

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOSE LUIS SANCHEZ LOPEZ,	)	
	)	
Employee,	)	
Claimant,	)	
	)	INTERLOCUTORY
v.	)	DECISION AND ORDER
	)	
NATIVE CONSTRUCTION	)	AWCB Case No. 202314764
MANAGEMENT, INC.,	)	
	)	AWCB Decision No. 25-0007
Respondent,	)	
and	)	Filed with AWCB Anchorage, Alaska
	)	on February 4, 2025
BENEFITS GUARANTY FUND,	)	
	)	
Insurer,	)	
Defendants.	)	

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Jose Luis Sanchez Lopez's (Claimant) March 20, 2024 claim was heard on January 23, 2025, in Anchorage, Alaska, a date selected on September 3, 2024. A May 15, 2024 hearing request gave rise to this hearing. Attorney Carson Honeycutt appeared in person and represented Claimant, who appeared in person. Tammy Sullivan appeared in person on behalf of Rebound Sports and Orthopedics Physical Therapy. McKenna Wentworth, adjuster for the Workers' Compensation Benefits Guaranty Fund (Fund), and Velma Thomas, the Fund's administrator appeared by Zoom and represented the Fund. A representative for Native Construction Management, Inc., (NCM) did not appear and the hearing chair's attempt to contact it was unsuccessful. As a preliminary issue, the hearing chair informed the parties that the Alaska Workers' Compensation Division (Division) failed to serve NCM with the hearing notice, and that there were numerous service issues for documents served by the Division and the parties. The record closed on January 23, 2025.

ISSUE

The Fund and Claimant ask the panel to approve a stipulation signed by the Fund and Claimant which contains a finding that Claimant's claim is compensable and includes an order directing NCM to pay Claimant according to its terms. They contend NCM was provided sufficient notice of the hearing and has not participated in any proceedings. The Fund and Claimant contend a hearing continuance would contravene the legislative intent that benefits are paid to injured workers quickly, efficiently, fairly and predictably at a reasonable cost to employers.

**Should the Fund's and Claimant's stipulation be approved or should the hearing be continued?**

FINDINGS OF FACT

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

- 1) On October 17, 2023, Claimant reported he fell from a ladder while working for NCM on August 27, 2023, and hit a tree stump, injuring multiple body parts including his head, neck, back and ribs. (Employee Report of Occupational Injury or Illness to Employer, October 17, 2023).
- 2) On October 17, 2023, Claimant sought temporary total disability (TTD) benefits and medical and transportation costs. He described the nature of his injury, how it happened, and the body parts injured as, "Ladder and I fell about 5 feet and I landed on a tree stump, I fractured 5 ribs and broke collar bone, head injury. I have not been able to work since the accident." Claimant filed against NCM and the Fund. He included NCM's mailing address: 501 W. 41st Ave. Ste. D, Anchorage, AK 99503. (Claim for Workers' Compensation Benefits, October 17, 2023).
- 3) On October 20, 2023, the Division served NCM with the claim by first-class mail at the 501 W. 41st Ave. address. (Claim Served, October 20, 2023).
- 4) On November 7, 2023, the Division served the November 28, 2023 prehearing conference notice; NCM was not served with a copy of the prehearing conference notice. (Prehearing Conference Notice Served, November 7, 2023).
- 5) On November 10, 2023, the Fund answered Claimant's claim and controverted all benefits, contending the claim lacked sufficient grounds to establish all elements to collect against the Fund:

- The injured worker must have been an employee of an uninsured employer at the time of injury.

- The employee's work for the employer must have been the substantial factor in the cause of the injury or illness.
- The injured worker must file a claim for benefits against the uninsured employer, and a separate claim for benefits against the Fund. Both claims must be filed within two years of the injury, or knowledge that an injury or illness was work related.
- The injured workers' claim against the employer must result in an order by the Alaska Workers' Compensation Board (Board) to pay benefits to the injured worker.
- The employer must be found by the Board to be in default of the aforementioned order.

The Fund served NCM at PO Box 140931, Anchorage, AK 99514 by first-class mail. (Controversion Notice and Initial Answer to the Employee's Claim for Benefits from the Alaska Workers' Compensation Benefits Guaranty Fund, November 10, 2023).

6) On November 28, 2023, Thomas and Claimant requested another prehearing conference to allow Arthur Stevenson, NCM's representative, to attend. (Prehearing Conference Summary, November 28, 2023).

7) On November 28, 2023, the Division served the parties with notice of the December 12, 2023 prehearing conference. It served NCM by first-class mail at the PO Box address and included a copy of the November 28, 2023 prehearing conference summary. (Prehearing Conference Notice Served and Prehearing Conference Summary Served, November 28, 2023).

8) On December 12, 2023, Claimant, Thomas and Wentworth attended a prehearing conference; a representative for NCM did not attend, NCM did not file anything in response to the claim and there was no telephone number for NCM in the record. (Prehearing Conference Summary, December 12, 2023). The Division served the parties with the December 12, 2023 prehearing conference summary; NCM was served at the PO Box address by first-class mail. (Prehearing Conference Summary Served, December 12, 2023).

