

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MICHAEL DWAIN HUNTER TATE,)
)
Employee,)
Claimant,)
)
v.) FINAL DECISION AND ORDER
)
) AWCB Case No. 201906254
AMERICAN DREAM CONSTRUCTION,)
LLC,) AWCB Decision No. 25-0017
)
Employer,) Filed with AWCB Anchorage, Alaska
and) on March 10, 2025
)
AMERICAN INTERSTATE INSURANCE)
COMPANY,)
)
Insurer,)
Defendants.)

Michael Dwaine Hunter Tate's (Employee) November 8, 2024, motion to enforce a October 23, 2024 hearing stipulation was heard on February 6, 2025, in Anchorage, Alaska, a date selected on December 11, 2024. The November 8, 2024, motion gave rise to this hearing. Attorney Elliot Dennis appeared and represented Employee, who appeared and testified. Attorney Krista Schwarting appeared and represented American Dream Construction, LLC, and American Interstate Insurance Company (Employer). All appeared by Zoom. The record remained open for Employee's final fee affidavit and Employer's response and closed on February 12, 2025.

ISSUES

Employee contends Employer failed to pay past temporary total disability (TTD) benefits owed pursuant to an October 20, 2023, stipulation, offset by the "stipend" benefits Employer paid. He

contends Employer stopped paying TTD benefits in December 2024, without explanation. Employee wants the terms of the October 23, 2024, hearing stipulation written into a decision and order and requests an order awarding him the specific amount owed for past TTD benefits.

Employer contends it paid TTD benefits in early November 2024 pursuant to the October 23, 2024, hearing stipulation and authorized the medical treatment agreed to in the stipulation. It requests an order finding it abided by the parties' October 23, 2024, hearing stipulation.

1) Should Employee's petition to enforce the October 23, 2024, hearing stipulation be granted?

Employee contends he is entitled to actual attorney fees and costs, and future statutory fees on continuing benefits.

Employer contends the attorney fees and costs Employee seeks are too high. It did not provide any specific objections to Employee's itemized attorney fees and costs.

2) Is Employee entitled to attorney fees and costs?

FINDINGS OF FACT

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

- 1) On May 8, 2019, Employee was injured while working for Employer when he strained his groin lifting a saw. (First Report of Occupational Injury or Illness, May 14, 2019).
- 2) On October 28, 2020, Employee's attorney entered his appearance on behalf of Employee. (Entry of Appearance, October 28, 2020).
- 3) On November 3, 2020, Employee sought TTD benefits, medical and transportation costs, a penalty for late-paid compensation, interest, reemployment benefits and attorney fees and costs. He described the nature of the injury as, "EE was lifting concrete saw, walking backwards up a step into a [C]onnex container. While stepping he felt a pain jolt through lower body and persisted in his left testicle. He has been under treatment since. He has a core muscle injury. He has been approved for implantation of a [dorsal] root ganglion stimulator but wants a 2nd opinion." (Claim for Workers' Compensation Benefits, November 3, 2020).

- 4) On December 1, 2020, Employee requested a hearing on his November 3, 2020, claim. (Affidavit of Readiness for Hearing (ARH), December 1, 2020).
- 5) On December 11, 2020, Employer opposed Employee's December 1, 2020, ARH, contending the second opinion had not been scheduled, it was entitled to depose Employee, and an employer's medical evaluation (EME) was scheduled for January 2021. (Affidavit of Krista M. Schwarting in Opposition to Affidavit of Readiness for Hearing, December 11, 2020).
- 6) On December 30, 2020, a hearing was scheduled for February 3, 2021, on Employee's November 3, 2020, claim. (Prehearing Conference Summary, December 30, 2020; Hearing Notice Served, December 30, 2020).
- 7) On January 12, 2021, Michael Katz, MD, a physical medicine and rehabilitation specialist, examined Employer for an EME and opined Employee's primary problem is a nerve entrapment, which is a relatively common complication of an inguinal hernia surgery. He also believed Employee may have a non-work-related right hip labral tear. Dr. Katz stated Employee's "pain all over" complaints are likely an extension of pain complaints associated with anxiety. He opined the complication of the hernia surgery met the substantial cause standard for work-relatedness and the work injury is still the substantial cause of his ongoing groin problems. Dr. Katz did not feel work was "a 'substantial' factor in the cause" of Employee's upper/mid/lower back complaints; he said Employee was highly anxious and "anxiety is a clear risk factor for spinal pain." He recommended microdissection of the nerves to find the entrapment and referred Employee to Dr. Susan MacKinnon, a plastic surgeon at Barnes Hospital in St. Louis, for the procedure. Dr. Katz stated no further injections and blocks are needed other than for diagnostic purposes and he did not believe the SCS is the next treatment option and "a TENS [transcutaneous electrical nerve stimulation] would not do much" but pain medications may be needed. There was also no indication for chiropractic, massage, acupuncture, or passive therapies and no present need for physical or occupational therapy. Dr. Katz said Employee may require a computed tomography or magnetic resonance imaging (MRI) of the scrotal area and said it is always useful to address psychiatric overlay (i.e. the patient's anxiety and depressive symptoms) while the organic issue is being treated. Employee's presentation had objective findings in the groin and in his anxiety. Dr. Katz limited Employee to only sedentary work due to the work injury, said Employee had not reached medical stability, and opined it is unlikely that chlamydia is a contributing condition. (Katz EME report, January 12, 2021).

8) On January 19, 2021, Employer controverted all benefits related to the spine and the following specific medical benefits: chiropractic, massage, acupuncture, passive therapies, physical and occupational therapy, TENS unit, and blocks and injections other than for diagnostic purposes based upon Dr. Katz's EME report. (Controversion Notice, January 19, 2021).

