ALASKA WORKERS' COMPENSATION BOARD

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

JOSE R. QUINONEZ, Employee, Claimant, v. TRIDENT SEAFOODS, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201603968J & 201614882M AWCB Decision No. 24-0072 Filed with AWCB Anchorage, Alaska on December 27, 2024

José Quinonez's (Employee's) April 1, 2024 claim was heard on December 11, 2024, in Anchorage, Alaska, a date selected on September 24, 2024. An August 27, 2024 hearing request gave rise to this hearing. Employee appeared telephonically, represented himself and testified through professional Spanish-language interpreters. Attorney Jeffrey Holloway appeared by Zoom and represented Trident Seafoods and its insurer (Employer). The record closed at the hearing's conclusion on December 11, 2024.

ISSUE

Employee contends he obtained "new evidence" suggesting his current low-back condition, symptoms and need for medical treatment are related to either his February 10, 2016 right-shoulder injury in case 201603968J, or his February 14, 2016 left-foot injury in case 201614882M, while working for Employer; he may claim they are related to both. Regardless, Employee contends his

ongoing bilateral leg and foot pain is caused by his low-back, which he now contends has been the case all along. Accordingly, he seeks related benefits.

Employer contends Employee's left-foot and right-shoulder injuries were decided in two previous final decisions. To the extent Employee seeks to modify those prior decisions, Employer contends it is either too late, or Employee presented no evidence to support modification. It further contends numerous equitable principles and doctrines bar Employee's April 1, 2024 claim. If it is not barred, Employer contends Employee failed to prove his low-back or bilateral leg and foot conditions, symptoms or need to treat them are compensable. In the event Employee has simply mis-pled his claims and is seeking new benefits for his accepted left-foot or right-shoulder injuries, Employer contends he failed to demonstrate any benefits are due but unpaid. Consequently, it contends his April 1, 2024 claim should be denied on any and all possible bases.

Shall Employee's April 1, 2024 claim be denied?

FINDINGS OF FACT

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

1) The designated chair reviewed every medical record found in Employee's agency files. Only relevant records are included in this decision. (Observation).

2) Employee reported three injuries to the Workers' Compensation Division (Division) while working for Employer; with related case numbers they include:

(A) 201601723: On January 19, 2016, Employee's First Report of Injury (FROI) claims his "left hand thumb struck against rack while working in the cod plant blast freezer." This caused a "contusion." Employee filed limited medical records in this case; the records referred only to left-foot, left-thumb and right-shoulder pain. There is no mention of Employee's low back in any document in this file. There were no witnesses listed. At hearing on December 11, 2024, Employee testified this case does not involve his current claim. (Record).

(B) 201603968J: On February 10, 2016, Employee's FROI states, "EE [Employee] was taking out empty racks from the freezer rack got stuck EE slipped and didn't fall pulling R [right] shoulder." This injury was a shoulder "strain or tear." The FROI states the claim administrator

"knew" about this injury on March 10, 2016; Employer "first knew" on March 11, 2016. Employee timely reported this event and a right-shoulder injury to the claims administrator and Employer within 30-days of February 10, 2016. (Observation). Under "Cause of Injury" the FROI states, "SLIP, OR TRIP, DID NOT FALL." In over 700 medical records filed in this case file, including an employer's medical evaluation (EME) and a second independent medical evaluation (SIME), the only work-related injuries and symptoms claimed included Employee's right shoulder, feet, and left thumb. This file contains two records where he complained about his back. These references are limited to unspecified "back pain" related to coughing when Employee had pneumonia, and another occasion for sitting too long in his wheelchair. (Agency file). At the December 11, 2024 hearing, when expressly asked to clarify whether he fell down in this event, Employee evaded the question. After repeated questioning, he initially confirmed he did not fall down. Later in the hearing he stated he was uncertain if he fell down. Based on Employee's hearing testimony, this injury is likely the event to which he now attributes his current low-back-related symptoms, because he claimed a "slip" on only this date. (Record; observations, experience, judgment and inferences drawn from the above).

(C) 201614882M: On February 14, 2016, Employee's FROI claims, "EE was pushing and pulling racks and also moving them side to side and sustained injury to foot." The FROI further states the claims administrator "knew" about this reported injury on October 4, 2016; Employer "first knew" on October 5, 2016. This injury was described as a "foot" "strain or tear." There were no witnesses listed. This "master" file, joined with 201603968J contains all the medical records found in 201601723 and 201603968J, plus additional medical records. These medical records total approximately 1,000 pages. Prior to April 1, 2024, Employee's medical records include no mention about falling at work with Employer. (Agency files; observations). Given Employee's December 11, 2024 hearing testimony, it appears he now contends this file is only connected to his April 1, 2024 claim because he never had a foot injury at all, and his lower-extremity symptoms all came from his low-back, which he now appears to contend he injured in case 201603968J, but he just did not know it until recently. (Record; observations, experience, judgment and inferences drawn from the above).

3) On February 15, 2016, in the earliest medical record in these three files, Employee told PA-C Robert Finlay at the Trident Akuta Clinic that he twisted his "right" ankle on February 14, 2016. (Finlay report, February 15, 2016).

4) Since March 29, 2016, Employee, his friends, interpreters or representatives, had teleconferences with Division staff approximately 216 times seeking information and assistance in case 201614882M. Once these cases were joined, 201614882M became the "master" case in which the Division recorded such contacts and other events. In the first seven phone calls, three had interpreters, three did not specify, and one was with a non-Spanish-speaking Division staff member without an interpreter. However, beginning June 13, 2018, nearly all teleconferences Employee had with the Division were with Elizabeth Pleitez, a Spanish-speaking staff person. At the December 11, 2024 hearing, Employee characterized Pleitez as "the only Angel" with the Division with whom he spoke regularly, and whom he said answered his questions and assisted him in completing case-related paperwork. (Agency file: Communications tab, March 29, 2016 through the present; record, December 11, 2024).

5) On April 1, 2016, Employee mentioned a "1/19/16" injury with Employer to an unnamed physician at "USHW of Washington-Denny." (US Healthworks report, April 1, 2016).

6) On August 18, 2016, Michael Erickson, MD, saw Employee for a "2/2016" inversion injury to his foot, which was previously treated as a right-ankle sprain; at this visit Employee now claimed he was having left-foot pain. He also mentioned his "shoulder injury" as a "second complaint." Dr. Erickson recommended home therapy for the shoulder and occupational therapy for his thumb. He diagnosed left-foot pain caused by tendinopathies associated with overuse. Dr. Erickson expressly could not attribute this to a work injury. (Erickson report, August 18, 2016).

7) On November 3, 2016, on referral from David Belfie, MD, Employee had physical therapy (PT) at Virginia Mason Medical Center, with Charles Bellia, PT. On the referral form, Dr. Belfie did not check "Back Pain" in the space provided. (Bellia report, November 3, 2016).

8) On January 3, 2017, Dr. Belfie referred Employee for more PT. On this form, Dr. Belfie again did not check the box for "Back Pain." (Belfie referral, January 3, 2017).

9) On March 5, 2017, an ambulance crew with American Medical Response (AMR) picked Employee up and took him to a hospital. Employee had cold or flu-like symptoms and acute breathing difficulties. The paramedics' assessment stated "Back: Symmetric," and recorded no back-pain complaints. Employee was "fit appearing." (AMR report, March 5, 2017).

10) On March 5, 2017, emergency room staff at Yakima Regional Medical & Cardiac Center evaluated Employee for flu-like symptoms, noted no barriers to communication and said, "The patient speaks fluent English." Employee had a "Productive Cough" and complained of pain in "back, chest and neck." Employee's "back" was negative for pain at rest, but had pain with movement. The diagnosis was "pneumonia." The record does not otherwise identify where in his "back" Employee had pain, but his pain complaints appear to have been caused by coughing related to his pneumonia. (Yakima Regional Medical & Cardiac Center record, March 5, 2017; inferences drawn from the above).

11) On May 24, 2017, on referring Employee to Virginia Mason Medical Center for more PT, Michael Morris, MD, did not check "Back Pain" on the referral form. (Virginia Mason Medical Center Therapy Referral, May 24, 2017).

12) On September 21, 2017, Employee in case 201614882M requested temporary total disability (TTD) and medical benefits, and a frivolous or unfair controversion finding for his left-foot injury. His hand-written claim states "pain in left foot from pushing and pulling heavy racks." The claim did not mention slipping, falling or low-back pain or other symptoms or any lumbar injury. (Claim for Workers' Compensation Benefits, September 21, 2017).

13) On October 9, 2017, Employee in case 201603968J requested a compensation rate adjustment and explained his injury was, "Pushing a rack outside to the freezer, my foot slipped on ice, and I caught myself with all my weight on my shoulder." It did not mention a fall, low-back pain or a lumbar injury. (Claim for Workers' Compensation Benefits, October 9, 2017).

14) On January 4, 2018, Employee in case 2016103968J requested TTD benefits and an unfair or frivolous controversion finding in a claim missing a case number, but referencing the February 10, 2016 right-shoulder injury; it also mentioned his left foot and thumb. It did not cite a fall, low-back pain or a lumbar injury. (Claim for Workers' Compensation Benefits, January 4, 2018).

15) On January 26, 2018, Mark Fleming, DO, saw Employee for an EME for his February 10, 2016 right-shoulder injury. Dr. Fleming examined Employee's back, but Employee did not mention falling down or back pain to Dr. Fleming. Pain diagrams Employee completed for this evaluation did not include any low-back symptoms. Employee stated his right shoulder took his entire weight when he was going to fall, but did not fall because he caught himself. (Fleming report, January 26, 2018).

16) On January 29, 2019, Employee in case 201614882M requested funds for sleeping in a park prior to his SIME, in a claim missing a case number, but referencing his February 14, 2016 left-foot injury. It did not mention a fall, low-back pain or a lumbar injury. (Claim for Workers' Compensation Benefits, January 29, 2019).

17) On February 1, 2019, Peter Diamond, MD, saw Employee for an SIME for the joined cases. In the history he gave Dr. Diamond, Employee did not mention falling down or having any back pain. (Diamond report, February 1, 2019).

18) On April 23, 2019, Employee, represented by an attorney, amended his prior claims and requested in both his right-shoulder case 201603968J and his left-foot case 201614882M, TTD and permanent partial impairment (PPI) benefits, medical and related transportation, interest, attorney fees and costs. The amended claim did not mention a fall, low-back pain or a lumbar injury. (Claim for Workers' Compensation Benefits, April 23, 2019).