9) On December 27, 2023, the Fund filed a Medical Summary with attached medical records; it served NCM at the PO Box address by first-class mail. (Medical Summary, December 27, 2023).

10) On February 1, 2024, the Fund filed a Notice of Intent to Rely on envelopes showing the controversion, answer and medical summary mailed to NCM by first-class mail to the PO Box address were returned as "vacant, unable to forward." It served NCM by first-class mail to the PO Box address. (Notice of Intent to Rely, February 1, 2024).

11) On March 5, 2024, the Fund requested a prehearing conference to discuss medical bills received; it served NCM with a copy of the request for conference to the PO box address. (Request for Conference, March 5, 2024).

12) On March 6, 2024, the Division served a March 20, 2024 prehearing conference notice; NCM was served by first-class mail to the PO box address. (Prehearing Conference Notice Served, March 6, 2024).

13) On March 20, 2024, Claimant filed a claim for TTD and permanent partial impairment (PPI) benefits, medical and transportation costs, interest, and attorney's fees and costs. The claim was filed against NCM and the Fund. He provided 501 W. 41st Ave. address for NCM. (Claim for Workers' Compensation Benefits, March 20, 2024).

14) On March 20, 2024, Claimant, Thomas and Wentworth attended the prehearing conference; a representative for NCM did not attend. Claimant provided a possible second mailing address for NCM: 141 Patterson St. #113, Anchorage, AK 99504. (Prehearing Conference Summary, March 20, 2024).

15) On March 21, 2024, the Division served NCM with the March 20, 2024 prehearing conference summary by first-class mail to the PO Box address. (Prehearing Conference Summary Served, March 21, 2024).

16) On March 26, 2024, the Division served Claimant's March 20, 2024 claim; it did not serve NCM with a copy. (Claim Served, March 26, 2024).

17) On March 27, 2024, NCM's copy of the March 20, 2024 prehearing conference summary was returned to the Division as "vacant, unable to forward." (Returned Mail, March 27, 2024).

18) On April 1, 2024, the Fund filed a Medical Summary and attached medical records; it served NCM at the 141 Patterson Street address by first-class mail. (Medical Summary, April 1, 2024).

19) On April 22, 2024, Claimant filed a Medical Summary and attached medical records; he did not serve NCM with a copy. (Medical Summary, April 22, 2024).

20) On April 23, 2024, Claimant filed copies of pay stubs, a ledger from Metropolitan Life Insurance Company and envelopes mailed to NCM from Claimant's attorney to the 141 Patterson Street address, which were returned as "attempted - not known, unable to forward," and to the PO Box address, which was returned as "vacant, unable to forward." It is unknown what Claimant's attorney mailed to NCM. The pay stubs provided NCM's address as the 141 Patterson Street

address. Claimant did not serve NCM with a copy of the documents. (Affidavit of Service, April 23, 2024).

21) On April 23, 2024, Claimant requested a prehearing conference; he did not serve NCM with the request. (Request for Conference, April 23, 2024).

22) On April 26, 2024, the Division served the parties with a May 9, 2024 prehearing conference notice; it served NCM by first-class mail at the PO box address. (Prehearing Conference Notice, April 26, 2024).

23) On April 30, 2024, Claimant filed a Medical Summary and attached medical records; he did not serve NCM with a copy. (Medical Summary, April 30, 2024).

24) On May 9, 2024, Claimant, Thomas and Wentworth attended the prehearing conference. “Parties confirmed that they have made multiple attempts to contact [NCM] with no success.” (Prehearing Conference Summary, May 9, 2024).

25) On May 9, 2024, the Division served NCM with a copy of the May 9, 2024 prehearing conference summary by first-class mail to the PO Box address and the 141 Patterson Street address. (Prehearing Conference Summary Served, May 9, 2024).

26) On May 9, 2024, the Division served notice of a June 13, 2024 prehearing conference; it served NCM at the PO Box address and the 141 Patterson Street address. (Prehearing Conference Notice, May 9, 2024; Prehearing Conference Notice Served, May 9, 2024).

27) On May 15, 2024, Claimant requested a hearing on his March 20, 2024 claim; the Affidavit of Readiness for Hearing (ARH) listed NCM’s address as the 501 W. 41<sup>st</sup> Ave. address but Claimant did not serve NCM with a copy. (ARH, May 15, 2024).

28) On June 13, 2024, Claimant, Thomas and Wentworth attended the prehearing conference; a representative for NCM did not attend. The parties agreed to an oral hearing on October 2, 2024, for four hours. The prehearing conference summary listed the 141 Patterson Street address for service to NCM. (Prehearing Conference Summary, June 13, 2024).

29) On June 17, 2024, the Division served NCM with a copy of the June 13, 2024 prehearing conference summary at the PO Pox address by first-class mail. (Prehearing Conference Summary Served, June 17, 2024).

30) On June 17, 2024, the Division served the October 2, 2024 hearing notice; it did not serve NCM with a copy. (Hearing Notice Served, October 2, 2024).

31) On June 21, 2024, NCM's copy of the June 13, 2024 prehearing conference summary was returned to the Division as "vacant, unable to forward." (Returned Mail, June 21, 2024).