9) On January 29, 2021, the Board approved the parties' stipulation to vacate the February 3, 2021, hearing and to the following:

- 1) The employer has agreed to preauthorize Vincera Institute to perform a detailed diagnostic evaluation of employee, Michael Tate, related to his pain complaints associated with his May 8, 2019, work injury at Dutch Harbor, Alaska.
- 2) The employer has agreed to make necessary travel arrangements so employee may attend an appointment at Vincera Institute.
- 3) Employee has agreed to withdraw his subpoena compelling adjuster Alicia Thruman to appear and give testimony.
- 4) The parties agree that the issues scheduled for hearing on February 3, 2021, are now moot and though employer has filed its hearing brief and employee is ready to file his hearing brief, it is not necessary for him to do so, and,
- 5) The employee's counsel reserves the right to seek interim attorney's fees for the cost of preparing for February 3, 2021 hearing, if an agreement between the parties does not resolve that issue. (Stipulation Regarding February 2, 2021, Hearing, January 29, 2021).

10) On February 15, 2021, William Meyers, MD, at Vincera Core Physicians examined Employee.

He was "pretty convinced" Employee has a combined issue of hip and core muscle problems:

. . . the hip is probably the underlying cause considering the location of the inguinal crease as well as the pubic bone left lower abdomen and abductor region. With time and compensation, the right side has gotten involved. The mesh is probably not the principal cause of the pain but may be aggravating this to some degree. I want to put him through differential injections of Marcaine which would include both hips, both pubic plates, and both psoas muscle. I suspect the differential injections will help determine the pattern of pain relief and will help provide additional evidence. I would like him to come back and see Dr. Struan Coleman. I do want to get some hip X-rays on him while he is here. I gave most likely an excellent candidate for bilateral hip arthroscopies with bilateral pubic plate repairs, bilateral pelvic floor repairs, with the left side being redo, with mobilization of mesh, possible partial removal, bilateral reduction, bilateral rectus abdominis and adductor compartment decompressions, and steroid injections. (Meyers chart note, February 15, 2021).

11) On March 25, 2021, the Board approved the parties' stipulation to pay Employee \$15,000 in interim attorney fees. (Stipulation for Approval of Employee's Attorney Fees, March 25, 2021).

12) On April 22, 2021, Employer controverted “treatment recommended by Vincera other than for hernia condition” based upon Dr. Katz’s EME report. (Controversion Notice, April 22, 2021).

13) On July 1, 2021, Employee sought TTD and permanent partial impairment (PPI) benefits, medical and transportation costs, a finding of unfair or frivolous controversion, interest, attorney fees and costs, and reemployment benefits. He described the nature of the injury as, “EE was lifting concrete saw, walking backwards up a step into a [C]onnex container. While stepping he felt a pain jolt through lower body. He has been diagnosed with core muscle, hip and lumbar injuries and entrapped nerve(s). He has been unable to obtain treatment he is entitled to under the Act and ER has failed to pre-authorize treatment for the entrapped nerve.” (Amended Claim for Workers’ Compensation Benefits, July 1, 2021).

14) On July 22, 2021, Employer answered Employee’s July 1, 2021, claim, contending TTD benefits were being paid; Employer had not received a PPI rating; it was paying for medical treatment, except treatment specifically controverted; and Employer’s two controversions were based upon evidence in the record. It denied any failure to preauthorize treatment and contended no further attorney fees and costs were due because it previously paid fees pursuant to a stipulation and it was paying time loss and medical benefits. (Answer, July 22, 2021).

15) On August 10, 2021, the Reemployment Benefits Administrator (RBA) designee found Employee ineligible for reemployment benefits based upon Dr. Katz’s prediction that he would be able to return to the position of Nurse Assistant with further medical treatment when his attending physician, Jacqueline Austin, FNP, declined to provide predictions. (Letter, August 10, 2021).

16) On August 20, 2021, Employee appealed the RBA designee’s decision under AS 23.30.041 contending, “. . . the RBA found Mr. Tate unqualified for reemployment benefits based review of the RBA’s decision on unreliable or inaccurate information.” (Petition, August 20, 2021).

17) On April 6, 2022, Elysia Spencer, MD, performed a microscopic subinguinal left spermatic cord denervation. (Spencer Operative Report, April 6, 2022).

18) On April 15, 2022, Employee reported increasing left testicular pain and swelling. (Mariam Miller, MD, report, April 15, 2022).

19) On May 15, 2022, Employee followed up with Dr. Spencer and reported his suture pain improved since he was last seen, and his testicular and inguinal pain was “the same as preoperatively or somewhat improved.” She recommended Employee be evaluated by Alaska Native Medical Center Chronic Pain Physicians as she is not an expert in assessing or treating

abdominal wall and pelvic floor musculoskeletal pain and cannot recommend, he have treatment at the abdominal wall and pelvic floor musculoskeletal multidisciplinary clinic which previously evaluated him. Dr. Spencer did not think his groin and testicular pain was due to nerve entrapment within the spermatic cord because he did not experience resolution of his pain with the spermatic cord innervation. (Spencer report, May 15, 2022).

20) On June 22, 2022, Karl Tieva, MD, answered questions from Employee's attorney and opined the work injury is the substantial cause of Employee's spinal pain due to compensation for the left groin pain arising from the work injury. He said continued physical therapy and rehabilitation, evaluation and management by specialists, and additional interventional procedures, potentially surgery, are medical treatments which may be reasonable and necessary for treatment of the work injury and spinal pain. Dr. Tieva believed Employee needed additional medical treatment for his work injury and that it would be reasonable and appropriate for Employee to return to the Vincera Institute for additional evaluation and treatment. He said additional evaluation and management at a pain clinic and by specialists in Alaska should be considered before sending Employee out-of-state to Vincera Institute. Dr. Tieva opined Employee had not reached medical stability. (Tieva responses, June 22, 2022).

21) On July 19, 2022, Dr. Tieva referred Employee to Vincera Institute for further evaluation and management of left lower quadrant, left groin, and left testicular pain and said he may benefit from treatment with a core specialist. (Tieva letter, July 19, 2022).