19) On June 25, 2019, in a claim dated June 17, 2019, Employee again representing himself on a claim bearing 201603968J for his right-shoulder case but with the injury date for his 201614882M left-foot injury, requested TTD benefits, a penalty for late-paid compensation and interest. He explained, "Shoulder injury while taking out empty racks from freezer -- I did not fall but pulled right shoulder. Looking to get paid for injuries sustained while working." It expressly denied a fall, and did not mention low-back pain, other possibly lumbar-related symptoms or any lumbar injury. (Claim for Workers' Compensation Benefits, June 17, 2019).

20) On September 5, 2019, Jessica Richards, CRNA, saw Employee for a preoperative physical prior to his right-shoulder manipulation under anesthesia. When Richards reviewed Employee's systems, the only "musculoskeletal" pain he reported was in his right-shoulder. His "Neurologic" was negative. (Richards report, September 5, 2019).

21) On October 2, 2019, in a claim dated June 17, 2019, Employee in a claim bearing 201603968J for his right-shoulder case but with the injury date for his 201614882M left-foot injury, requested TTD benefits, a penalty for late-paid compensation and interest. He repeated his explanation for how he was injured and his reason for filing a claim as set forth in his June 17, 2019 claim. It did not mention a fall, low-back pain, other back symptoms or a lumbar injury; the claim expressly denied a fall. (Claim for Workers' Compensation Benefits, June 17, 2019).

22) On January 23, 2020, Joseph Fiorito, DPM, with Harborview Podiatry Clinic, saw Employee who had pain in both feet, but more on the left. Employee stated this was "caused by working in

Alaska and pushing heavy carts." Dr. Fiorito diagnosed plantar fasciitis and peripheral neuropathy. Manual muscle testing in all extremities was "normal." Employee did not mention a fall, back pain or a low-back injury at work for Employer. (Fiorito report, January 23, 2020).

23) On March 17, 2020, George Nanos, MD, performed a records review EME for Employee's right shoulder in case 201603968J. Dr. Nanos reviewed 888 pages of medical records, beginning January 19, 2016, and ending October 31, 2019. There was no reference to a fall or spinal injury or symptoms in the records he reviewed, or in his report. (Nanos report, March 17, 2020).

24) On April 28, 2020, Dr. Nanos reviewed additional records for Employee spanning from August 5, 2019, through February 25, 2020. Again, there was no reference to a fall or any spinal injury or symptoms in the records he reviewed, or in his report. (Nanos report, April 28, 2020).

25) In September 2020, a person assaulted Employee and hit him on his neck from behind with an object. At the December 11, 2024 hearing, Employee testified he did not see the person and did not know what happened. Specifically, when asked, he evaded and stated he did not know if he fell down when attacked, and said he simply "woke up in the hospital" and ultimately had cervical-fusion surgery. Nonetheless, Employee denied having any injury or symptoms to his lumbar spine resulting from that assault. He expressly denied that his current leg symptoms began after this assault, and stated they started in Alaska. (Record).

26) If a person "wakes up" in a hospital following an injury or assault, that person was unconscious after the event. (Experience, judgment and inferences drawn from the above).

27) On December 16, 2020, Seattle, Washington physician Midori Higashi, DPM, with Minor and James Podiatry-First Hill saw Employee for his foot and ankle; Employee stated:

> Since pts last visit, he relates that he was robbed and had to have surgery to his spine. Since that surgery, he has been having increased symptoms to his lower extremities, namely that he has been having numbness and tingling and burning pain to his bilateral lower extremities. . . .

He did not mention a fall or a lumbar injury while Employee worked for Employer. Dr. Higashi diagnosed "plantar neuropathy." (Higashi report, December 16, 2020). His December 16, 2020 report is the first medical record found in Employee's three case files mentioning "symptoms to his lower extremities," and "numbness and tingling and burning pain to his bilateral lower extremities." In in the panel's extensive experience reviewing slip and slip-and-fall injuries and related medical records and physicians' depositions, a fall to the ground could cause or aggravate,

accelerate or combine with a low-back condition and cause a need for medical treatment. But it is unlikely that slipping but not falling, and pulling on one's right shoulder with one's body weight, would. (Experience). When asked at the December 11, 2024 hearing about Dr. Higashi's report, quoted above, Employee evaded. Rather than confirm if he began having "increased symptoms to his lower extremities" after his first assault, Employee demanded to know the clinic where Dr. Higashi worked. The chair at hearing not knowing the clinic's name, advised Employee that he did not know. (Record).

28) On June 14, 2021, Employee had a Functional Capacity Evaluation (FCE) at People's Injury Network Northwest (PINN) for "Freezing-Room Worker." He arrived at the evaluation using a power-wheelchair he obtained after the "cervical spine injury in September 2020 (unrelated to claim of injury)." He chose not to use the wheelchair during his FCE. The examiner noted, "Objective Biomechanical Findings are not reliable and consistent as client did self-limit secondary to reported pain. . . ." Employee stated he had cervical surgery in September 2020. The evaluator noted, "There were no biomechanical findings evaluated by the Physical Therapist that would prohibit client from fully participating in this evaluation." The conclusion was, "Test findings for this client are valid for safe Maximum functional abilities/tolerances. Test findings for this client are valid for safely performing the listed physical demands/essential job requirements." Employee described "nerve-related symptoms in his lower extremities following" his first assault and related surgery. When asked about his ability to sit, Employee reported "pain in lower back after prolonged sitting" in his wheelchair. He did not mention falling while at work for Employer and did not mention any low-back injury. (PINN report, April 27, 2021). At the December 11, 2024 hearing, when asked if he told the PINN physical therapist that he had lower-extremity symptoms following his first assault and resultant cervical fusion, Employee evaded the question and eventually stated he did not recall. (Record).

29) On August 13, 2021, Dr. Diamond reviewed additional medical records and did not diagnose any work-related low-back symptoms or injuries. (Diamond report, August 13, 2021).

30) On November 9, 2021, at Employee's request, a panel postponed a hearing scheduled on Employee's claims, as discussed in the next factual finding. (Agency files).

31) On November 23, 2021, *Quinonez v. Trident Seafoods*, AWCB Dec. No. 21-0110 (November 23, 2021) (*Quinonez I*), after the November 9, 2021 hearing, denied a request for a second mediation, but affirmed the hearing postponement on Employee's claims. Just prior to that

hearing, Employee had called the Division, and staff advised him that he had called too early. A few minutes later, a woman called the Division on Employee's behalf and said he had been "assaulted" that morning and could not attend the hearing because he had to file a police report and get treatment. *Quinonez I* found grounds for this postponement request "questionable," but nevertheless postponed the hearing and "froze" the evidentiary record as it was on November 9, 2021, to prevent prejudice to Employer, which had already filed its evidence and briefing. (*Quinonez I*). At the December 11, 2024 hearing, Employee explained that on November 9, 2021, he had gone to his social worker's office to participate in the hearing. He was in a wheelchair, and when he got inside he exited the wheelchair and had an altered gait. Employee testified that a security guard thought he was drunk and grabbed him, causing "minor scratches." At hearing, he denied injuring his low-back during this second assault. (Record).

32) On December 8, 2021, Employee had Dr. Higashi's December 16, 2020 report because he filed it on a medical summary. (Medical Summary, undated but filed on December 8, 2021).

33) On January 19, 2022, a Board panel heard, on the written record, Employee's petition to change venue. (Agency file: Judicial tab, January 19, 2022).

34) On January 25, 2022, *Quinonez v. Trident Seafoods*, AWCB Dec. No. 22-0006 (January 25, 2022) (*Quinonez II*) denied Employee's venue change request. (*Quinonez II*).

35) According to his medical records, by no later than March 2, 2022, Employee had relocated to Phoenix, Arizona. (Circle the City clinic records, March 2, 2022).

36) On March 10, 2022, Fartun Jama, PA, with Circle the City saw Employee and charted:

> Pt reports hx neck injury which required surgery, reports the injury was secondary to an assault. He does not recall the mechanism of injury, reports he sustained the injury 9/2021, pt reports he has had some intermittent neck pain since the injury. Not having a neck pain at the moment, He reports multiple joint stiffness, with achy joints, feels sometimes his fingers swell up.

There is no mention in this report of any fall at work with Employer, or a low-back injury, pain or other low-back-related symptoms. (Jama report, March 10, 2022).

37) On April 13, 2022, PA Jama saw Employee and recorded:

> Lower back pain: takes gabapentin 300 mg TID for back pain and for Neuropathy (unknown cause), reports he was told his neuropathy is secondary to neck surgery he had for neck injury. [H]is lower back pain is chronic . . . describes as "sciatica" no known prior MRI. . . .

Motion testing caused "mild discomfort." There is no mention of any work-related fall or injury to Employee's low back. PA Jama diagnosed "lumbar intravertebral disc degeneration" and referred him to a pain treatment center. (Jama referral, April 13, 2022). When asked about this report at the December 11, 2024 hearing, Employee evaded and demanded to know the clinic's name before responding to questions, many of which he considered "unfair." (Record).

38) On May 23, 2022, Employee completed paperwork for his visit with a lumbar-spine pain specialist. He stated his low-back symptoms began in 2008, but became worse in 2021. He did not mention any low-back injury while working for Employer. (Arizona Pain Treatment Center-Dunlap intake forms, May 23, 2022). When asked at the December 11, 2024 hearing about this intake form, Employee evaded and demanded to know the physician's name. (Record). There was no physician's "name" for this document because it was an intake form for the Arizona Pain Treatment Center-Dunlap. (Observation).

39) On May 23, 2022, Employee testified in deposition. He described a 2008 right-hip injury from a fall from equipment while working for an employer in Texas. Employee also discussed the first assault in Seattle, in 2020, which required neck surgery. Since then, he had increasing physical issues, including his fingers "clamping," and numbness and tingling in his legs and feet. Employee said that although he had leg and foot issues "from Alaska," they got "more complicated" after he was assaulted. Since his right-hip injury in 2008, sitting has bothered Employee and made his "lower back" start hurting. Employee said in the previous five years he had filed several workers' compensation claims, "for these injuries and the Alaska one," and was "opening one right now for the hip," which was in Texas' workers' compensation system, but he had not pursued it. Notably, he did not testify, mention or imply that he ever fell down or otherwise injured his low back while working for Employer. Employee has not worked since leaving Alaska after his February 14, 2016 injury. (Deposition of José Quinonez, May 23, 2022). At the December 11, 2024 hearing, when asked if he hurt his low back during this 2008 Texas fall, Employee laughed robustly and said "no." (Record).