32) On June 26, 2024, Claimant filed a ledger from Rebound Sports and Orthopedic PT; he did not serve NCM with a copy. (Affidavit of Service, June 26, 2024).

33) On July 1, 2024, Rebound Physical Therapy sought medical costs totaling \$6,835; the claim provided the 501 W. 41st Ave. address for NCM and was signed by Sullivan. The claim was filed against NCM and the Fund. (Claim for Workers' Compensation Benefits, July 1, 2024).

34) On July 3, 2024, the Division served the July 1, 2024 claim; it did not serve NCM with a copy. (Claim Served, July 3, 2024).

35) On July 3, 2024, the Division served notice of a September 3, 2024 prehearing conference; it did not serve NCM. (Prehearing Conference Notice and Prehearing Conference Notice Served, July 3, 2024)

36) On July 23, 2024, the Fund answered the July 1, 2024 claim contending it lacked sufficient grounds to establish all elements to collect against the Fund, including:

- The injured worker must have been an employee of an uninsured employer at the time of injury.
- The employee's work for the employer must have been the substantial factor in the cause of the injury or illness.
- The injured worker must file a claim for benefits against the uninsured employer, and a separate claim for benefits against the Fund. Both claims must be filed within two years of the injury, or knowledge that an injury or illness was work related.
- The injured workers' claim against the employer must result in an order by the Alaska Workers' Compensation Board (Board) to pay benefits to the injured worker.
- The employer must be found by the Board to be in default of the aforementioned order.

The Fund served the answer on NCM by first-class mail to the PO Box address. (Initial Answer to Rebound Physical Therapy's Claim for Benefits from the Alaska Workers' Compensation Benefits Guaranty Fund, July 23, 2024).

37) On August 22, 2024, a stipulation signed by Claimant, Thomas and Wentworth continuing the October 2, 2024 hearing and was approved. (Stipulation for Continuance of the October 2, 2024 Hearing, August 22, 2024). The Division did not serve NCM with a copy of the approved stipulation. (Served, August 22, 2024).

38) On September 3, 2024, Thomas, Sullivan, Wentworth and Claimant attended the prehearing conference; a representative for NCM did not attend. The parties agreed to schedule an oral hearing on January 23, 2025. (Prehearing Conference Summary, September 3, 2024). The Division served NCM with a copy of the September 3, 2024 prehearing conference to the PO Box address by first-class mail. (Prehearing Conference Summary Served, September 3, 2024).

39) On September 3, 2024, the Division served notice of a December 19, 2024 prehearing conference; it served NCM at the PO Box address by first-class mail. (Prehearing Conference Notice and Prehearing Conference Notice Served, September 3, 2024).

40) On September 3, 2024, the Division served notice of the January 23, 2025 hearing notice; it did not serve NCM. (Hearing Notice Served, September 3, 2024).

41) On September 6, 2024, NCM's copy of the December 19, 2024 prehearing conference notice and September 3, 2024 prehearing conference summary was returned to the Division as "vacant, unable to forward." (Returned Mail, September 6, 2024).

42) On November 7, 2024, Timothy Miller, MD, testified at deposition. (Videoconference Deposition of Timothy Miller, MD, November 7, 2024).

43) On December 3, 2024, the Fund filed corporate information for NCM and Alaska Management Group Inc., notice of change of officials for Alaska Management Group Inc., complaint of malpractice for Alaska Management Group Inc., Courtview search results for Arthur Silas Stevens and notice of change of officials for NCM. It served NCM by first-class mail to the PO Box address. The corporate entity details for NCM provided the 501 W. 41st Ave. address as its physical address and 10240 Betula Dr., Anchorage, AK 99507 as Arthur Steven's physical address and the notice of change of officials for NCM included the 141 Patterson Street address as Arthur Steven's mailing address. (Notice of Intent to Rely, December 3, 2024).

44) On December 19, 2024, Thomas, Sullivan, Wentworth and Claimant's attorney attended the prehearing conference; NCM did not attend. The parties advised that Claimant did not attend a previously scheduled employer medical evaluation (EME) and they were working together to reschedule it. The parties agreed that the EME report may be submitted after the January 3, 2025 evidence deadline if necessary and to change the briefing deadline to January 20, 2025, and allow for briefing addendums. The issues identified for hearing included:

Compensability  
-Employee/Employer relationship

- Injury occurred during course/scope of employment
- Employee's 3/20/2024 WCC
- TTD
- TPD
- PPI
- Medical costs
- Transportation costs
- Interest
- Attorney fee's/costs

(Prehearing Conference Summary, December 19, 2024). The Division served NCM with a copy of the December 19, 2024 prehearing conference summary by first-class mail to the PO Box address. (Prehearing Conference Summary Served, December 23, 2024).

45) On December 23, 2024, Claimant filed a Medical Summary and attached medical records; he did not serve NCM with a copy. (Medical Summary, December 3, 2024).

46) On December 30, 2024, NCM's copy of the December 19, 2024 prehearing conference summary was returned to the Division as "vacant, unable to forward." (Returned Mail, December 30, 2024).