22) On September 9, 2022, Employer answered Employee's August 20, 2021 petition, contending the RBA's decision was based on substantial evidence and did not constitute an abuse of discretion. (Answer, September 9, 2021).

23) On September 2, 2022, Loretta Lee, MD, an internal medicine specialist, examined Employee for an EME and diagnosed (1) left inguinal hernia repair with chronic groin pain, (2) left gluteus minimus muscle strain, (3) lumbar degenerative disc disease and facet arthropathy at L5-S1, (4) thoracic disc protrusion at T7-8 with upper back and shoulder pains, (5) congenital nonunion anomaly at vertebral body T2, (6) SLAP tear in right shoulder, (7) depression and anxiety, (8) resolved chlamydia infection, and (9) dilated right heart chambers and IVC. She opined the work injury was the substantial cause of the left inguinal hernia and chronic groin pain but the work injury was not the substantial cause of any of the other conditions. The September 17, 2021, pelvis MRI showed only a left gluteus minimus muscle strain, no pelvic muscle injury, and the SLAP

tear was preexisting. Dr. Lee stated Employee already had surgery to remove the entrapped nerve recommended by Dr. Katz on April 6, 2022, and the pain did not improve; the physician that performed the surgery recommended against any further surgical procedures. Dr. Lee did not believe further urologic surgeries would help his pain. She opined a TENS unit or other muscle stimulator device, further physical therapy, chiropractic care, massage or acupuncture are not medically reasonable and necessary but fall within the realm of medically accepted treatment plans for the work-related condition. Dr. Lee said Employee had not reached medical stability as his pain doctor recommended an electromyography and nerve conduction study to look for neurogenic claudication versus thoracic outlet syndrome but it would not be related to the work injury. She did not recommend further injections or blocks because he has had multiple injections and nerve blocks and nothing helped but stated they would be within the realm of medically accepted treatment options. Dr. Lee stated Employee will likely need to be on some pain medications chronically and treatment by a pain management specialist would be useful to better control his left lower abdominal and groin pain. If nothing else was suggested by the pain doctor that Employee has not already exhausted or that he is “agreeable to entertaining,” he should be considered medically stable. (Lee EME report, September 2, 2022).

24) On September 12, 2022, Employee requested a hearing on his November 3, 2020, claim. (ARH, September 12, 2022).

25) On September 21, 2022, Employer opposed Employee’s September 12, 2022, ARH contending clarification on the issues to be set for hearing was needed and because it intended to depose one or both EME physician prior to hearing. (Affidavit of Krista M. Schwarting in Opposition to Affidavit of Readiness for Hearing, September 21, 2022).

26) On September 22, 2022, Employer controverted all benefits for conditions other than the inguinal hernia, treatment for femoral acetabular impingement, injections and blocks, passive treatment including chiropractic treatment and massage therapy, and further urologic surgery based upon Dr. Lee’s EME report. (Controversion Notice, September 22, 2022).

27) On October 12, 2022, a hearing was scheduled for December 14, 2022, on Employee’s November 3, 2020 claim. (Prehearing Conference Summary, October 12, 2022; Hearing Notice Served, October 13, 2022).

28) On January 9, 2023, Luke Liu, MD, examined Employee and recommended a left ilioinguinal and iliohypogastric nerve block for diagnostic and therapeutic purposes for left testicle pain. If

Employee did not respond to this nerve block, Dr. Liu recommended a pudendal nerve block. (Liu report, January 9, 2023).

29) On January 17, 2023, Dr. Liu performed a left ilioinguinal and iliohypogastric nerve block. (Liu report, January 17, 2023).

30) On February 14, 2023, Employee reported 15 to 20 percent symptom relief after the left ilioinguinal and iliohypogastric nerve block and a decrease in left testicular swelling. (Liu report, February 14, 2023).

31) On February 27, 2023, Dr. Liu performed a left pudendal nerve block. (Liu report, February 27, 2023).

32) On March 15, 2023, Employee reported 70 percent relief of left-sided groin and testicular pain for about a week after the left pudendal nerve block and the pain gradually returned to baseline. It helped 100 percent with incontinence. Hailey Lankford, PA-C, recommended repeating the left pudendal nerve block for potential extended therapeutic effect and said Employee could also consider a superior hypogastric nerve block and a rectus abdominus sheath nerve block. (Lankford report, March 15, 2023).

33) On October 20, 2023, Dr. Lee reexamined Employee for an EME. She diagnosed (1) left inguinal hernia repair with entrapment syndrome, (2) left testicle pain, (3) left hydrocele, (4) left gluteus minimus muscle strain, (5) lumbar degenerative disc disease and facet arthropathy at L5-S1, (6) thoracic disc protrusion at T7-8, (7) labral tear in right shoulder, (8) depression and anxiety, and (9) resolved chlamydia infection. Dr. Lee opined the work injury is the substantial cause of his left groin and testicle pain and left hydrocele. The labral tear, depression and anxiety, and chlamydia infection existed prior to the work injury. She said Employee was medically stable because he had not had any appreciable change in his status in the past 45 days and rated Employee with a two percent PPI. Dr. Lee stated further injections and blocks were not indicated because he already had some and had only a very temporary response to them and she recommended he undergo no further invasive surgical procedures as he had a spinal cord stimulator [SCS] placed, and it did not help. She said pain management treatment was reasonable for him to continue and medications could be prescribed for his work injury but physical therapy was not reasonably necessary because he did not see any significant improvement in symptoms with past physical therapy. Dr. Lee stated Employee would benefit from vocational rehabilitation as it was unlikely that he will be able to return to his prior employment as a laborer; she recommended he be

restricted from lifting more than 20 pounds and from being on his feet for more than a few hours a day and that he would need breaks due to the work injury. She said the restrictions were permanent because he did not obtain significant pain relief after a neurectomy. Dr. Lee opined that the treatment recommended by Vincera Institute was not medically reasonable or necessary because it is considered experimental. (Lee EME report, October 20, 2023).