40) On May 25, 2022, Arash Ghaffari, MD, with Arizona Pain Treatment Center-Dunlap saw Employee who said he had low-back pain with onset in "2008." Dr. Ghaffari diagnosed lumbar radiculopathy, intravertebral disc disorders in the lumbar region, lumbar facet arthropathy and low-back pain. Employee did not mention falling down or lumbar-spine pain or injury while working for Employer. This report contains no medical-legal causation opinion regarding Employee's

lumbar condition, symptoms or need for medical treatment. (Ghaffari report, May 25, 2022). When asked at the December 11, 2024 hearing about Dr. Ghaffari's report where Employee said his low-back pain began in 2008, Employee evaded and demanded to know at what clinic Dr. Ghaffari worked. At hearing, the designated chair could not identify the clinic and told Employee he did not know the clinic's name at that time. (Record).

41) On June 1, 2022, diagnostic imaging showed lumbar spine scoliosis, multilevel degenerative spondylosis, degenerative disc disease at L2-L3 and multilevel degenerative posterior facet hypertrophy. (Diagnostic Imaging Report, June 1, 2022).

42) On June 15, 2022, Employee told Dr. Ghaffari that his "lower back" pain had worsened over the previous two years since being in a wheelchair. (Ghaffari report, June 15, 2022).

43) On June 20, 2022, a computerized tomography (CT) scan for Employee's "lower back pain due to work injury in 2008," disclosed multilevel lumbar degenerative disease with moderate to severe spinal stenosis at L4-5 and mild to moderate spinal stenosis at L2-3, 3-4, and L5-S1 levels, with multilevel foraminal stenosis. (CT report, June 20, 2022). At the December 11, 2024 hearing, after repeated questioning and Employee's evasive answers, he finally stated that by June 20, 2022, "many doctors" in "Phoenix, Arizona" had told him his leg and foot symptoms were coming from his back, and Employee had determined that his lower-back condition arose from his February 10, 2016 work injury with Employer. He also conceded that no doctor had ever told him that his work for Employer caused his CT findings or related symptoms. (Record, December 11, 2024). Regardless of who paid the bills for Employee's diagnostic imaging and office visit on June 20, 2022, he incurred a bill for medical services on that date. (Experience, observations).

44) Thirty days from June 20, 2022, not including that date, was July 20, 2022. Employee filed nothing between June 20, 2022, and July 20, 2022, amending his prior injury reports or his previous claims. He filed no new FROI or a new claim notifying Employer that he had decided by June 20, 2022, that his lumbar-spine condition was causing his bilateral lower-extremity symptoms, or alleging any injury with Employer caused, aggravated, accelerated or combined with his lumbar condition to cause symptoms and need for treatment. (Agency files).

45) On June 23, 2022, three days after Employee had the above-referenced realization, the parties, with a Spanish interpreter, attended a prehearing conference before a Board designee. The designee and the parties discussed issues for an August 30, 2022 hearing on Employee's left-foot claim. The summary for this meeting states, "Designee confirmed with Employee that . . . he is

seeking Medical costs related to his left foot." Employee did not mention that three days earlier he had determined his lower-extremity symptoms were coming from his low back, and his awareness that he had allegedly hurt his low back on February 10, 2016, while working for Employer. (Prehearing Conference Summary, June 23, 2022).

46) Between June 20, 2022, and July 20, 2022, other than attending the June 23, 2022 prehearing conference, Employee communicated with the Division only once. On July 1, 2022, Employee called Pleitez, and they spoke for 20 minutes:

> 20 min. EE called to get help with reading a couple of letters that ER send [sic] to him. I told EE that we did not get a copy of the letters and discussed the last few documents that the board has received. The EE asked questions regarding ER requesting SSI information and payment amounts and when payments began. I explained to EE that ER has the right to get information, so they know how much its expected for them to pay should that be the case. In addition EE talked about evidence he has regarding his foot. I provided him with the deadlines for brief and evidence (Evidence: 8/10/22 and Brief: 8/23/22) and explained the importance of evidence to support what he is claiming. The EE stated that he has a friend who is bilingual and will help him to read the letters he received from the ER. EE was grateful for the assistance – ep. (201614882M agency file: Judicial, Communications, Phone Call tabs, July 1, 2022).

47) On June 27, 2022, Employee completed a pain diagram for Arizona Pain Treatment Centers. On it, he did not indicate any low-back pain, but only identified symptoms beginning at his left groin and going down his left leg to his foot. (Pain Diagram, June 27, 2022).

48) On July 28, 2022, Employer filed with the Division and served on Employee the lumbar-spine records, beginning March 2, 2022, through June 20, 2022, from Arizona providers referenced in the preceding factual findings. (Medical Summary, July 28, 2022).

49) On August 30, 2022, the parties attended a hearing. Employee through professional interpreters said nothing about falling down or an alleged low-back injury at any time while working for Employer. (Record, August 30, 2022).

50) On September 14, 2022, *Quinonez v. Trident Seafoods*, AWCB Dec. No. 22-0063 (September 14, 2022) (*Quinonez III*) in a final decision denied Employee's September 21, 2017 and April 23, 2019 claims for medical benefits for his left foot. Among other things, *Quinonez III* found Employee not credible on several points. (*Quinonez III*).

51) On October 17, 2022, Employee appealed *Quinonez III* to the AWCAC. (*Quinonez v. Trident Seafoods*, AWCAC Order Dismissing Appeal (April 11, 2023) (*Quinonez IV*)).

52) On April 11, 2023, because Employee failed for six months to file appropriate documents with the AWCAC, did not contact it for assistance, failed to ask for additional time to file required pleadings, and did not respond to an order to show cause why his appeal should not be dismissed, *Quinonez IV* dismissed his appeal for failure to prosecute it. (*Quinonez IV*).

53) On November 22, 2023, the parties attended a hearing. Employee through professional interpreters said nothing about falling down or an alleged low-back injury at any time while working for Employer. (Record, November 22, 2023).

54) On December 21, 2023, *Quinonez v. Trident Seafoods*, AWCB Dec. No. 23-0080 (December 21, 2023) (*Quinonez V*) in a final decision denied Employee's September 21, 2017, October 9, 2017, January 4, 2018, January 29, 2019, April 23, 2019, June 17, 2019 (filed on June 25, 2019), and June 17, 2019 (filed on October 2, 2019) claims for a right-shoulder work injury with Employer. (*Quinonez V*).

55) On January 11, 2024, Employee appealed *Quinonez V* to the AWCAC. (*Quinonez v. Trident Seafoods*, Sua Sponte Order Dismissing Appeal and Returning Jurisdiction to the Board (April 29, 2024) (*Quinonez VI*)).

56) On February 19, 2024, Ian Newport, DPM, with Integrated Medical Services, in Buckeye, Arizona, saw Employee for "bilateral foot pain." Employee told Dr. Newport:

> 62-year-old male presents [sic] clinic for bilateral foot pain. Patient has notable lumbar degenerative changes throughout the lumbar spine. Has been to numerous doctors over the years for chronic bilateral foot pain. Many of them have told him that [sic] likely was coming from his back. Some of [sic] told him other things are causing the pain. . . . Spanish interpreter utilized for entire visit.

This report does not mention falling or any low-back injury while working for Employer. In light of Employee's symptoms, Dr. Newport said, "Given this [sic] appears that patient's bilateral foot pain is neurologic in nature and likely coming from lumbar back." He referred Employee to a spinal surgeon. This report offers no medical-legal causation opinions. (Newport report, February 19, 2024, attached to Claim for Workers' Compensation Benefits, April 1, 2024).

57) On March 5, 2024, Brian Vernon, MD, with Abrazo Brain & Spine Institute-Arrowhead Campus, in Glendale, Arizona, saw Employee as a new patient for, "Low back pain":

> Patient with multi-year history of low back pain that has gradually been worsening for the past year. Secondary to his back and lower extremity pain, patient is not

> currently ambulating and is in a wheelchair. He endorses numbness and tingling to the bilateral lower extremities, as well. He endorses he sustained a ground-level fall resulting in a back injury in 2008. . . .

His symptom onset was ">10 years ago." Dr. Vernon reviewed x-rays, which showed "moderate and degenerative" changes in the lumbar spine. Employee's imaging showed lumbar spinal stenosis with neurogenic claudication at L2-3, L3-4, L4-5, and L5-S1; an epidural lipomatosis at L2-S1; and multiple degenerative lumbar spondyloses. Employee decided he wanted to proceed with surgery; the proposed procedure was a "lumbar laminectomy from L2-S1." This report offered no medical-legal causation opinions. Employee did not mention falling while working for Employer or any other low-back injury. (Vernon report, March 4, 2024, attached to Claim for Workers' Compensation Benefits, April 1, 2024). When asked at the December 11, 2024 hearing about this report's history stating when Employee's low-back symptoms began, he was evasive and essentially non-responsive. (Record).

58) On April 1, 2024, Employee in 201614882M claimed TTD benefits, medical costs, transportation, a penalty for late-paid compensation and interest. He stated that on February 14, 2016, "The rack cart tires were not working properly, and I slipped and fell and hurt by [sic] shoulder, foot and back." Employee added, "New Evidence / My foot pain is caused by my back (including Back as a body part)." He attached several 2024 medical records. (Claim For Workers' Compensation Benefits, April 1, 2024). This claim was the first mention in any document in Employee's three agency files stating he fell while working for Employer. (Observations). At the December 11, 2024 hearing, when asked to confirm the June 20, 2022 date that he knew the nature of his low-back injury and its alleged relationship to his employment with Employer, Employee evaded and stated he "never had back problems before in [his] life." When asked why he waited until April 1, 2024, to raise his low-back issues Employee stated he wanted to be "very sure" given the "various opinions" he had received from physicians, and he wanted to be "completely sure" before he filed anything. Employee referenced a female physician who told him something that "clarified" the work-related connection for him. When asked what that physician had said, and when she said it, Employee evaded the question. Employee stated he did not tell this physician that he had fallen down while working for Employer. (Record).