47) On January 3, 2025, Claimant filed a Medical Summary and attached medical records; he did not serve NCM with a copy. (Medical Summary, January 3, 2025). Claimant also filed a copy of a medical bill; he did not serve NCM with a copy. (Affidavit of Service, January 3, 2025).

48) On January 10, 2025, the Fund filed the deposition transcript of Dr. Miller; it served NCM at the PO Box address by first-class mail. (Notice of Intent to Rely, January 10, 2025).

49) On January 16, 2025, Claimant filed a hearing brief and a witness list; he did not serve NCM with a copy. (Employee's Hearing Brief and Witness List, January 16, 2025).

50) On January 17, 2025, the Division served NCM with the October 17, 2023 claim, March 20, 2024 prehearing conference summary, March 20, 2024 claim, May 9, 2024 prehearing conference summary, June 13, 2024 prehearing conference summary, October 2, 2024 hearing notice, July 1, 2024 claim, August 22, 2024 stipulation, September 3, 2024 prehearing conference summary, December 19, 2024 prehearing conference summary, January 23, 2024 hearing notice, and Dr. Miller's deposition transcript among other documents, by certified mail at 907 Richardson Vista Rd. #134, Anchorage, AK 99501 and to email address arthur.stevens87@gmail.com. (Email, January 17, 2025; ICERS Event Entry, Served, Envelope and Certified Mail Receipt 9589 0710 5270 1505 3560 02).



51) On January 21, 2025, the Fund filed a Medical Summary with an EME report; it served NCM at the PO Box address. (Medical Summary, January 21, 2025).

52) On January 21, 2025, the Fund filed a hearing brief; it did not serve NCM with a copy. (Benefits Guaranty Fund Hearing Brief, January 21, 2025).

53) On January 21, 2025, Claimant filed a mileage reimbursement request; he did not serve it on NCM. (Affidavit of Service, January 21, 2025).

54) The Division has an administrative case for NCM regarding its failure to insure for workers' compensation in case number 700008746. The Special Investigations Unit Investigator settled with NCM and submitted a mutually signed stipulation on July 12, 2024. The address in the file for this case for NCM is 905 Richardson Vista Rd. #134, Anchorage, AK 99501, the phone number is (907) 885-4270 and the email address for its representative is arthur.stevens87@gmail.com. (Agency record for 700008746).

55) The last known address for NCM is the 905 Richardson Vista Rd. address. (Agency record).

56) A representative for NCM did not appear for the hearing. The chair called the last known telephone number for NCM, (907) 885-4270, at the hearing, but the number was not working and there was no option to leave a voicemail. (Record).

57) The Fund contended the service of the December 19, 2024 prehearing conference summary was a substitute for the hearing notice for this hearing because it contained the hearing date. It contended the hearing notice is a courtesy hearing notice and it did not receive a hearing notice. The Fund contended NCM was properly served with the December 19, 2024 prehearing conference notice and failed to attend. It contended the hearing notice was a minor technical issue and the notice NCM received was sufficient. The Fund contended that the PO Box address is the last known mailing address for NCM. (Record).

58) Claimant contended NCM has the statutory duty to keep its address up to date under AS 23.30.070(a). He contended NCM waived its right to notice because it failed to update its address pursuant to 8 AAC 45.060(f). Claimant contended NCM could challenge the signed stipulation later for the failure to serve it. He contended a hearing continuance would prejudice him because it would delay payment of benefits and needed medical treatment, and it would also increase attorney fees and costs for continuing litigation. Claimant contends a hearing continuance would contravene legislative intent to ensure quick, efficient, fair, and predictable delivery of benefits to

injured workers at a reasonable cost for employers. He contended Employer could raise any due process issue at a later date. (Record).

59) On January 23, 2025, Claimant filed a stipulation signed by Thomas, Wentworth and Claimant's attorney the same day. It stated:

COME NOW, the parties, by and through their respective counsel of record, and hereby stipulate as follows:

1. Native Construction Management ("Employer") has not participated in prehearing conferences, and Jose-Luis ("Employee") and the Benefits Guaranty Fund ("Fund") have made repeated good faith efforts to contact the Employer to participate in proceedings.
2. Based on the evidence in the record, the Employer paid Jose-Luis as an employee of Native Construction Management at the time of his September 22, 2023, injury.
3. The Employer has not disputed Jose-Luis's status as an employee of Native Construction Management.
4. The Employee has raised the presumption of compensability for his September 22, 2023, injury, and no party has submitted evidence to rebut the presumption regarding the mechanism of injury: falling off of a ladder.
5. The Fund does not dispute the injury to the left shoulder, but it does dispute responsibility for left-shoulder nonunion because it claims it is a chronic condition. The Fund has rebutted the presumption of compensability regarding nonunion, and a genuine dispute exists regarding Employee's left-shoulder nonunion. Employee and the Fund stipulate that the Board may refer the left-shoulder nonunion to a Second Independent Medical Evaluation ("SIME").
6. Medical treatment through the date of Hearing for Jose Luis's September 22, 2023, work-related injury has been reasonable and necessary.
7. Subject to the dispute above, additional diagnostics and medical treatment are reasonable and necessary for the Employee's left shoulder. Specifically, the Employee needs an MR arthrogram to address a symptomatic SLAP tear. This arthrogram is recommended by both treating physicians and the EIME physician.
8. The period for Temporary Total Disability ("TTD") is 9/25/2023 to 3/8/2024. The period for Temporary Partial Disability ("TPD") is 3/9/2024 to 12/17/2024. This stipulation does not preclude the Employee or the Fund from asserting claims and defenses for TTD or TPD benefits in the future based on new evidence.
9. The Employee is entitled to the current Permanent Partial Impairment ("PPI") rating of 2% Whole Person Impairment rating based on the report from Dr. Barrington. This stipulation does not preclude the Employee or the Fund from asserting claims and defenses for additional PPI benefits in the future based on new evidence.
10. Subject to the disputed issue above, Jose-Luis is entitled to medical costs from September 22, 2023, through the date of this Hearing. Medical costs should be awarded and paid per the fee schedule. The Employee and the Fund reserve the