34) On November 30, 2022, the Board approved the parties' stipulation to continue the December 14, 2022, hearing until additional medical evaluations could be performed based upon Dr. Lee's deposition testimony as the additional medical evaluations would help the parties either resolve their dispute or would clarify the issues to be decided by the Board. (Stipulation to Continue Hearing, November 30, 2022).

35) On November 2, 2023, Edward Baumgartner, Jr., MD, recommended Employee try a left pudendal nerve block and consider traditional SCS trial and future ablation. (Baumgartner chart note, November 2, 2023).

36) On November 17, 2023, Dr. Baumgartner performed a left pudendal nerve block. Employee was discharged with full relief of his left-sided pudendal pain. (Baumgartner chart note, November 17, 2023).

37) On November 17, 2023, Employer controverted all TTD benefits after October 20, 2023, PPI benefits beyond two percent, and specific medical treatments, including surgical treatment, further physical therapy, and further diagnostic studies and testing based upon Dr. Lee's October 20, 2023, EME report. (November 17, 2023).

38) On November 21, 2023, Employee requested a hearing on his August 20, 2021, petition. (ARH, November 21, 2023).

39) On November 21, 2023, Employee requested a second independent medical evaluation (SIME). (Petition, November 21, 2023).

40) On December 1, 2023, Employer opposed Employee's November 21, 2023, ARH contending discovery was incomplete because Employee had requested cross-examination of Dr. Lee and an SIME. (Affidavit of Krista M. Schwarting in Opposition to Affidavit of Readiness for Hearing, December 1, 2023).

41) On December 4, 2023, Dr. Lee issued an addendum EME report and opined there was no role for placement of an SCS for his work-related left-sided groin and testicle pain after hernia repair surgery because there is no specific evidence for its use in treating nerve entrapment syndrome

after hernia repair; and it was tried and failed. She stated pain medication and anti-inflammatory medications could help control the pain associated with nerve entrapment syndrome after hernia repair surgery and noted those commonly used include tricyclic antidepressants, gabapentinoids, serotonin norepinephrine reuptake inhibitors, tramadol, non-steroidal anti-inflammatory medications, and the cox-2 inhibitor celecoxib. Dr. Lee said there was no evidence to support chiropractic therapy to treat nerve entrapment syndrome after hernia repair but massage therapy may help temporarily with symptoms by relieving some of the pressure around the pudendal nerve. (Lee addendum EME report, December 4, 2023).

42) On December 8, 2023, Employer controverted placement of an SCS and chiropractic treatment based upon Dr. Lee's December 4, 2023, addendum EME report. (Controversion Notice, December 8, 2023).

43) On December 11, 2023, Employer answered Employee's November 21, 2023, petition for an SIME contending he failed to provide an SIME form and documentation of any medical dispute. (Answer, December 11, 2023).

44) On December 28, 2023, a hearing was scheduled on Employee's November 21, 2023, petition for an SIME and August 20, 2021 petition appealing the RBA designee's decision on January 25, 2024. (Prehearing Conference Summary, December 28, 2023; Hearing Notice Served, December 28, 2023).

45) On January 4, 2024, Employer amended its answer to Employee's SIME November 21, 2023, petition contending he failed to lay out all potential disputes as Employer contended there were disputes regarding Employee's ability to return to work and the need for reemployment benefits. It also contended Employee failed to provide documentation of disputes with the recent EME reports and to provide medical records reflecting a dispute regarding orthopedic conditions. (Amended Answer, January 4, 2024).

46) On January 23, 2024, the Board approved the parties' stipulation to continue the January 25, 2024, hearing on Employee's November 21, 2023, SIME petition and August 20, 2021, petition appealing the RBA's decision. (Stipulation for Continuance of Hearing, January 23, 2024).

47) On February 20, 2024, the Board approved the parties' stipulation to remand the case to the RBA's office and to assign an Alaskan rehabilitation specialist to Employee's case rather than a Missouri specialist who would be unfamiliar with Alaska law. (Stipulation, February 20, 2024).

48) On April 23, 2024, Paul Kaloostian, MD, a neurosurgeon, examined Employee for an SIME, and diagnosed (1) thoracic and lumbar myofascial strain related to the work injury and (2) inguinal hernia with associated post-inguinal hernia repair, neuropathy to the groin and left testicle related to the work injury. He opined the work injury is the substantial cause of Employee's need for groin pain medical treatment and disability and there was no need for further treatment for any midback, low back, or neck pain for the work injury as that had healed. Dr. Kaloostian recommended a micro-decompression of nerves involved in the inguinal hernia surgery because there is likely entrapment, which is a common complication. He urged the surgery be performed at a tertiary care facility by a general surgeon or neurological surgeon specializing in entrapped nerves, such as UCLA, UC San Francisco, or John Hopkins. Dr. Kaloostian stated Employee continued to be disabled by groin pain, was not medically stable because more treatment was necessary, and he predicted Employee would reach medical stability three to six months after the micro-decompression of the left inguinal region. He stated Employee could do sedentary work with no heavy lifting, bending, or twisting. (Kaloostian SIME report, April 23, 2024).

49) On April 17, 2024, Employee requested a hearing on his July 1, 2021, claim. (ARH, April 17, 2024).

50) On May 24, 2024, Employer opposed Employee's April 17, 2024, ARH contending Dr. Kaloostian's deposition needed to be completed. (Affidavit of Krista M. Schwarting in Opposition to Affidavit of Readiness for Hearing, May 24, 2024).

51) On September 3, 2024, a hearing was scheduled for October 23, 2024, on Employee's July 21, 2021, claim on TTD benefits, medical and transportation costs and attorney fees and costs. (Prehearing Conference Summary, September 3, 2024; Hearing Notice Served, September 3, 2024).

52) On October 16, 2024, Employee's attorney filed a fee and costs affidavit totaling \$153,955.96. He sought \$139,546.37 in attorney fees for 300.1 hours at \$465 an hour and \$14,409.50 in costs, including 53.2 hours of paralegal fees at \$200 per hour. He also addressed the *Rusch* factors. (Affidavit of Counsel for Award of Attorney Fees, Paralegal Fees, and Costs, February 16, 2024; Affidavit for Award of Paralegal Fees for Work Performed by Shona J. Embs, October 17, 2024).