59) On April 29, 2024, *Quinonez VI* dismissed Employee's AWCAC appeal at his request, because he had found "new evidence of [his] back related to Akutan, Alaska." (*Quinonez VI*).

60) The panel was uncertain what relief Employee sought in his April 1, 2024 claim. However, given his statement that he had "New Evidence," the panel assumed he sought an order modifying either *Quinonez III*, *Quinonez V*, or both. (Observations, judgment).

61) On December 4, 2024, Employer in its hearing brief contended: (1) the Board should reject Employee's attempt to modify its prior decisions; (2) Employee's April 1, 2024 claim is barred by *res judicata*, claim-splitting, equity, collateral-, equitable- and quasi-estoppel, laches, and under AS 23.30.100 for his failure to give timely notice; (3) Employee's alleged back injury is not compensable; and (4) Employee is otherwise entitled to no benefits sought in his April 1, 2024 claim. (Hearing Brief of Trident Seafoods Corporation, December 4, 2024).

62) Employer further contended *Quinonez III* and *Quinonez V* were final decisions, which Employee initially appealed, but the AWCAC dismissed his first appeal because he failed to pursue it, and dismissed his second appeal at his request. It contended that the one-year statutory time limit to seek modification of *Quinonez III* had long passed, and there was no basis to modify *Quinonez V* because it dealt solely with Employee's right shoulder, and his April 1, 2024 claim made no claim in respect to his right-shoulder injury; it claims a "new" back injury caused his bilateral foot pain. To the extent Employee claimed additional benefits for either his left-foot or his right-shoulder, Employer contended he presented no evidence of any benefits due but unpaid. (Hearing Brief of Trident Seafoods Corporation, December 4, 2024).

63) Employer also contended Employee, having lost on claims for two other body parts, has now changed "his mechanism of injury" and added his low-back as a new body part "after eight years of litigation." It contended that not once prior to April 1, 2024, did Employee ever mention or report that he injured his low-back while working for Employer. His prior pleadings including several claims never described his low back as an injured body part. Employer contended that Employee never told any medical provider that he had injured his lower back until 2024. It contended Employee's current claim that he "slipped and fell" on February 14, 2016, is inconsistent with his prior claims including his June 17, 2019 claim where he expressly stated he "did not fall" but simply slipped and "pulled" his right shoulder. Consequently, Employer contended that not only do these inconsistencies further reflect on Employee's poor credibility, but result in his current claim being barred and rejected under the equitable doctrines listed above. (Hearing Brief of Trident Seafoods Corporation, December 4, 2024).

64) Moreover, Employer contended that notwithstanding all the above reasons to deny or bar Employee's April 1, 2024 claim, there is no evidence demonstrating his low-back condition, symptoms or need to treat them is compensable under the Alaska Workers' Compensation Act (Act). It noted that Employee testified he injured his lower back working for a Texas company in 2008 and has suffered low-back symptoms since then. Even when Employer deposed him in May 2022, Employee failed to mention having suffered a low-back injury in 2016 or at any other time while working for Employer. Employer contended that no medical opinion states that Employee's work for Employer was "the substantial cause" of his low-back condition, symptoms or need to treat them. (Hearing Brief of Trident Seafoods Corporation, December 4, 2024).

65) In the event Employee somehow mis-pled his claim, Employer contended that no left-foot or right-shoulder benefits are due but unpaid. Therefore, it contended Employee is entitled to no benefits for those already adjudicated body parts and related claims. Previous Board decisions found the left-foot and right-shoulder injuries medically stable, and Employer contended Employee failed to demonstrate that any benefits, consistent with *Quinonez III* or *V*, are due but unpaid. Thus, it contended Employee's April 1, 2024 claim must be denied. (Hearing Brief of Trident Seafoods Corporation, December 4, 2024).

66) On December 10, 2024, one day before hearing, Employee faxed the Division copies of two checks -- one issued on January 12, 2022, for TTD benefits for 2016 through 2020 totaling $16,939.20, and one for October 19, 2021, for $3,012.21. There is no evidence he served these on Holloway. (Agency file: Judicial, Party Actions, Evidence Filed tab, December 10, 2024).

67) At hearing on December 11, 2024, Employee testified as referenced in several factual findings, above. In addition, he repeatedly explained that he had no idea that his foot and leg symptoms allegedly came from his lower back until he went to Phoenix and saw specialists. He conceded the numerous foot specialists he had seen never referred him to a low-back specialist. Employee's main contention was that this entire situation was Holloway's fault, primarily because in his view Holloway never sent him to the "correct specialists." (Record).

68) Asked if he ever had back pain before he worked for Employer, Employee testified he did after he fell and hurt his hip around "2006-07." (Record). According to his records in his three agency files, from February 2016 until March 5, 2017, and again on June 14, 2021, to April 1, 2024, Employee only mentioned "back pain" twice: On March 5, 2017, he had "back pain" related to coughing from pneumonia; on June 14, 2021, he had back pain from sitting too long in his

wheelchair. (Agency files). However, at hearing he testified that when he left Alaska and moved to Seattle, he first noticed back pain around February 2016 when he was walking around carrying a small backpack. Employee said he told all his physicians about his lumbar pain after 2016, but his records do not support this. While Employee's medical records are replete with references to him telling his physicians that his low-back symptoms began in 2008 after a fall in Texas, and began increasing in 2021, and after he testified to that fall in his deposition, Employee insisted that he did not hurt his lower back in that 2008 Texas fall -- it was his "right hip." (Record).

69) The designated chair repeatedly invited Employee to describe when he first made the connection between his lower-extremity symptoms, his lumbar-spine condition, and his work for Employer. At first he said he could not recall. Later, Employee repeatedly said "Phoenix" was when he found out his problem was allegedly from his back and not his foot. When pressed for specificity, Employee stated that June 20, 2022 imaging revealed his lumbar-spine findings, and that was when he understood the nature of his injury and its alleged relationship to his employment with Employer. (Record; inferences drawn from the above).

70) When invited to explain the differences among his FROIs for his relevant two injuries with Employer, and his claims filed in those two cases in which he expressly stated he "did not fall" on February 10, 2016, versus his April 1, 2024 claim in which he expressly stated he "fell" on February 14, 2016, Employee was extremely evasive. He finally testified he "did not fall" in 2016, and found the contrary statement in his April 1, 2024 claim "weird." Employee blamed Holloway for this, and added that Employee is a "senior person," implying he had memory problems. Eventually, at hearing after providing long, evasive answers to this question Employee testified "to be honest [he] can't recall" if he fell down on February 10, 2016. He conceded that no doctor has ever told Employee that his work with Employer caused his lumbar spine condition or his symptoms. However, he reiterated that "many doctors" at least in Phoenix told him his lower-extremity symptoms were coming from his back. (Record).

71) In his closing argument, Employee disagreed with everything Holloway said on Employer's behalf. It was all "not true." Nevertheless, he said he will keep "pushing forward" and will appeal to a higher authority. Employee insisted he injured his low-back in February 2016 notwithstanding what Holloway says. He claimed he is an "illiterate farmworker" who has never worked in an office. Employee contended Employer "fired" him "like a dog." When asked if he felt he was given a fair opportunity to present his evidence and arguments, Employee said he did not

understand some words used at the hearing "even in Spanish." Some words he "just does not get." When asked if there was anything in particular, Employee was vague and said, "lots of things." However, he specifically objected to the designated chair asking him the same questions "over and over." It was "making [him] crazy." As was the case in prior hearings, Employee sometimes answered the chair's questions before the interpreter began, or finished, interpreting. Nevertheless, Employee maintains he "told the truth." Ultimately, he wants Employer to be responsible for his alleged low-back injury and related benefits. (Record).

72) At hearing, Employer reiterated its contentions and arguments from its hearing brief. It added that the panel should issue a "screening order" to prevent Employee from raising additional injuries from claims that have already been resolved. (Record).

73) People with acute or chronic lumbar spine injuries usually have localized lower back pain, often concurrent with or followed by lower-extremity symptoms. (Experience, observations).

PRINCIPLES OF LAW

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

> **AS 23.30.010. Coverage**. (a) . . . [C]ompensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. . . . When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or . . . the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or . . . the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

Employment must be "the substantial cause" of disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). Construing AS 23.30.010(a), *Morrison v.*

Alaska Interstate Construction, Inc., 440 P.3d 224, 234-37 (Alaska 2019) said the Board must consider different causes of the "benefits sought," the extent to which each cause contributed to the need for the benefit at issue, and then identify one cause as "the substantial cause." *Traugott v. ARCTEC Alaska*, 465 P.3d 499, 511-13 (Alaska 2020) said "work must still be a factual cause of the disability or need for medical treatment."

> **AS 23.30.100. Notice of injury**. . . . (a) Notice of an injury . . . in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury . . . to the board and to the employer.
>
> (b) The notice must be in writing, contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury . . . and be signed by the employee or by a person on behalf of the employee. . . .
> . . . .
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> > (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
> > (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
> > (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

Morrison-Knutson Co., Inc. v. Vereen, 414 P.2d 536 (Alaska 1966) stated the two-fold purpose for the §100 notice requirement: (1) to enable the employer to provide immediate medical diagnosis and treatment to minimize the injury's seriousness; and (2) to facilitate the earliest possible investigation into the facts surrounding an injury. *Fox v. Alascom, Inc*., 783 P.2d 1154, 1159 (Alaska 1989) addressed §100 and advised the Board on remand to: (1) determine if the employer was notified of the claimed injury within 30 days of the date it became "apparent that a compensable injury ha[d] been sustained," and (2) finding if there was a reason to excuse failure to give notice on grounds that for some satisfactory reason the employee could not have given notice, or for one of the other exceptions listed in the statute.

Tinker v. VECO, Inc., 913 P.2d 488, 491-92 (Alaska 1996) also discussed §100, found that the injured worker failed to give timely written notice of his injury, and said:

> The Board then proceeded to determine whether this failure was excusable under AS 23.30.100(d)(1). Two requirements must be met before this excuse can be applied: first, knowledge of the injury by the employer, in-charge agent, or carrier, and second, a lack of prejudice to the employer or carrier. . . .