right to raise additional claims or defenses for medical costs as new evidence becomes available.

11. Jose-Luis is entitled to medical-related transportation costs from September 22, 2023, through the date of this Hearing. Medical-related transportation costs should be awarded and paid per the Act. The Employee and the Fund reserve the right to raise additional claims or defenses for medical-related transportation costs as new evidence becomes available.

12. Subject to the dispute above, Jose-Luis is entitled to interest on claimed benefits from September 22, 2023, through the date of this Hearing. Interest should be awarded and paid per the Act. The Employee and the Fund reserve the right to raise additional claims or defenses for interest as new evidence becomes available.

13. The Fund is not liable to the Employee for penalties related to late payment of compensation or unfair or frivolous Controversion. The Fund supported its Controversion and Answer within the framework of the Act. The Controversion and Answer submitted by the Fund are not frivolous before the Fund owes benefits. Currently, these claims apply only to the Employer's actions. The Employee reserves the right to seek payment for these items against the Employer if the Employer participates in proceedings related to the Employee's Claim in the future. The Employee and the Fund reserve the right to raise additional claims or defenses for penalties related to late payment of compensation and unfair or frivolous controversions as new evidence becomes available.

14. The Fund does not oppose the Employee's Attorney's Fees and Costs for services through the Hearing date. The Fund agrees that the fees provided on Mr. Honeycutt's January 16, 2025, *Affidavit of Fees and Costs: Carson Honeycutt* and the \$455 per hour fee for Mr. Honeycutt are reasonable. The Fund agrees that the fees for Legal Assistant Jenna G. Daniels provided on Mr. Honeycutt's January 16, 2023, *Affidavit of Fees and Costs: Carson Honeycutt* and the fee rate of \$175 per hour are reasonable. Mr. Honeycutt is entitled to statutory minimum fees on future benefits not in dispute per *State of Alaska v. Wozniak*, 491 P.3d 081 (2021).

15. Any benefits order must be made against the Employer before the Fund bears responsibility. The Fund is liable only after the Employer defaults on any benefits ordered.

16. Employer and Fund agree to the following for purposes of determining compensation rates:

- a. Employee Average weekly hours worked for Employer: 28
- b. Rate of Pay: \$35.00/hr
- c. Employee's Gross Weekly Earnings: \$980
- d. Marital Status: Married
- e. Exemptions: 2
- f. Spendable Weekly Wage: \$850.01
- g. TTD Weekly Benefit: \$680.01
- h. Average Weekly Post Injury Gross Wages: \$570.23
- i. TPD Benefits: \$268.26

17. Unless otherwise stipulated above, the Employee and the Benefits Guaranty Fund reserve the right to raise additional claims or defenses as new evidence becomes available. The Employee does not waive his right to future compensation

and medical benefits to which the Employee may be entitled to per the Act. The Fund does not waive its rights to defend against any future compensation and medical benefits claims which the Employee may be entitled to per the Act.

....

### ORDER

The Alaska Workers' Compensation Board, being duly advised on the Stipulated Agreement between the parties, it is hereby ordered that the Employee's claims listed above are compensable, and the Employee is entitled to an award of compensation paid by the Employer.

In the event the Employer defaults on payment for this award of compensation for more than 30 days then the Board shall issue a supplementary order of default on this stipulation and/or the Hearing record. Upon issuance of the supplementary order of default, the Board shall direct the Fund to pay the benefits due to the Employee. The Fund shall be subrogated to all rights of the Employee and the Fund may pursue the collection of defaulted payments.

The Board orders payment of actual attorney's fees, paralegal fees, and costs, and statutory minimum attorney's fees on future benefits per Wozniak.

A representative for NCM did not sign the stipulation and it was not served upon NCM. (Stipulation, January 23, 2025).

### PRINCIPLES OF LAW

**AS 23.30.001. Legislative intent.** It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

....

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

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

**AS 23.30.070. Report of injury to division.** (a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall file with the division a report setting out

(1) the name, address, and business of the employer;

**AS 23.30.075. Employer's liability to pay. . . .**

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the division, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

**AS 23.30.082. Workers' compensation benefits guaranty fund. . . .**

(c) Subject to the provisions of this section, an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers' compensation claim. The fund may assert the same defenses as an insured employer under this chapter.