53) On October 22, 2024, Employer's attorney emailed Employee's attorney:

I tried to call you a few minutes ago, but your office phone went to voicemail. I have confirmed the following with my client:

1. Benefits post 10/20/23 will be converted to TTD, and the difference between stipend and TTD will be paid. There may be a short period before stipend was initiated, and that will be paid as TTD;
2. The past two checks got off track, but will be entered with a penalty this week;
3. My client will authorize the surgery recommended by Dr. Kaloostian, with the corollary that progress needs to be made on having Mr. Tate seen ASAP--the adjuster will provide the necessary authorization and
4. TTD will be paid going forward, with the hope that Mr. Tate will recover along the timeline discussed by Dr. Kaloostian. We will of course reserve the right to obtain an IME as necessary.

Please instruct your client to make an appointment at a tertiary medical center--if he starts this process immediately, hopefully he can be seen within the next month.

We need to review the attorney fees to ensure that they are related to the issues set for hearing and will discuss that with you accordingly. If there are updated fees, please let us know as soon as possible. (Email, October 22, 2024).

54) On October 23, 2024, Employee's attorney replied to the October 22, 2024, email:

I have not been able to talk with my client, but I have drafted a stipulation which embodies the terms of the offered agreement in your email yesterday. I am agreeable to filing this stipulation with the board. Please review and if acceptable, sign it and return it to me and I will file it with the board. We can appear at 9:00 to advise of the agreement. If this stipulation is not acceptable to you, let me know ASAP, as I am still preparing for the hearing.

The draft stipulation stated:

A hearing is scheduled for October 23, 2024, to address the issues of employee's entitlement to medical treatment including treatment at a tertiary medical center, past and future temporary total disability benefits, interest and attorney fees. To resolve the issues pending before this board the parties stipulate as follows:

1. Employee is not medically stable and has not been medically stable since his initial work injury on May 8, 2019.
2. Employee is entitled further medical treatment consistent with the opinions of Dr. Paul Kaloostian, the SIME physician in this case, including treatment of his groin pain, hydrocele and urinary incontinence issues at an out-of-state tertiary medical Center.
3. Employee will be paid temporary total disability benefits from October 20, 2023, less amounts paid to him as .041 stipend benefits. Employee will be paid temporary total disability benefits going forward until he is medically stable.
4. Interest will be paid on the difference between the amount paid to employee as .041 stipend benefits and past temporary total disability benefits.
5. Employer will provide employee's counsel with written documentation on how it has computed past TTD and interest payments.

6. Employee is entitled to attorney fees pursuant to AS 23.30.145 (a) and (b). The parties agree counsel for employee shall be paid statutory fees under AS 23.30.145 (a) on all benefits paid from October 23, 2024, forward and actual attorney fees from the beginning of this case to October 23, 2024, with credit for \$15,000 paid in fees pursuant to the March 25, 2021 stipulation approved by this board.

7. The parties request the board to temporarily suspend its work on this case, except for approval of this stipulation. Within 10 days of filing this stipulation, the parties will file a stipulation with the board setting forth the agreed to amount of past actual attorney fees owed to employee's counsel from the beginning of this case until October 23, 2024. Or if they cannot reach an agreement, they will file a joint notice that they cannot agree on the amount of past legal fees owed and a request that the board decide the issue of past legal fees based on the record.

8. Two past due .041 stipend payments, plus late payment penalties, will be paid to employee on or before October 25, 2024. (Email and Stipulation to Resolve Issues [sic] Scheduled for Hearing, October 23, 2024).

55) On October 23, 2024, the parties stated terms on the record. Employer agreed to pay Employee TTD benefits after October 20, 2023; the TTD benefits will be offset by paid stipend benefits. If there was a short gap period prior to "stipend" benefits, Employer agreed to pay TTD benefits for that period. Employer agreed that Employee was not medically stable and Employer will authorize the surgery recommended by Dr. Kaloostian. Employer agreed there were two outstanding checks for overdue past stipend benefits that will be entered with penalty that week and should be mailed by Monday October 28, 2024, "but it might even be this week." The parties had not reached an agreement on attorney fees and costs but agreed that if they were not able to resolve the attorney fees and costs, they would request the Board decide attorney fees and costs. (Record).

56) On October 24, 2024, Employee's attorney filed a supplemental fee and costs affidavit totaling \$161,541.96, for an additional \$6,696 in fees for 14.4 hours at \$465 per hour and \$800 in costs for paralegal fees for four hours at \$200 per hour. (Supplemental Affidavit of Counsel for Award of Attorney Fees, Paralegal Fees, and Costs, October 24, 2024; Supplemental Affidavit for Award of Paralegal Fees Performed by Shona Embs, October 24, 2024).

57) On November 5, 2024, Employee's attorney emailed a draft stipulation to Employer's attorney and said, "Please edit as needed and return." (Email, November 5, 2024).

58) On November 7, 2024, Employer's attorney emailed Employer's attorney:

Here is the status on the checks. I will review the stipulation and hopefully we can finalize everything but the attorney fees tomorrow.

1. Late checks for the period of 09/17/24-10/14/24 (4 weeks). Check issued on 11/05/24 in the amount of \$2469.30.
2. TTD check for the period of 10/15/24-10/28/24 (2 wks) was issued on 11/04/24 in the amount of \$1411.06.
3. TTD check for the period of 10/29/24-11/11/24 will go out on 11/11/24. (Email, November 7, 2024).

59) On November 8, 2024, Employee filed an emergency motion to enforce the October 23, 2024, hearing stipulation. He contended Employer failed to make timely payment of past due benefits, including penalties, failed to meaningfully respond to Employee's stipulation to document the parties' agreement, and failed to respond to Employer's request for attorney fees and costs. Employee requested a hearing be scheduled. (Employee's Emergency Motion to Enforce Stipulated Agreement and Obtain Ruling on Legal Fees, November 8, 2024).