In *Kolkman v. Greens Creek Mining Co*., 936 P.2d 150, 156 (Alaska 1997) a worker began having symptoms, later determined to be a heart attack, while on the job in June 1990. Later that evening, he reported to the company medic and described his symptoms. Two days later, and after the worker had obtained treatment for his heart attack, his wife notified the employer that the claimant had suffered a heart attack. In September 1991, the claimant's cardiac expert wrote a letter opining that the heart attack was work-related. The worker filed his injury report in June 1991 and a claim for benefits that same day. *Kolkman* noted the short 30-day §100 timeframe within which an injured worker must report an injury, and the fact that an injury's work-relatedness is often "gradually" and "not dramatically" acquired. It further noted it is often difficult to fix the day from which the 30-day notice requirement begins to run, and highlighted the distinction between §100, and AS 23.30.105, the latter which requires both knowledge of the injury and knowledge of its work-relatedness. *Kolkman* also found there was "no doubt" that the worker's employer knew the claimant had suffered a heart attack. Consequently, *Kolkman* overruled previous precedent that had erroneously required notice indicating to a reasonably conscientious manager that a case might involve a potential compensation claim. Having found that the employer had actual knowledge of the employee's heart attack, *Kolkman* reviewed the record for prejudice to the employer, and held the employer provided no evidence to support a conclusion it was prejudiced by late notice. As the employee did not know his injury was work-related until almost a year after the fact, his obligation to provide notice did not arise until that time.

In *Cogger v. Anchor House*, 936 P.2d 157, 159-61 (Alaska 1997) the injured worker did not "formally" file an injury report, but told his supervisors about his April 1992 work injury. The worker filed a claim for benefits for his April 1992 injury in September 1992. After a hearing, the Board held his claim was barred under §100 for failure to give the employer timely written notice. On appeal, *Cogger* treated §100's notice requirement like a "discovery rule" for statutes of limitations in civil cases. It stated "the thirty-day period begins to run when the worker could reasonably discover an injury's compensability." *Cogger* noted the exact date when an employee could reasonably discover compensability "is often difficult to determine." But, on the other hand,

missing the short notice period "bars a claim absolutely." "For reasons of clarity and fairness," *Cogger* held the 30-day period "can begin no earlier than when a compensable event first occurs. However, it is not necessary that a claimant fully diagnose his or her injury for the thirty-day period to begin." *Cogger* stated the compensable event occurred "when he visited the emergency room and incurred medical costs for this emergency room visit." That visit was on July 15, 1992; therefore, the claimant's injury became "compensable on July 15, 1992," when the injured worker visited the emergency room. *Cogger* determined that because the injured worker waited until September 9, 1992, to give his employer "formal written notice" through his claim, "the board and the court were correct to hold that his formal notice was untimely."

Cogger next examined the record to determine if there was something to excuse the worker's failure to give timely written notice, under §100(d). It found "there [was] no question" that the employer had "knowledge" of the worker's injury. *Cogger* said the employer had "sufficient actual knowledge" of the injury to "trigger the protections of the statute." In other words, the "actual knowledge" exception in §100(d) applied. *Cogger* next turned to the other required finding for §100(d) to apply, and found the employer was not prejudiced by the worker's failure to give timely, formal, written notice.

Dafermo v. Municipality of Anchorage, 941 P.2d 114, 116-19 (Alaska 1997) held the Board's late-notice finding was supported by substantial evidence. However, it also found that a §100(d) exception applied because the worker gave his supervisors "knowledge of the injury." *Dafermo* reviewed the record and found the employer was not prejudiced by the failure to give timely written notice. Therefore, *Dafermo* concluded that the Board should have excused the employee's failure to give timely written notice under §100(d).

Hammer v. City of Fairbanks, 953 P.2d 500, 505 (Alaska 1998) held "knowledge" does not appear to be a "term of art." In context, it means no more than "awareness, information, or notice of the injury. . . ." *Hammer* further stated, "An employer has notice of an employee's actual injury when the employee files his original claim pursuant to AS 23.30.100."

Robertson v. American Mechanical, Inc., 54 P.3d 777, 779-80 (Alaska 2002) held an injured worker's subsequent claim was barred by the "claim splitting rule" under the *res judicata* doctrine. The injured worker began working for the employer as a house painter in February 1994. On September 2, 1994, the claimant went to a clinic for what he believed was a work-related "back strain." He later returned to the same clinic for a back injury allegedly suffered on October 26, 1994. On April 24, 1996, the claimant had back pain and right-leg numbness, so he visited an orthopedic surgeon; that physician diagnosed lumbar degenerative disc disease and considered the problem "preexistent." The claimant saw another orthopedic physician on May 16, 1996, and told him he had been injured at work in October 1994. The worker did not formally report the injury to the employer until June 4, 1996, when he filed an injury report. He claimed his supervisor knew of the fall 1994 injury. The employer contended it had no notice of the alleged back problem until the employee filed his claim. The employer defended on §100 notice grounds because the claimant had not reported an October 1994 injury until June 1996.

The Board heard and denied the 1997 claim on its merits. The claimant moved for modification, which the Board also denied, finding it was "solely a back-door attempt to reopen and retry the employee's case." The claimant appealed the modification denial decision. The superior court affirmed the Board's denial on procedural grounds but noted that absent the claimant's procedural failures, it would have also affirmed the Board's decision on substantive grounds. The claimant did not appeal that decision.

However, on the same day that the claimant appealed the Board's modification denial to the superior court, he filed an "amended" injury report. The report was the same as the original but contended his injury may have occurred as early as September 1, 1994, as opposed to October 26, 1994, as originally claimed. The Board heard this claim and dismissed it on notice, untimely claim under §100, *res judicata*, collateral estoppel, laches, equitable estoppel and quasi-estoppel grounds. The claimant appealed this decision to the superior court, which affirmed on procedural and substantive grounds. He then appealed to the Alaska Supreme Court, which held:

> When applicable, res judicata precludes a subsequent suit "between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit." It requires that "(1) the prior judgment was a final

> judgment on the merits, (2) a court of competent jurisdiction rendered the prior judgment, and (3) the same cause of action and same parties or their privies were involved in both suits."
> . . . .
>
> We hold that Robertson's claim is barred by the rule against claim splitting, which is "a conventional application of the doctrine of res judicata." The rule against claim splitting provides that "all claims arising out of a single transaction must be brought in a single suit, and those that are not become extinguished by the judgment in the suit in which some of the claims were brought." When analyzing claim splitting, "the relevant inquiry is not whether the two claims are grounded in different theories, but whether they arise out of the same transaction or core set of facts." Robertson had the option of arguing in his original claim that he was either injured on October 26, or alternatively that he was injured while working for AMI on September 1 and aggravated the injury on October 26. Because both claims are based on the same injury and the same "core set of facts," these claims should have been brought together. Because they were not, Robertson's amended claim is barred by res judicata.

McGahuey v. Whitestone Logging, *Inc*., 262 P.3d 613, 615-16, n. 1 (Alaska 2011) found a worker was involved in a bunkhouse fight. He did not file an injury report for over a year. When he finally filed one, the worker alleged he injured his hip, lower-back and ear in the fight. His employer controverted because he had not given timely §100 notice. The worker then alleged he had verbally informed his supervisor about the injuries. After a hearing, the Board determined the claim was barred because the worker did not give his employer timely notice. The Board performed an alternative analysis assuming the worker had given timely notice and decided the claim was not compensable on its merits.

The worker appealed and the AWCAC affirmed. On further appeal, *McGahuey* found the Board and AWCAC had failed to properly apply the AS 23.30.120(a)(2) statutory presumption of sufficient notice, but affirmed because the AWCAC correctly determined substantial evidence in the record supported the Board's alternate decision on the claim's merits. *McGahuey* made clear that if "written notice is not given as required, the claim is barred." However, *McGahuey* further found "the Commission and the Board both erred in failing to identify when the 30-day period for giving written notice began, but that the error was harmless." *McGahuey* reiterated that the 30-day period for giving written notice "can begin no earlier than when a compensable event first

occurs." It stated the date the 30-day period began to run is important in determining whether formal notice was timely and in assessing prejudice to the employer if notice was late.

> **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;
> (2) sufficient notice of the claim has been given. . . .
>
> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. . . .

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). The presumption's application involves a three-step analysis. To attach the presumption, and without regard to credibility, an injured worker must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). In claims based on highly technical medical considerations, medical evidence is often necessary to make the preliminary connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312 (Alaska 1981). Once the presumption attaches, and without regard to credibility, an employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion, considering the whole record. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Id*. This means the employee must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*.

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

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

> **AS 23.30.130. Modification of awards.** (a) Upon . . . the application of any party in interest on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation. . . .

Interior Paint Company v. Rodgers, 522 P.2d 164, 168 (Alaska 1974) set forth the standards for the Board's modification under AS 23.30.130. *Rodgers* stated, "We find that an examination of all previous evidence is not mandatory whenever there is an allegation of mistake in determination of a fact under AS 23.30.130(a)." *Rodgers* warned of potential abuse and said:

> The concept of "mistake" requires careful interpretation. It is clear that an allegation of mistake should not be allowed to become a back-door route to retrying a case because one party thinks he can make a better showing on the second attempt.

Rodgers further held that though the Board "may" review a case, and its review can consist "merely of further reflection on the evidence initially submitted," there is no requirement that the Board must go over all prior evidence. The Board "must only give due consideration to any argument and evidence presented with a petition for modification." When alleging a factual mistake or change in condition, a party "may ask the board to exercise its discretion to modify the award at any time until one year" after the last compensation payment is made, or the Board rejected a claim. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005).

Lindhag v. State, Department of Natural Resources, 123 P.3d 948, 955-58 (Alaska 2005) held the Board has discretionary authority under §130 to rehear and modify a decision. In *Lindhag*, shortly after the Board issued its decision denying her claim based on evidence that her illness was caused by dust mites at her home, the claimant produced new evidence disproving the Board's decision. Citing 8 AAC 45.150, *Lindhag* referenced the "key language" requiring that any new evidence "could not have been discoverable prior to the hearing through due diligence." The Board found

no evidence showing that the new evidence could not have been obtained prior to the initial hearing. *Lindhag* said, "Whatever the merits of this 'newly discovered evidence,' it plays no role in the question of whether the board's decision was supported by substantial evidence. The board cannot be expected to deliberate on evidence that was not presented at the hearing." *Lindhag* affirmed the Board's decision on this "mistake of fact" basis. The claimant also contended her physical condition had changed post-decision. *Lindhag* rejected this argument as well noting the claimant merely alleged a different cause or source for the same unchanging condition, which is an allegation insufficient under the Board's regulation governing modifications to justify a different result. *Lindhag* made it clear that "neither party can raise original issues such as work-connection, employee or employer status, occurrence of the compensable accident, and degree of disability at the time of the first award" using the "change in conditions" rule:

> Here, Lindhag is introducing new evidence for proof of causation, to support the notion that her injury is work-related. This is an "original issue" not contemplated by change-in-conditions modification. Thus, the board did not abuse its discretion in denying Lindhag's request for modification on these grounds.