(d) If the fund pays benefits to an employee under this section, the fund shall be subrogated to all of the rights of the employee to the amount paid, and the employee shall assign all right, title, and interest in that portion of the employee's workers' compensation claim and any recovery under AS 23.30.015 to the fund. Money collected by the division on the claim or recovery shall be deposited in the fund.

**AS 23.30.110. Procedure on claims. . . .**

(b) Within 10 days after a claim is filed the board, in accordance with its regulations, shall notify the employer and any other person, other than the claimant, whom the board considers an interested party that a claim has been filed. The notice may be served personally upon the employer or other person, or sent by registered mail.

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. . . .

**AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

Bifurcation is appropriate where a party has raised a potentially dispositive issue, and the relevant law and facts were substantially independent of the other issues to be considered separately. *Nelson v. Klukwan, Inc.*, AWCB Dec. No. 09-0071 (April 13, 2019).

**8 AAC 45.050. Pleadings. . . .**

(b) For claims and petitions under this subsection,  
. . . .

(4) Within 10 days after receiving a claim that is complete in accordance with this paragraph, the board or its designee will notify the employer or other person who may be an interested party that a claim has been filed. The board will give notice by serving a copy of the claim by certified mail, return receipt requested, upon the employer or other person. The board or its designee will return to the claimant, and will not serve, an incomplete claim. A claim must

(A) state the names and addresses of all parties. . . .

(c) For answers to claims and petitions under this subsection,

(1) an answer to a claim must be filed not later than 20 days after the date of service of the claim and served upon all parties; if an answer is not timely filed, default will not be entered, but statements in the claim will be deemed admitted; however, failure of a party to deny a fact alleged in a claim does not preclude the board from requiring proof of the fact;

(2) an answer to a petition must be filed not later than 20 days after the date of service of the petition and served upon all parties;

(3) an answer must be simple in form and language and state the admitted and disputed claims briefly and clearly so that a lay person knows what proof will be required at the hearing and, when applicable, state

(A) any reason why the claim or dispute cannot be heard completely at the first hearing;

(B) whether the claim is barred under AS 23.30.022, 23.30.100, 23.30.105, 23.30.110, or otherwise barred by law or equity;

(C) whether the injury was proximately caused by the employee's willful intent to injure or kill any person;

(D) whether the injury was proximately caused by the employee being intoxicated or being under the influence of a drug or combination of drugs;

(E) whether the last injurious exposure rule applies;

(F) whether the employee has failed to minimize the disability, giving specifics of the allegation;

(G) whether the employee has been overpaid or paid at a different rate than that which is due; and

(H) whether the employee's compensation rate should be adjusted under AS 23.30.175(b);

(4) a general denial is not an answer;

(5) the evidence presented at a hearing will be limited to those matters contained in the claim, petition, and answer, except as otherwise provided in this chapter;

....

(f) For stipulations under this subsection,

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

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

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

(4) notwithstanding any stipulation to the contrary, the board may base its findings upon the facts as they appear from the evidence, may cause further evidence or testimony to be taken, or may order an investigation into the matter as prescribed by AS 23.30.

While settlements of disputed claims are favored and as a matter of judicial policy the court should maintain and enforce contracts, courts have refused to enforce settlements that are against public policy. *Seal v. Welty*, 577 P.3d 613 at 624 (Alaska 2020).

**8 AAC 45.052. Medical summary. . . .**

(d) After a claim or petition is filed, all parties must file with the board an updated medical summary form within five days after getting an additional medical report. A copy of the medical summary form, together with copies of the medical reports listed on the form, must be served upon all parties at the time the medical summary is filed with the board.

(e) No hearing will be scheduled or held until the party filing the affidavit of readiness for hearing has complied with the provisions of this section.

**8 AAC 45.060. Service.** (a) The board will serve a copy of the claim by certified mail, return receipt requested, upon each party or the party's representative of record.

(b) Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. Service by mail is complete when deposited in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address.

. . . .

(e) Upon its own motion or after receipt of an affidavit of readiness for hearing, the board will serve notice of time and place of hearing upon all parties at least 10 days before the date of the hearing unless a shorter time is agreed to by all parties or written notice is waived by the parties.

(f) Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address.



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

(b) . . . The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties. . . .

. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

(1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the claim or petition;

(2) dismiss the claim or petition without prejudice; or

(3) adjourn, postpone, or continue the hearing.

. . . .

(i) At hearing, the board will consider a legal memorandum only if it is in accordance with 8 AAC 45.114.

**8 AAC 45.074. Continuances and cancellations. . . .**

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

(1) good cause exists only when

. . . .

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing. . . .

**8 AAC 45.114. Legal Memoranda.** Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must (1) be filed and served at least five working days before the hearing, or timely filed and served in accordance with the prehearing ruling if an earlier date was established;

**8 AAC 45.120. Evidence. . . .**

(f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. . . .