60) On November 22, 2024, Employer answered Employee's November 8, 2024, emergency motion. It stated a check was issued on November 5, 2024 in the amount of \$2,469.30 for the period September 17 through October 15, 2024, a check was issued on November 4, 2024 for TTD benefits from October 15 through October 28, 2024 for \$1,411.06, a check was issued on November 11, 2024 for TTD benefits from October 29 through November 11, 2024, and a penalty check was issued on November 8, 2024. Employer stated it is continuing to review past benefits and convert them to TTD benefits as needed. It contended the parties had not reached an agreement on attorney fees and costs and Employer did not object to a hearing on attorney fees and costs. (Answer, November 22, 2024).

61) On December 11, 2024, the Board designee scheduled a hearing on February 6, 2024, on Employee's "[November 8, 2024] petition to enforce the stipulated agreement and obtaining a ruling on fees" and set the issues as:

- The employer has failed to make timely payment of past due benefits, including penalties as it agreed during the 10/23/24 hearing.
- Employer has failed to meaningfully respond to employee's stipulation to document parties' agreement employer has failed to respond.
- Employee's request for attorney's fees and costs. (Prehearing Conference Summary, December 11, 2024).

62) On January 30, 2025, Employee filed a hearing brief contending the terms from the October 23, 2024, stipulation should be written into a decision and order. He contended Employer failed to pay the past TTD benefits owed from October 20, 2023, offset by the stipend benefits Employer

paid. Employee calculated TTD benefits owed as \$12,043.85, with a reduction for the late paid stipend amount of \$2,469.30 and stipend benefits Employer already paid totaling \$19,754.44 from \$34,267.59 for 48.57 weeks (48 weeks + 4 days) at a weekly TTD benefit rate of \$617.32. He contended Employer owes a penalty and interest on the \$12,043.85. Employee also contended he is entitled to continuing TTD benefits until he is medically stable based upon the parties' stipulation. He requested orders awarding the specific amount he is owed for back TTD benefits and for the overdue TTD benefits, and attorney fees and costs. Employee contended he is entitled to actual attorney fees and costs totaling \$175,681.95, with credit for the \$15,000 Employer paid in the past, and future statutory fees on ongoing benefits. Attached to Employee's hearing brief as an exhibit was a history of payments paid by Employer as of December 29, 2024, provided to Employee by Employer. (Hearing Brief on Employee's Emergency Motion to Enforce Stipulated Agreement and Obtain Ruling on Legal Fees, January 30, 2025; Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

63) On January 30, 2025, Employee's attorney filed a fee affidavit for attorney fees and costs totaling \$175,681.96, including an additional \$13,950 in fees for 300.1 hours at \$465 per hour and \$280 in costs for 1.4 additional paralegal hours at \$200 per hour. (Second Supplemental Affidavit of Counsel for Award of Attorney Fees, Paralegal Fees, and Costs, January 30, 2025; Supplemental Affidavit for Award of Paralegal Fees Performed by Shona Embs, January 30, 2025).

64) On January 30, 2025, Employer filed a hearing brief contending the parties did not agree on the amount of attorney fees at the October 23, 2024, hearing. It contended that it entered payments of TTD benefits beginning in early November 2024 and authorized an appointment with the physician Employee selected, and he attended it. (Employer's Hearing Brief, January 30, 2025).

65) At hearing, Employee testified he has not received all past TTD benefits Employer agreed to pay him at the October 23, 2024, hearing. Employer stopped paying benefits in December 2024. Employee said he would not have been able to navigate the workers' compensation system without his attorney. (Record).

66) Employee contended Employer had not paid all past TTD benefits owed, which should be offset by the stipend benefits already paid, and it stopped paying TTD benefits in December 2024. He had seen the specialist located in Los Angeles for an initial appointment and was waiting to receive the medical records. Employee contended it is important to have the parties' oral agreement in writing, and contended he should be awarded actual, full attorney fees and costs

under AS 23.30.145(b), and continuing attorney fees on benefits paid from October 24, 2024, and continuing. (Record).

67) Employer contended it paid benefits retroactive to November 2024. It contended it had informed Employee it was unwilling to agree to the full attorney fees in the attorney fee affidavits but was willing to sign a stipulation without the attorney fees. Employer contended the attorney fees and costs Employee seeks is too high. (Record).

68) On February 6, 2025, Dennis filed a supplemental fee affidavit for paralegal fees for 0.4 hours, at an hourly rate of \$200, totaling \$80. (Third Supplemental Affidavit for Award of Paralegal Fees Performed by Shona Embs, February 6, 2025). He also filed a supplemental fee affidavit for attorney fees for an additional 4.3 hours, at \$465 an hour, totaling \$1,999.50. The new total amount for fees and costs is \$177,761.46, for a total attorney fee of \$162,191.87 for 348.8 hours at \$465 per hour and \$15,569.59 in total costs, including 59 hours of paralegal work at an hourly rate of \$200, and \$3,769.59 in expenses. (Third Supplemental Affidavit of Counsel for Award of Attorney Fees, Paralegal Fees and Costs, February 6, 2025).

69) Employer has paid Employee \$139,370.47 in TTD benefits, \$22,223.74 in “stipend” benefits, and \$4,425 in PPI benefits as of December 29, 2024, and paid \$9,296.50 for the reemployment evaluation. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

70) Employer paid TTD benefits through November 30, 2023; the weekly TTD benefit rate is \$705.53. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

71) Employer paid “stipend” benefits from February 5 through September 16, 2024, totaling \$19,754.44; the biweekly “stipend” benefit rate is \$1,234.65. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024)

72) Employer issued a check for the two late “stipend” payments totaling \$2,469.30 on November 5, 2024, for “stipend” benefits from September 17, 2024 through October 14, 2024. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

73) Employer began paying TTD benefits from October 15, 2024; the first TTD benefit check for this period was issued on November 4, 2024. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

74) Employer stopped paying TTD benefits on December 23, 2024; the TTD benefit check for the last payment was issued December 23, 2024. (Benefits Payments on Behalf of Michael Dwaine Hunter Tate; December 29, 2024).