In *Griffiths v. Andy's Body & Frame, Inc*., 165 P.3d 619, 624 (Alaska 2007), the Board dismissed a self-represented litigant's petition for modification because he failed to include the affidavit required by 8 AAC 45.150. *Griffiths* vacated and remanded the Board's decision noting that it was an abuse of discretion on this case's facts to hold the *pro se* litigant to all requirements.

> **8 AAC 45.120. Evidence.** . . .
>
> (f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision. . . .
>
> **8 AAC 45.150. Rehearings and modification of board orders.** (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.
> . . . .
> (c) A petition for a rehearing or modification based upon change of conditions must set out specifically and in detail the history of the claim from the date of the injury to the date of filing of the petition and the nature of the change of conditions. The

> petition must be accompanied by all relevant medical reports, signed by the preparing physicians, and must include a summary of the effects which a finding of the alleged change of conditions would have upon the existing board order or award.
>
> (d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail
>
> > (1) the facts upon which the original award was based;
> > (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
> > (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
>
> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.
>
> (f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

ANALYSIS

Shall Employee's April 1, 2024 claim be denied?

The relief Employee seeks in his April 1, 2024 claim is hard to pin down. His claim mentions he "slipped and fell" but he filed that claim in case 201614882, which is his left-foot injury from February 14, 2016. But at hearing on December 11, 2024, Employee seemed to allege that his low-back injury arose from his February 10, 2016 right-shoulder injury, which is the only instance in which he reportedly "slipped" while working for Employer. Moreover, given his claim's reference to "New Evidence," Employee appears to want an order modifying *Quinonez III* or *Quinonez V*, or both, based on either "new evidence," or perhaps on a prior factual-finding error. Or, as he stated in his claim Employee is simply "adding" an additional "body part," his low-back, to the injurious event that hurt his right shoulder, addressed primarily in *Quinonez V*.

Employer also had difficulty with Employee's claim and raised many statutory and equitable defenses. However, the ultimate issue here is whether Employee's need to treat an alleged low-back injury arose out of and in the course of employment with Employer. AS 23.30.010(a). To be compensable, Employee's work for Employer must be "the substantial cause" of his disability or need for medical treatment for his lumbar-spine-related symptoms. *Huit*; *Morrison*; *Traugott*. However, a valid legal defense will bar his claim altogether. AS 23.30.100(a), (b), (d); *McGahuey*. There is a slim possibility that Employee may be seeking additional benefits for a new disability period or medical care for his two relevant injuries. This decision will analyze these issues separately, in an effort to cover all likely bases for Employee's April 1, 2024 claim.

(1) Does §100(a) Bar Employee's Claim?

AS 23.30.100(a) requires written notice of an injury be given to an employer within 30 days of the injury date. If written notice is not given as required, the claim is barred. *McGahuey*. Timely notice is important to allow an employer to diagnose the injury and give prompt, proper treatment and to investigate the injury. *Vereen*. However, §100(d) provides that failure to give notice can be excused when *either*: (1) the employer had actual notice of the injury *and* was not prejudiced by lack of written notice, *or* (2) fact-finders determine that notice could not be given "for some satisfactory reason," *or* (3) an employer fails to raise the §100 defense at the first hearing on the claim. *Tinker*; *McGahuey*. Only Employee knows the date he discovered his low-back condition or related symptoms allegedly arose from either or both of his February 2016 injuries. But the panel must make that critical finding under §100(a). *McGahuey*.

AS 23.30.120(a)(1), and (2) create a presumption that a "claim" is compensable and "sufficient notice of the claim has been given." "Claim" normally refers to a written claim for benefits, as opposed to an "injury report," now referred to as a "FROI." However, construing §120(a) together with §100, this decision presumes that by "claim" the legislature intended §100 to mean "notice" of an injury. Therefore, a presumption analysis applies to the sufficient notice issue. *Meek*.

(A) The notice presumption applied to the two February 2016 events.

This decision further presumes that the standard presumption analysis also applies to the "sufficient notice" presumption. To raise the presumption of sufficient notice for his alleged low-

back injury, Employee without regard to credibility, must make a "preliminary link" showing that he gave Employer written notice that he hurt his low-back in February 2016, within 30-days of February 10 or 14, 2016. *Tolbert*. Without regard to credibility, there is no evidence Employee ever gave Employer written notice that he allegedly hurt his low-back in February 2016, at any time, until he filed his April 1, 2024 claim. At hearing, Employee did not testify that he gave Employer written notice that he injured his lower-back in February 2016; he implied that he did not because he said he did not know he had injured it until 2022. His agency files contain no such written notice. Therefore, Employee cannot raise the statutory presumption of sufficient notice for his alleged low-back injury arising from a February 2016 incident. *Tolbert*.

Without the §120(a)(2) presumption's benefit, Employee must prove he gave Employer timely written notice that he allegedly injured his low-back in February 2016, with substantial evidence. *Miller*. As previously stated, Employee has never stated or argued that he provided written notice within 30-days of February 10 or 14, 2016. There is no evidence that he did. *Lindhag*. Therefore, Employee failed to prove he gave Employer written notice. *Saxton*. Consequently, Employee's April 1, 2024 claim for an alleged February 10 or 14, 2016 low-back injury is barred under§100(a), *unless* his failure to give notice is excused by an exception in §100(d). *Fox*.

Employee's failure to give written notice does *not* bar his April 1, 2024 claim if: (1) Employer, its agent in charge of the business in the place where the injury occurred, or the carrier had "knowledge of the injury" *and* this panel determines Employer or its carrier have not been prejudiced by his failure to give notice, *or* (2) this decision excuses Employee's failure to give notice on grounds that for "some satisfactory reason notice could not be given," *or* (3) Employer failed to raise the notice defense at the first hearing on Employee's claim for compensation for this alleged injury. AS 23.30.100(d)(1)-(3); *McGahuey*. Each element will be analyzed:

(1) *Actual knowledge and prejudice*: Employee presented no testimony, evidence or argument that Employer, its agent in charge of the business in the place where his alleged low-back injury occurred, or the carrier had "knowledge of the injury" at the time it allegedly occurred; here "injury" means his alleged low-back injury. Employee failed to prove the first prong of the first

element under §100(d)(1). Therefore, the conjunctive second "prejudice" prong is irrelevant, and this exception does not apply to excuse Employee's failure to give written notice. *Tinker*.

(2) *A satisfactory reason*: Taking Employee's testimony as true, he did not know he allegedly injured his low-back on February 10 or 14, 2016, until June 20, 2022. AS 23.30.122; *Smith*. Realizing one has had an injury is sometimes gradual and not easily determined. *Kolkman*; *Cogger*. Shoulder and foot experts consistently told Employee he had right-shoulder and left-foot injuries. Foot experts diagnosed issues specific to his foot. Employee's attending physicians never referred him to a spine specialist. His lower-extremity symptoms could be coming from his low-back or they could have been coming from his cervical fusion. *Rogers & Babler*. If Employee did not know until June 20, 2022, that his lower-extremity symptoms allegedly arose from his February 10 or 14, 2016 injuries, that was a "satisfactory reason" to not report an alleged low-back injury within 30 days of February 10 or 14, 2016. A "first compensable event" did not occur until June 20, 2022, when Employee went to his doctor and saw diagnostic imaging revealing his lumbar spine issues. At that point Employee said his doctor told him his lower-extremity symptoms were all coming from his lumbar spine. On June 20, 2022, he incurred a medical bill notwithstanding who paid it. Therefore, this decision will excuse Employee's failure to timely report an alleged low-back injury within 30 days of February 10 or 14, 2016, under §100(d)(2). *Dafermo*.

(3) *Objection timely raised*: Employer at the December 11, 2024 hearing, timely raised its §100 objection to Employee's untimely written notice. It could not have raised this defense earlier because Employer was unaware he claimed a work-related low-back injury until he filed his April 1, 2024 claim. Therefore, this prong does not excuse Employee's late written notice.

Given the above analysis, Employee's April 1, 2024 claim will not be barred under §100 for failure to give timely written notice within 30 days of February 10 or 14, 2016, because this decision will excuse his failure for a "satisfactory reason." *Kolkman*. The satisfactory reason is that Employee did not know that he allegedly injured his low-back on February 10 or 14, 2016, until June 20, 2022. However, since this decision will excuse Employee's failure to provide Employer with written notice of a February 10 or 14, 2016 low-back injury within 30-days of those dates, he loses the "presumption of compensability" for those alleged injuries. AS 23.30.120(b).

(B) The notice presumption applied to the June 20, 2022 knowledge date.

The same presumption analysis applies to June 20, 2022, the date on which Employee testified he discovered or became aware he had an alleged work-related low-back injury on February 10 or 14, 2016. *Meek*. There is no evidence Employee gave Employer written notice that he hurt his low-back until he filed his April 1, 2024 claim. *Tolbert*. At hearing, Employee did not testify that he gave Employer written notice that he allegedly injured his lower-back in February 2016, within 30-days of June 20, 2022, the date he discovered he had allegedly injured it; he implied that he did not. His agency files are again devoid of any such notice. *Lindhag*. Therefore, Employee cannot raise the "sufficient notice" presumption for his alleged low-back injury arising from a February 10 or 14, 2016 accident, that he discovered on June 20, 2022. *Tolbert*.