**8 AAC 45.177. Claims against the workers' compensation benefits guaranty fund.** (a) Upon receipt of a report of occupational injury or illness involving an injury to an employee employed by an employer who appeared to be uninsured at the time of the injury, the division shall immediately notify the division's special investigations section and the administrator of the workers' compensation benefits guaranty fund in the division's Juneau office.

(b) The division shall send a letter to the parties advising the parties that the employer may not have had workers' compensation insurance in effect at the time of the employee's injury. In the letter, the division shall also advise the parties of the rights and remedies available to the injured worker under the Act if the employer was not insured.

(c) A workers' compensation claim shall be filed against the fund within the same time and in the same manner as a claim filed against the employer in accordance with AS 23.30.105, AS 23.30.110, and 8 AAC 45.050. The division shall serve the claim upon the fund's administrator and advise the parties that copies of all future documents filed with the division are also to be served upon the fund's administrator.

(d) The fund is subject to the same claim procedures under the Act as all other parties.

(e) The fund may not be obligated to pay the injured worker's claim unless the

(1) employee and employer stipulate to the facts of the case, including that the employee's claim is compensable, which has the effect of an order under 8 AAC 45.050(f), or the board issues a determination and award of compensation; and

(2) the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due.

(f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170.

(g) In this section, “fund” means the worker’s compensation benefits guaranty fund (AS 23.30.082(a)).

### ANALYSIS

#### **Should the Fund’s and Claimant’s stipulation be approved, or should the hearing be continued?**

The January 23, 2025 hearing was scheduled to address Claimant’s March 20, 2024 claim against NCM and the Fund. At hearing, the Fund and Claimant requested the panel approve their January 23, 2025 stipulation which contains a finding that Claimant’s claim is compensable and includes an order directing NCM to pay Claimant according to its terms. The chair informed the parties of service issues on NCM with the hearing notice and the claims by the Division, among other service issues with other documents. The Fund contended service of the December 19, 2024 prehearing conference summary on NCM by first-class mail on September 3, 2024 to the PO Box address was sufficient notice. The Fund and Claimant contended NCM has not participated in proceedings regarding the claim and has not disputed compensability despite the Fund’s and Claimant’s good faith efforts to contact it. The Act states, “The board shall give each party at least 10 days’ notice of the hearing, either personal or by certified mail.” AS 23.30.110(c). Due process and fairness require parties to have adequate hearing notice. AS 23.30.001(1), (4). NCM is a party to Claimant’s claims as he seeks orders compelling it to pay him benefits under the Act. The Division failed to serve NCM with the January 23, 2025 hearing notice by certified mail. Service of the December 19, 2024 prehearing conference summary by first-class mail is not sufficient because service by certified mail was not completed. AS 23.30.110(c).

NCM did not appear at hearing and the chair’s attempt to contact its representative at its last known phone number was unsuccessful. When a party unexpectedly fails to appear at a hearing, the hearing panel must determine the appropriate action. If it can be determined the party was served with hearing notice and is not present, the panel may in its discretion and in priority order either (1) proceed to hearing, take evidence and decide the case; (2) dismiss the case without prejudice; or (3) adjourn, postpone or continue the hearing. 8 AAC 45.070(f). However, the panel must first find the missing party was served with the hearing notice. Unfortunately, service by certified mail was not completed on NCM. It would violate NCM’s due process rights to proceed to hearing,

take evidence, and decide the case when it was not properly served with the hearing notice and did not appear. AS 23.30.001(1), (4); AS 23.30.135(a); *Rogers & Babler*. Rather than continue the hearing, the parties requested the panel to approve the January 23, 2025 stipulation.

The due process service issue is further exacerbated by the Division's failure to serve NCM with the October 20, 2023 claim by certified mail to its last known address, the Division's failure to serve NCM with Claimant's March 20, 2024 claim and the July 3, 2024 medical provider claim, the Division's failure to reject Claimant's May 15, 2024 ARH which was not served upon NCM, Claimant's failure to serve NCM with evidence, and Claimant's and the Fund's failure to serve NCM with their hearing briefs and a copy of the January 23, 2025 stipulation. AS 23.30.110(b); 8 AAC 45.050(b)(4); 8 AAC 45.052(d), (e); 8 AAC 45.060(a), (b), (e); 8 AAC 45.070(b); 8 AAC 45.114; 8 AAC 45.120(f). It would violate NCM's due process rights to proceed to hearing, take evidence, and decide the case, whether it is a hearing on the merits or on approval of a stipulation which includes an order finding the claim compensable, when it was not properly served with claims, the stipulation, the parties' briefs, and evidence. AS 23.30.001(1), (4); AS 23.30.135(a); *Rogers & Babler*.