75) The next three checks which should have been issued for TTD benefits prior to the February 6, 2024, hearing date should have been issued on January 6, 20, and February 3, 2025. (Experience, judgment, and observation).

76) There are 45 weeks and four days from December 1, 2023, through October 14, 2024. (Observation).

77) There are six weeks and three days from December 24, 2024, through February 6, 2025. (Observation).

78) The parties agreed that penalties and interest on unpaid TTD benefits owed pursuant to the October 23, 2024, stipulation were not included as issues for the February 6, 2025, hearing in the December 11, 2024 prehearing conference summary and cannot be addressed at this hearing. (Record).

79) Employer did not file a response to Employee's supplemental affidavit of attorney fees. (Agency record).

PRINCIPLES OF LAW

The Board may base its decisions not only on direct testimony and other tangible evidence, but also on its "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 23.30.130. Modification of awards. (a) Upon its own initiative, or 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 . . . whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case [T]he board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

.....

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. . . .

In *Underwater Const. v. Shirley*, 884 P.2d 156 (Alaska 1994), the Alaska Supreme Court observed:

Alaska Statutes . . . outline the manner by which compensation payments are to be made. Compensation is “payable without an award, except where liability to pay compensation is controverted by the employer.” AS 23.30.155(a). If payment of compensation is controverted, the employee is entitled to a hearing and a compensation order “rejecting the claim or making the award.” AS 23.30.110(e). If an award is made, then compensation is “payable under the terms of an award.” AS 23.30.155(f). . . . [A]n employer seeking to modify or terminate payments made under a Board order must first seek the approval of the Board. AS 23.30.130(a).

When an employee sought and was entitled to an express award of permanent and total disability benefits, it was error to not make the award because such award would require the employer to first seek modification and obtain Board approval before terminating benefits. *Id.* at 161.

In *Cavitt v. D&D Services*, AWCAC Dec. No. 248 (May 4, 2018), the Commission applied *Shirley* and held, in awarding attorney’s fees, the Board undervalued its order “confirming [the employee’s] entitlement to TTD” benefits because the employer would have to seek modification of that order before it terminated benefits.

Summers v. Korobkin Construction, 814 P.2d 1369, 1372 (Alaska 1991) stated, “Moreover, we believe that an injured worker who has been receiving medical treatment should have the right to a prospective determination of compensability.” A Board order determining compensability will help an injured worker decide whether to pursue medical treatment or procedures.

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

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

The Board must consider the factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney's fee. *Rusch v. Southeast Alaska Regional Health Consortium*, 450 P.3d 784 (Alaska 2019). In *Cortay v. Silver Bay Logging*, 787 P.2d 103 (Alaska 1990) the Court stated attorney fees in workers' compensation cases should be fully compensatory and reasonable so injured workers can find and retain competent counsel. *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971 (Alaska 1986), held attorney fees should be reasonable and fully compensatory, considering the contingent nature of representing injured workers, to ensure adequate representation.

State of Alaska v. Wozniak, 491 P.3d 1081 (Alaska 2021) held a lump-sum award of fees incurred to the date of hearing and a separate award of ongoing fees on Employee's ongoing benefits, under two subsections from the same attorney fee statute, was not mutually exclusive, and affirmed the lower decisions awarding attorney fees in this manner.

8 AAC 45.050. Pleadings.

(f) For stipulations under this subsection,

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(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.

8 AAC 45.070. Hearings. . . .

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

ANALYSIS

1) Should Employee’s petition to enforce the October 23, 2024, hearing stipulation be granted?

On October 23, 2024, the parties placed stipulation terms on the record. Employee requests the terms of the October 23, 2024, hearing stipulation be written into a decision and order. He contends Employer failed to pay all TTD benefits it agreed to pay and stopped paying TTD benefits in December 2024 without explanation. Employer contend that it satisfied the stipulation’s terms.

Stipulations between parties may be made orally in the course of a hearing. 8 AAC 45.050(f)(2). When compensation is payable under the terms of an “award” or a “compensation order,” an employer must petition for approval to terminate benefits. AS 23.30.130(a); *Shirley; Cavitt*. An injured worker has the right to a prospective determination of compensability for medical treatment to help the worker decide whether to pursue the medical treatment. *Summers*. A stipulation has the effect of an order unless a subsequent order relieves a party from the terms of the stipulation for good cause. 8 AAC 45.050(f)(3). The stipulation’s terms should be memorialized in an order. AS 23.30.130(a); AS 23.30.135(a); 8 AAC 45.050(f)(3); *Shirley; Cavitt; Summers*.

On October 23, 2024, Employer agreed to pay Employee TTD benefits after October 20, 2023, and agreed Employee was not medically stable. If there was a short gap period prior to “stipend” benefits, Employer also agreed to pay TTD benefits for that period. Employer paid TTD benefits through November 30, 2023, and paid “stipend” benefits from February 5 through October 14, 2024. Thus, there is a “gap” in TTD benefits from December 1, 2023, through February 4, 2024, in which Employer was not paid TTD benefits as stipulated to at the October 23, 2024 hearing. Employer paid “stipend” benefits from February 5 through October 14, 2024 - Employee is entitled

to TTD benefits during that time according to the terms of the October 23, 2024, stipulation, which is paid at a higher rate. Therefore, Employer has not paid Employee pursuant to the October 23, 2024, stipulation because it did not pay Employee the higher TTD benefit rate from February 5, 2024, through October 14, 2024. Employer began paying TTD benefits again starting October 15, 2024, and paid TTD benefits through December 23, 2024, when the last check was issued. Employer has not filed a controversion notice contending Employee has reached medical stability. Employer should have continued paying TTD benefits by issuing benefits on January 6, 20, and February 3, 2025, and continuing, but did not. Employer has not paid Employee TTD benefits as stipulated to at the October 23, 2024, hearing.