Without the presumption's assistance, Employee must prove he gave Employer written notice within 30 days of June 20, 2022 – *i.e*., by July 20, 2022 -- with substantial evidence. *Miller*. He failed to prove that as well. *Saxton*. Employee had opportunities to give notice before the July 20, 2022 deadline. In the 30-day window between June 20 and July 20, 2022, Employee attended a prehearing conference on June 23, 2022; he had a Spanish interpreter present. Employee did not mention his newly-discovered alleged low-back injury. On July 1, 2022, he called the Division and spoke with Pleitez for 20 minutes. According to Pleitez's contact summary, he never mentioned his alleged low-back injury in that conversation either. Even assuming, for argument's sake, that Employee's referenced "evidence he has regarding his foot" refers to his discovery that he had a lower-back injury while working for Employer, Pleitez "provided him with the deadlines for brief and evidence (Evidence: 8/10/22 and Brief: 8/23/22) and explained the importance of evidence to support what he is claiming." Employee filed nothing and changed no issues set for hearing. Thus, Employee's April 1, 2024 claim for an alleged February 2016 low-back injury is barred under§100(a), *unless* his failure to give notice is excused by a §100(d) exception. *Fox*.

As in the previous presumption analysis, Employee's failure to give written notice within 30-days of June 20, 2022, will not bar his April 1, 2024 claim under the Act if: (1) Employer, its agent in charge of the business in the place where the injury occurred, or the carrier had "knowledge of the injury" to his low-back at the time it occurred *and* this panel determines Employer or its carrier have not been prejudiced by Employee's failure to give notice, *or* (2) this decision excuses

Employee's failure to give notice on the ground that for "some satisfactory reason notice could not be given," *or* (3) Employer failed to raise the notice defense at the first hearing on Employee's claim for compensation for this injury. AS 23.30.100(d)(1)-(3); *McGahuey*; *Dafermo*. Again, each element will be analyzed in respect to Employee's June 20, 2022 "discovery" date:

(1) *Actual knowledge and prejudice*: Employee presented no testimony, evidence or argument that Employer, its agent in charge of the business in the place where his alleged injury occurred, or the carrier had "knowledge of the injury" before April 1, 2024; again, "injury" means an alleged low-back injury. He did not testify that he told Employer, or that it otherwise knew, about his discovery that his low-back condition or leg symptoms allegedly arose from a February 2016 work injury, by July 20, 2022. *Hammer*. There is no evidence that he or it did. *Lindhag*. Employee failed to prove the first prong of the first element under §100(d)(1). The "prejudice" prong is again irrelevant, and this exception does *not* apply to excuse his failure to give written notice. *Tinker*.

(2) *A satisfactory reason*: Again, taking Employee's testimony as true, he did not know he allegedly injured his low-back in February 2016, until June 20, 2022. AS 23.30.122; *Smith*. However, Employee did not file an amended injury report or claim or give Employer any written notice by the July 20, 2022 deadline. His April 1, 2024 claim was his first and only notice. When asked why he waited until April 1, 2024, to file a claim and provide notice, Employee evaded and blamed Holloway for not sending him to a specialist. When pressed for this critical date, Employee further evaded but eventually testified he wanted to be "very sure" because he had conflicting medical opinions, and wanted to be "completely sure" before he filed a claim. But "knowledge" of an alleged injury under the Act is not a "term of art." It means no more than "awareness, information, or notice of the injury. . . ." *Hammer*. He had all these by June 20, 2022.

Moreover, it is not necessary that Employee had "fully diagnosed" his injury for the 30-day period to start running. *Cogger*. His alleged low-back injury became potentially "compensable" when on June 20, 2022, he visited his physician, had diagnostic imaging showing his serious lower-back condition, his physician told him his lower-extremity issues were coming from his back, and he incurred medical expenses, which on that date he attributed to a February 2016 injury. June 20, 2022, thus became the first "compensable event" for his alleged low-back injury. *Kolkman*;

Cogger. The 30-day §100 clock began to run on that day. *McGahuey*. Therefore, because Employee did not give a satisfactory reason for his failure to timely report in writing an alleged low-back injury by July 20, 2022, this failure will *not* be excused under §100(d)(2).

(3) *Objection timely raised*: At the December 11, 2024 hearing, Employer timely objected to Employee's untimely written notice. Since it had no knowledge that Employee alleged a low-back injury occurred in February 2016, until April 1, 2024, Employer could not have raised its §100 defense at a prior hearing. *Hammer*. Thus, Employee's failure to give timely written notice of an alleged low-back injury by July 20, 2022, will *not* be excused under §100(d)(3).

Given the above, Employee's April 1, 2024 claim will be barred under §100. He failed to give timely written notice to Employer within 30-days even after he discovered a February 2016 work injury allegedly caused a low-back injury on that date, and after his first compensable event on June 20, 2022, when he went to his physician and incurred a bill. *Kolkman*; *Cogger*.

Although it is not altogether clear what he wanted, Employee raised other issues in his April 1, 2024 claim. Therefore, in the alternative, this decision will address his other potential claims.

(2) Should Quinonez III or V be Modified Under AS 23.30.130?

The panel considered Employee's lay status when interpreting his April 1, 2024 claim, and excuses his failure to comply strictly with §130(a) and 8 AAC 45.150. *Griffiths*. He appears to be seeking modification of *Quinonez III* and *V*; the panel assumes that is what Employee intended and will apply the modification analysis to each decision. A party may seek a modification order under §130(a) on grounds of a "change in conditions" or a "mistake" in a panel's prior factual findings, by filing a petition "before one year after the date of the last payment of compensation" or before one year after a claim is rejected, as occurred in *Quinonez III* and *V*.

(A) Should Quinonez III be modified?

On September 14, 2022, in a final decision, *Quinonez III* denied Employee's claim for additional medical benefits for his left foot. He appealed *Quinonez III* to the AWCAC. Even though the AWCAC gave Employee nearly six months to file appropriate paperwork, he failed to do so and,

on April 11, 2023, the AWCAC dismissed his appeal for failure to prosecute. *Quinonez IV*. Thus, *Quinonez III* is binding. Employee's current claim states he has new evidence and implies that *Quinonez III* made a factual error regarding his left foot. Under §130(a), Employee had one year after *Quinonez III* was issued, or one year after the date Employer last paid him indemnity benefits, whichever is later, to request an order modifying *Quinonez III*.

To the extent his April 1, 2024 claim seeks an order modifying *Quinonez III*, it will be denied as a matter of law because Employee had until only September 15, 2023, to request an order modifying *Quinonez III*. Employee filed nothing with the Division seeking any relief until April 1, 2024, which was well after the one-year deadline. The only alternate time deadline applicable under §130(a) would be one year after Employer last paid him indemnity benefits. Employer timely filed comprehensive payment information to which Employee did not object. A spreadsheet shows Employer last paid Employee indemnity benefits on October 19, 2021. His April 1, 2024 claim is clearly also beyond the one-year mark from that payment and is again untimely as a matter of law under §130(a).

However, one day before the December 11, 2024 hearing, Employee untimely faxed copies of two checks, one issued on January 12, 2022, for TTD benefits for 2016 through 2020 totaling $16,939.20, and one issued October 19, 2021, for $3,012.21. Since these documents were not filed or served timely, the panel cannot consider them. 8 AAC 45.120(f). There is no excuse for his tardy filing because he had these documents years prior to hearing, and Pleitez advised Employee to file and serve evidence upon which he intended to rely. Even if these documents were considered, and if the January 12, 2022 check restarted the one-year clock running for modification, Employee's April 1, 2024 claim was still untimely. Further, Employer's spreadsheet shows that check was a replacement for prior checks paid in 2020 and 2021, which Employee either never cashed, or were returned to the carrier as undeliverable; it was not an initial "payment." As for the August 7, 2024 check, were it considered, the facsimile image is poor, and the panel cannot determine if that replacement check was for indemnity. *Rogers & Babler*.

Moreover, Employee testified he discovered and understood he had an alleged low-back injury on June 20, 2022, when his physician revealed the extent of his lumbar condition after diagnostic

imaging, and Employee made the connection. *Hammer*; *Kolkman*; *Cogger*. But the hearing giving rise to *Quinonez III* occurred on August 30, 2022 -- over two months *after* Employee gained his understanding. Employee never mentioned his low back at that August 30, 2022 hearing. His only explanation for waiting until April 1, 2024, to raise the low-back issue was his desire to be "completely sure" of a work connection. In other words, Employee could have raised the issue before and at the *Quinonez III* hearing, but simply chose not to. *Cogger*.

Lastly, even assuming Employee could not have discovered his "new evidence" prior to the *Quinonez III* hearing, the medical records he provided with his April 1, 2024 claim contain no causation opinions relating the CT findings for his low back to his work with Employer. 8 AAC 45.150(d)(2). In other words, all that the reports and imaging studies show are problems in his lumbar spine; he presented no evidence suggesting his work with Employer caused, aggravated, accelerated or combined with imaging findings to cause disability or the need for medical treatment for his low back. *Huit*. He did not show his employment was "the substantial cause" of disability or need for medical treatment for his low-back. AS 23.30.010(a); 8 AAC 45.150(e); *Morrison*. For the above reasons, if Employee seeks an order modifying *Quinonez III*, it will be denied as untimely and lacking substantial evidence under §130(a). *Lindhag*; *Rodgers*.

(B) Should Quinonez V be modified?

On December 21, 2023, *Quinonez V* in a final decision denied Employee's claim for additional benefits for his right-shoulder injury. Employee likewise appealed that decision to the AWCAC, but on April 29, 2024, the AWCAC dismissed it at his request. *Quinonez V* is binding. However, unlike *Quinonez III*, Employee's April 1, 2024 claim, if considered a modification request for this analysis' purposes, was filed timely within one year of *Quinonez V*'s issuance. It will not be dismissed as untimely. Other than that timing difference, the modification analysis is the same.

Employee testified he discovered and understood he had an alleged low-back injury on June 20, 2022. *Tinker*; *Kolkman*; *Cogger*. But the hearing giving rise to *Quinonez V* occurred on November 22, 2023 -- nearly a year and one-half *after* Employee gained his understanding. In other words, this was not "new evidence." It was evidence he chose to withhold. *Lindhag*. His only explanation for waiting until April 1, 2024, to raise the low-back issue was his desire to be "completely sure"

of a work connection. Again, Employee could have raised the low-back issue before or at the November 22, 2023 *Quinonez V* hearing, but did not. 8 AAC 45.150(d)(2).