Stipulations between the parties may be made in writing at any time before close of the record. 8 AAC 45.050(f)(2). However, a stipulation of facts must be signed by all parties if they agree that there is no dispute as to any material fact and to the immediate filing of an order based upon its filing. 8 AAC 45.070(f)(1). NCM did not sign the January 23, 2025 stipulation; therefore, it did not agree to the compensability of the claim, a material fact which was set as an issue to be decided at this hearing. Thus, NCM did not agree to the immediate filing of an order regarding compensability based upon the January 23, 2025 stipulation. Furthermore, the Fund has no independent liability to Claimant; its liability derives solely from NCM's liability. AS 23.30.075(b); AS 23.30.082(c). Regulation 8 AAC 45.177(e)(1) provides the Fund is not obligated to pay Claimant's claim unless Claimant and NCM agree to the facts of the case, including that the claim is compensable, which did not occur, or there is an award of compensation. It would violate public policy to approve the stipulation determining compensability when NCM did not appear at hearing, it did not sign or receive the stipulation, and it was not provided the opportunity to be heard and for argument or evidence to be fairly on the claim or the stipulation due to the Division's

and the parties' failure to properly serve it with numerous documents. AS 23.30.001(4); AS 23.30.082(c); 8 AAC 45.050(f)(1); 8 AAC 45.177(e); *Seal*.

Claimant contended NCM has the statutory duty to keep its address up to date under AS 23.30.070(a) and it waived its right to notice because it did not provide written notice of an address change as required in 8 AAC 45.060(f). While Claimant included two different addresses for NCM on his three claims, and a third at a prehearing conference, NCM did not provide a change of address. The last known address provided to the Division by NCM is the 905 Richardson Vista Rd. address and the Division was required to use this address for service until it received notice in writing of a change of address from NCM. 8 AAC 45.060(f). The Division failed to inform Claimant, the Fund, and Rebound Physical Therapy of NCM's last known address and the Division failed to serve any documents on NCM at its last known address as it is required to do. 8 AAC 45.060(f).

Claimant contended NCM could raise the due process issue later rather than delaying payment of benefits. They also contended it would prejudice them to delay making an order finding the claim compensable and directing NCM to pay benefits pursuant to the January 23, 2025 stipulation by delaying payment of benefits and providing medical treatment to Claimant and by increasing litigation costs. However, it is not fair to deny NCM its due process rights. AS 23.30.001(1), (4). Furthermore, it is not efficient to bifurcate the Fund's liability from NCM's liability as it derives solely from NCM's liability and the relevant law and facts for the Fund's liability are not substantially independent from NCM's liability. AS 23.30.001(1), (4); AS 23.30.082(c); *Nelson*. It would not be fair and efficient to approve the January 23, 2025 stipulation and to resolve the due process and liability issue at a later date. AS 23.30.001(1), (4); AS 23.30.135(a).

While continuances are not favored, a hearing may be continued for good cause. 8 AAC 45.070(a); 8 AAC 45.074(b). Proceeding to hearing to decide the compensability of Claimant's claim in a stipulation or in a merits hearing when the Division failed to properly serve NCM with claims and the hearing notice may constitute irreparable harm due to the resulting due process violation, because if the stipulation was approved, and the benefits paid, NCM would be obligated to pay the Fund back, before it had even been heard on the issues. 8 AAC 45.074(b)(1)(N). The only option

left is to “adjourn, postpone or continue the hearing.” 8 AAC 45.070(f). Thus, this hearing will be continued, and the stipulation will not be approved at this time. 8 AAC 45.074(b)(1)(N). A prehearing conference will be scheduled to set another hearing on Claimant’s March 20, 2024 claim and the parties’ January 23, 2025 stipulation. This will provide NCM with the opportunity to participate should it wish to do so. The Division will also re-serve NCM with the documents served on January 17, 2025, as the documents were served at the wrong address. NCM is advised that 8 AAC 45.050(c)(1) and 8 AAC 45.060(a) require it to file an answer within 23 days from service of a claim; and if an answer is not timely filed, statements in the claim will be deemed admitted but the panel at hearing may still require proof of the facts. This will also provide the Fund and Claimant with the opportunity to serve NCM with the evidence they intend to rely upon at hearing on the claim which have not been properly served upon NCM as 8 AAC 45.120(f) and 8 AAC 45.052(d) require evidence to be served upon all parties to be considered. The continuance will also provide the Fund and Claimant with the opportunity to serve NCM with their hearing briefs as 8 AAC 45.070(i) provides briefs cannot be considered unless they are in accordance with 8 AAC 45.114, which requires the briefs be served upon NCM. A copy of the January 23, 2025 stipulation will be included with the copy of this decision served on NCM.

#### CONCLUSION OF LAW

The Fund’s and Claimant’s stipulation should not be approved, and the January 23, 2025 hearing should be continued.

#### ORDER

- 1) The January 23, 2025 hearing is continued.
- 2) A prehearing conference will be scheduled to set another hearing on Claimant’s March 20, 2024 claim and the parties’ January 23, 2025 stipulation.
- 3) The Division will include a copy of the January 23, 2025 stipulation and the January 17, 2025 documents with NCM’s copy of this decision and order.

Dated in Anchorage, Alaska on February 4, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/  
Kathryn Setzer, Designated Chair

/s/  
Sara Faulkner, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Jose Luis Sanchez Lopez, employee / claimant v. Native Construction Management, Inc., respondent; Benefits Guaranty Fund, insurer / defendants; Case No. 202314764; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on February 4, 2025.

/s/  
Rochelle Comer, Workers' Compensation Technician