Employee requests an order awarding the specific amount he is owed for TTD benefits. Employer did not provide any alternative TTD benefit calculation. There are 45 weeks and four days from December 1, 2023, as Employer stopped paying TTD benefits November 30, 2023, through October 14, 2024, as Employer restarted paying TTD benefits on October 15, 2024. Based upon the weekly TTD benefits rate of \$705.53, Employer should have paid Employee \$32,152.01 in TTD benefits from December 1, 2023, through October 14, 2024 (45 weeks x \$705.53 + 4 days / 7 days x \$705.53 = \$32,152.01). *Rogers & Babler*. Employer paid \$22,223.74 in “stipend” benefits from February 5 through October 14, 2024 (\$19,754.44 + \$2,469.30 = \$22,223.74). Employer owes Employee \$9,928.27 in TTD benefits it should have paid pursuant to the parties’ October 23, 2024, stipulation from December 1, 2023 through October 14, 2024 (\$32,152.01 - \$22,223.74 = \$9,928.27).

Employer stopped paying TTD benefits on December 23, 2024; there are six weeks and three days from December 24, 2024, through February 6, 2025. Employer also owes Employee \$4,535.55 in TTD benefits as of the February 6, 2026, hearing (6 weeks x \$705.53 + 3 days / 7 days per week x \$705.53 = \$4,535.55). *Rogers & Babler*. It will be ordered to pay Employee \$14,463.82 in TTD benefits it owes pursuant to the October 23, 2024, stipulation (\$9,928.27 + \$4,535.55 = \$14,463.82). As the parties agreed, a penalty and interest benefits Employer failed to pay pursuant to the October 23, 2024, stipulation cannot be addressed at this hearing because they were not included as issues for hearing in the November 22, 2024 prehearing conference summary; this

decision will not address whether a penalty and interest are owed on the past due TTD benefits. However, hopefully the parties will resolve these issues on their own. 8 AAC 45.070(g).

At the October 23, 2024, hearing, Employer agreed there were two outstanding checks for overdue past “stipend” benefits that would be entered with penalty that week and should be mailed by Monday October 28, 2024, “but it might even be [that] week.” The “Benefits Payments on Behalf of Michael Dwaine Hunter Tate” statement shows Employer issued the check on November 5, 2024, eight days after it agreed to. Employer did not pay Employee the two outstanding “stipend” payments as it agreed to at the October 23, 2024, hearing. As the parties agreed, a penalty and interest cannot and will not be addressed on the “stipend” benefits paid on November 5, 2024. 8 AAC 45.070(g). The parties are encouraged to resolve these issues. In summary, Employee’s November 8, 2024, motion to enforce the October 23, 2024 hearing stipulation will be granted.

2) Is Employee entitled to attorney fees and costs?

Employee’s attorney obtained the October 23, 2024, stipulation regarding Employee’s TTD benefits and medical treatment for his work injury, which he sought in his November 3, 2020, claim, and July 1, 2021, amended claim. Employer controverted on November 17, 2023, and he was successful in obtaining an SIME, which Employer initially opposed. AS 23.30.145(a). Employee’s attorney also successfully prosecuted his November 8, 2024, motion to enforce the October 23, 2024, stipulation. AS 23.30.145(b). He also obtained two other stipulations on January 29, 2021, to authorize medical treatment Employee sought, and February 20, 2024, to remand the case to the RBA’s office, and a prior stipulation awarding \$15,000 in attorney fees and costs.

Employer generally contended the fees sought were excessive but did not object to Dennis’s attorney or his paralegal’s time spent on this case or their hourly rates. Attorney fees will not be reduced on the sole unsupported contention that the total amount of fees and costs sought are excessive. This decision considered the *Rusch* factors based upon Dennis’s affidavits. Dennis has obtained valuable benefits for Employee. Employee is entitled to reasonable attorney fees of \$147,191.87 (\$162,191.87 in total fees - interim attorney fees paid \$15,000 = \$147,191.87) and \$15,569.59 in costs. *Bignell*.

Employee’s attorney is also entitled to statutory attorney fees for any ongoing benefits paid to Employee after the October 23, 2024, stipulation. *Wozniak*.

CONCLUSIONS OF LAW

- 1) Employee’s petition to enforce the October 23, 2024, hearing stipulation should be granted.
- 2) Employee is entitled to attorney fees and costs.

ORDER

- 1) Employee’s November 8, 2024, motion to enforce the October 23, 2024 hearing stipulation is granted.
- 2) Employee is not medically stable and has not been medically stable since his work injury on May 8, 2019.
- 3) Employer shall pay Employee TTD benefits from October 20, 2023, less amounts paid to him as “stipend” benefits, and continuing until he is medically stable or is no longer disabled.
- 4) Employer shall pay Employee \$14,463.82 in TTD benefits it owes pursuant to the October 23, 2024, stipulation.
- 5) Employer shall pay for Employee’s further medical treatment consistent with the opinions of Dr. Kaloostian, including treatment of his groin pain, hydrocele, and urinary incontinence issues at an out-of-state tertiary medical center.
- 6) Employer shall pay Employee’s attorney \$147,191.87 in fees and \$15,569.59 in costs.
- 7) Employer shall pay Employee’s attorney statutory minimum *Wozniak* fees on ongoing benefits paid to Employee after the October 23, 2024, stipulation.

Dated in Anchorage, Alaska on March 10, 2025.

ALASKA WORKERS’ COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Sara Faulkner, Member

/s/
Anthony Ladd, Member

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

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

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Michael Dwaine Hunter Tate, employee / claimant v. American Dream Construction, LLC, employer; American Interstate Insurance Company, insurer / defendants; Case No. 201906254; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on March 10, 2025.

/s/

Rochelle Comer, Workers' Compensation Technician