Again, even assuming Employee could not have discovered his "new evidence" prior to the *Quinonez V* hearing, his new medical records contain no causation opinions relating the diagnostic imaging findings for his low-back to his work with Employer. *Lindhag*; 8 AAC 45.150(d)(2). Employee clearly believes that since he has significant imaging findings in his lumbar spine that his work with Employer must have caused those findings, and thus his symptoms and a need to treat them. But this is not the legal test. *Huit*; *Morrison*. He did not show through his "new evidence" that his employment with Employer was "the substantial cause" of disability or need for medical treatment for his low-back. AS 23.30.010(a); 8 AAC 45.150(e); *Morrison*. Therefore, for the above reasons if Employee is seeking an order modifying *Quinonez V*, it too will be denied as lacking probative evidence under §130(a). *Rodgers*; *Lindhag*.

(3) Could Employee Prevail on the Merits?

In the alternative, and notwithstanding all the above, even if this decision considered Employee's April 1, 2024 claim on its merits, he would still not prevail. This decision under §100(d)(2) excused his failure to give timely written notice within 30-days of his two February 2026 injuries. But under §120(b), he lost the "presumption of compensability" as a result. Thus, Employee had the burden of proof and persuasion, and as already stated he presented no substantial evidence to prove his causation theory. *Saxton*; *Morrison*; *Lindhag*. He would lose on that basis alone.

Alternately, even if the compensability presumption still applied, Employee's causation theory is medically complex. That is, the panel does not understand how a February 10, 2016 slip-but-no-fall shoulder injury or his February 14, 2016 foot injury could result in lower-back symptoms in 2022. Unlike a typical acute back injury, Employee's theory is new to this panel, and his lay opinion is not enough to even raise the presumption. *Tolbert*. He needed a medical opinion explaining how his February 2016 injuries either resulted in severe degenerative changes in Employee's lumbar spine discovered in 2022, or at least how they could cause delayed symptoms many years later. *Smallwood*. Employee expressly testified at hearing that no physician ever told him his work injury caused his low-back condition, or a need to treat symptoms arising from it.

All they told him, albeit in hearsay, was that his lower extremity symptoms were coming from his lower back. Without a medical-legal causation opinion, Employee could not raise the presumption of compensability under §120(a)(1). *Smallwood*. Without the presumption, Employee had the burden of production and persuasion and had to prove his claim by a preponderance of the evidence. *Saxton*. All he had was his testimony, discussed below.

At hearing, Employee suggested the February 10, 2016 right-shoulder injury was the genesis for his current low-back issues, even though he listed his February 14, 2016 foot injury on his April 1, 2024 claim. He explained for the first time that on February 10, 2016, when he slipped and his right hand grabbed the cart and his right arm held his entire body weight, his back ended up "like an accordion." This description is not found in any record in Employee's agency files nor is it found in his deposition. When pressed for details, he testified his back "extended" and "contracted" when he slipped. Employee did not testify that he felt any low-back pain on that occasion. He did not advise Employer's on-site medical clinic, US Healthworks, or Dr. Erickson of any low-back injury or symptoms in 2016, which one might expect if the February 10, 2016 injury caused his back to contort "like an accordion." Employee's new account describing how his alleged low-back injury occurred is not credible. AS 23.30.122; *Smith*.

Employee told Employer and his physicians that he hurt only his *right shoulder* on February 10, 2016, and hurt only his "*foot*" on February 14, 2016. When asked at hearing if his current low-back symptoms were related to the foot injury, he implied they were but only because he now contends there was never anything wrong with his foot, and it was his low back all along causing his foot symptoms. Throughout the hearing, Employee was evasive in his answers and required the designated chair to repeat the same questions until he provided a responsive answer; in some instances, he never did. Employee took exception to this questioning and at the hearing's conclusion stated the repeated questions were "driving [him] crazy."

But Employee was deliberately evasive. When faced with a question, the answer to which could cut against his position, Employee evaded. For example, when describing his first assault where an unknown person hit him in the back of his neck, resulting ultimately in a cervical fusion, Employee could not say whether he had fallen down after this attack. All he was willing to say

was that he was hit in the back of the neck and he "woke up in the hospital." Experience teaches that if a person is assaulted and "wakes up" somewhere, that person was knocked unconscious. *Rogers & Babler*. If Employee was knocked unconscious, he likely fell down onto the sidewalk after his first assault. Falling from a standing position onto a concrete sidewalk could conceivably cause lumbar-spine symptoms. His evasiveness and unwillingness to concede that he fell down after his first assault seriously decreased his credibility. Yet, at the same time Employee was somehow certain he did not injure his low back in that assault. AS 23.30.122; *Smith*.

Other evidence casts doubt on his credibility. In December 2020, Employee told Dr. Higashi that since his September 2020 assault he had "increased symptoms to his lower extremities." When asked about this at hearing, Employee evaded. On June 14, 2021, Employee told a therapist at PINN that he had nerve-related symptoms in his lower extremities following his September 2020 assault. When asked about this, Employee again evaded. On April 13, 2022, Employee told PA Jama that his "lower back pain is chronic." When asked about this, Employee demanded to know the clinic at which this provider worked. His medical records repeatedly show him telling physicians that his lower-back symptoms began after his fall from equipment in 2008 while working in Texas. Employee implied in his deposition that he had reopened his Texas claim. When Employee moved to Phoenix, he saw a new provider at Arizona Pain Treatment Center. There, he completed an intake form, which stated his low-back symptoms began in 2008, but became worse in 2021. In each instance, when Employee was invited to explain these records, he evaded and suggested the questions were unfair since he did not have the records before him. At hearing, when describing how his low-back symptoms began after his February 10, 2016 work injury with Employer, Employee testified he "never had back problems before in [his] life," which is clearly not true. AS 23.30.122; *Smith*.

This panel acknowledges and considers that English is not Employee's first language. Nevertheless, it also cites an emergency room physician in 2017 who stated Employee had "no barriers to communication" and said, "The patient speaks fluent English." Moreover, in the nearly 216 contacts Employee had with the Division since 2016, nearly all have been with Pleitez, a Spanish-speaking staff member, whom he called "the only Angel" at the Division. Similarly, at his numerous prehearing conferences and at all his hearings, Employee always used a Spanish

interpreter. At the December 11, 2024 hearing, Employee began answering some questions either before the interpreter had begun interpreting or before the designated chair finished asking the question. When faced at hearing with difficult questions, Employee even with assistance from a professional interpreter was evasive and at times suggested his age or alleged illiteracy was to blame for his nonresponsive answers to simple questions like, "did you fall on February 10, 2016?" This too detracted from his credibility. AS 23.30.122; *Smith*. He is cagey, not illiterate.

Employee's April 1, 2024 claim made it challenging to know exactly what he wanted. Thus, at hearing the chair asked him numerous questions to clarify his claim and the relief he sought. Employee objected to being asked the same questions at hearing repeatedly. But had he been forthright and answered the questions on the first try, the additional follow-up questions would not have been necessary. *Rogers & Babler*. Perhaps most damaging to his credibility was Employee's statement in his April 1, 2024 claim that on February 14, 2016 he "fell." Employee never said he even slipped, much less fell in his left-foot case. On his previous FROI and claims for his February 10, 2016 right-shoulder injury, Employee expressly stated he did *not* fall. When asked about this obvious change in how the February 2016 injuries occurred, and after much prodding and unresponsive answers, Employee first stated he did not fall -- this was probably the truth. He later recanted, finding it "weird" that "fall" was in his April 1, 2024 claim, and ultimately concluded he could not recall if he fell down or not. This too was not credible. AS 23.30.122; *Smith*.

Clearly, Employee slipping, but not falling, and catching himself with his right arm presented a compelling case for a right-shoulder injury. Employer accepted that injury and paid applicable benefits. Now Employee wants Employer to pay for his low-back issues. Slipping *and falling* in February 2016 could present a compelling case for a low-back injury, or aggravation, acceleration or combination with his obvious degenerative lumbar condition. His changing story line to suit his requested remedy renders his testimony not credible. AS 23.30.122; *Smith.* The only relevant medical evidence in this case shows Employee has degenerative changes in his lumbar spine. There is no medical evidence suggesting his February 2016 injuries caused his lumbar condition, or aggravated, accelerated or combined with it to cause a need for treatment or any disability. Therefore, "the substantial cause" of Employee's current lumbar symptoms and need to treat them are his age-related degenerative lumbar changes. *Morrison*. His claim will be denied.

Given the above analyses, even if his claim was not barred under §100 and not subject to modification under §130, he would not prevail on its merits. When Employee wanted his left foot treated he claimed a left-foot injury. When he wanted his right shoulder treated, he claimed a right-shoulder injury and made his injury descriptions match the desired results. Now that Employee has a serious lumbar-spine condition, he wants Employer to pay for that too, and changed his injury details to achieve that goal. His situation is most similar to the claimant in *Robertson*. Employee is "claim-splitting" and should have raised his low-back injury at the *Quinonez III* or *V* hearings. Because he did not, Employee's April 1, 2024 claim will also be denied under the claim-splitting doctrine. *Robertson*.

(4) Are There any Benefits Due but Unpaid?

Lastly, if Employee inadvertently mis-pled his April 1, 2024 claim and was actually asking for additional benefits for his left-foot or his right-shoulder injuries, independent of his low-back claim, he presented no evidence of any benefits unpaid but due in either case. Therefore, if that is what he is requesting, his claim will be denied for failure of proof. *Lindhag*.

Given the above results, this decision will not reach any other equitable defenses Employer raised at hearing. Further, under these facts, and seeing no reason for it, this decision will decline to issue a screening order against Employee as Employer requested, at this time.

CONCLUSION OF LAW

Employee's April 1, 2024 claim will be denied.

ORDER

1) Employee's April 1, 2024 claim is barred under AS 23.30.100.
2) Alternately, Employee's request for an order modifying *Quinonez III* and *V* is denied.
3) Alternately, Employee's April 1, 2024 claim is denied on its merits.
4) Alternately, Employee's April 1, 2024 claim is denied under the claim-splitting doctrine.
5) Alternately, any claims for benefits unpaid but due in 201603968J and 201614882M are denied for lack of evidence.
6) Employer's request for claim-screening order is denied at this time.

Dated in Anchorage, Alaska on December 27, 2024.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Jose R. Quinonez, employee / claimant v. Trident Seafoods, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201614882; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on December 27, 2024.

/s/
Rochelle Comer, Workers Compensation Technician