales’s September 14, 2022, PTSD diagnosis, which was directly related to the injury at issue, shows his decision to leave work at the other kennel was reasonable. *Rogers & Babler*.

Although Hughes was generally correct in her contentions that Morales obtained other employment after leaving her and McElheny's property, Morales's credible testimony regarding the dates he obtained that employment, and being relegated to the use of one arm because his other arm was in a sling, show that he did experience a period of disability following the dog bite for which he should be compensated. AS 23.30.185. Morales left McElheny's and Hughes's property on May 8, 2022, attempted unpaid work at the other kennel, then began work painting and drywalling a house on June 16, 2022. Therefore, Morales is entitled to TTD benefits from May 9, 2022 until June 16, 2022, less the three-day waiting period provided for at AS 23.30.150. *Id*.

4) Is Employee entitled to interest?

Since the Act provides for interest on compensation not paid when due, AS 23.30.155(p), Morales is entitled to interest. *Rawls*.

5) Is Employe entitled to attorney fees and costs?

Employee seeks awards of a reasonable attorney fee and costs. Since Howling Bay resisted providing benefits by defending against Employee's claim, necessitating this hearing, an award of a reasonable attorney fee is appropriate. *Moore*. Pursuant to *Rusch*, the factors set forth under Rule 1.5(a) of the Alaska Rules of Professional Conduct are consulted to arrive at a reasonable, fully compensatory attorney fee award. *Bignell*. Although Morales speaks English with a rather thick accent, he possesses decent English language skills, did not require a translator at hearing, and there is no evidence that he imposed any unique time limitations on his attorney. Rule 1.5(a)(5). Similarly, Morales's attorney entered his appearance on May 25, 2022, and no evidence was presented that would indicate that the nature and length of Moraeles's professional relationship with his attorney warrants any consideration in the determination of a reasonable fee. Rule 1.5(a)(6).

Morales has billed his attorney time at $520 per hour. His attorney has previously been awarded fees based on that hourly rate by both a board panel and the Commission, and neither Howling

Bay nor the Fund objected to that rate, or the hours billed. Employee's attorney is well-known among both the workers' compensation bar and workers' compensation hearing officers. He has successfully represented both employers and injured workers for two decades. Rule 1.5(a)(7). Morales's hourly billing rate is comparable to billing rates customarily awarded to similarly experienced attorneys in workers' compensation cases. Rule 1.5(a)(3). Virtually all fees in workers' compensation cases are contingent, and here, Morales first had to prevail on the employer-employee relationship issue, the Fund's statutory defense contending that he was part-time or transient help, and McElheny's defense based on his immigration status, before the merits of his claim could be decided. Morales's success on each of these issues was not certain. His attorney's hourly billing rate, though lofty, is not inappropriate given the contingent nature of the representation. Rule 1.5(a)(8).

The merits of workers' compensation claims are often litigated. Controlling law and relevant decisional authorities for issues concerning the benefits awarded here are well known among workers' compensation practitioners and can be readily ascertained by other attorneys. However, other issues litigated, such as the previously mentioned employer-employee relationship, the Funds statutory defense and the effect of Morales's immigration status are seldom litigated and required additional preparation and briefing by Morales's attorney. The complexity of litigation, including the time and skills required for prosecution of Employee's claim, was slightly above average as reflected by these additional issues. Rule 1.5(a)(1). On the other hand, claimant attorneys are rarely, if ever, precluded from other employment due to conflicts of interest, and Morales is not the type of unpopular client that would permit charging a higher fee. Rule 1.5(a)(2). Neither would taking Morales on as a client have deprived his attorney of long-term future employment since, unfortunately, workers are continuously being injured on the job. *Id*.

Morales was successful in securing continued medical treatment for his dog bite, an obviously valuable benefit under the Act. He also secured a discreet TTD award as well as an interest award. In short, Morales successfully obtained every benefit he sought at hearing. Rule 1.5(a)(4). Considering the amounts involved and the results obtained, along with the other

previously discussed factors under Rule 1.5, Employee should be awarded all his claimed fees and costs. *Id.*; *Bignell*.

CONCLUSIONS OF LAW

1) Morales was an employee covered under the Act.
2) Morales is entitled to medical and related transportation benefits.
3) Morales is entitled to TTD, as set forth above.
4) Morales is entitled to interest.
5) Morales is entitled to attorney fees and costs as set forth above.

ORDERS

1) Morales's May 25, 2022 claim is granted.
2) Pursuant the Superior Court's December 19, 2023 orders, Tabitha Hughes shall pay Morales all benefits, interest, fees and costs awarded by this decision and order.

Dated in Fairbanks, Alaska on September 30, 2024.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
John Dartt, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

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 Mauricio Morales, employee / claimant v. Kevin J. McElheny and Tabitha A. Hughes d/b/a Howling Bay Kennels, employer; Benefits Guarenty Fund, insurer / defendants; Case No. 202208063; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by certified US Mail on September 30, 2024.

/s/

Whitney Murphy, Office Assistant