ALASKA WORKERS' COMPENSATION BOARD

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

MANUEL HERNANDEZ, Employee, and JUSTIN EPPLER, ESQ., Claimants, v. OCEAN BEAUTY SEAFOODS, LLC, Employer, and LIBERTY INSURANCE CORP., Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201711427 AWCB Decision No. 25-0036 Filed with AWCB Anchorage, Alaska on June 13, 2025

Manuel Hernandez's (Employee) March 16 and December 26, 2018, January 8, May 20 and December 23, 2019, and March 18 and August 17, 2021 claims were reconsidered in part as directed on remand from the Alaska Workers' Compensation Appeals Commission (Commission), and his November 7 and December 4, 2023, December 4, 2024, January 13, February 3, February 5, February 19 and February 24, 2025 "claims" were also heard, on May 8, 2025, in Anchorage, Alaska, a date selected on February 26, 2025. Some of the latter documents were not technically "claims," but the Workers' Compensation Division (Division) treated them as "claims" for administrative filing purposes. Also heard was Employee's former attorney Justin Eppler's (Eppler) December 20, 2024 claim for attorney fees and costs. A February 26,

2025 stipulation gave rise to this hearing. Employee appeared by Zoom, represented himself and testified through professional Spanish interpreters. Attorney Krista Schwarting appeared and represented Ocean Beauty Seafoods, LLC and its insurer (Employer). Eppler appeared and represented himself, but did not testify. The record remained open for Employer to file additional payment information as directed at hearing, and closed on May 14, 2025. Because of a shortage of panel members, Southeast member Debbie White sat on this panel by assignment from the Commissioner of Labor & Workforce Development under AS 23.30.005(e); no party objected to her participation.

ISSUES

The parties disagreed on the scope of *Hernandez VI*'s remand. Employer contended *Hernandez VI* was the "law of the case" on any issue decided in *Hernandez IV* that was not remanded. It contended *Hernandez VI* made a narrow remand limited to enumerated issues. Employer also contended *Hernandez IV*'s credibility findings "remain intact" and the instant decision need not revisit factual issues decided in *Hernandez IV* but not expressly remanded.

Employee focused on his claimed disability and need for medical treatment. He did not expressly address the complicated legal issues surrounding the *Hernandez VI* remand.

Eppler disagreed with Employer's position. He contended *Hernandez IV*'s credibility findings are not binding. Eppler argued that *Hernandez VI*'s remand was broad. He contended the remanded issues are intertwined with other, non-remanded issues decided in *Hernandez IV*. However, Eppler further argued that given this case's posture, a second hearing may be necessary to address all issues. Thus, he contended the instant decision must consider how the remanded issues affect all previously decided matters from *Hernandez IV*.

Employer and Eppler basically agreed on at least five enumerated issues remanded in *Hernandez VI*. Employee expressed no clear position on these issues. Eppler addressed some, but only to the extent the results may affect his attorney fee and cost claim.

1) **Are non-remanded issues in *Hernandez VI* "the law of the case" on remand?**

Employee through Eppler contended his August 7, 2017 work injury with Employer was "the substantial cause" of his "chronic pain," "anxiety or panic attacks," "depression," "somatoform disorder" and a "Somatic Symptoms Disorder." He argued this panel must apply the statutory presumption of compensability to this issue in accordance with *Hernandez VI*. Employee contended Employer failed to rebut the raised presumption on these diagnoses.

Employer contended Employee's August 7, 2017 work injury was not the substantial cause of his "chronic pain," "anxiety or panic attacks," "depression," "somatoform disorder" or a "Somatic Symptoms Disorder." It argued that Employee does not meet the diagnostic criteria for several of these diagnoses and his other mental health conditions are not work-related. Employer further contended that its evidence rebutted any raised presumption of compensability as to each.

2) Is the work injury the substantial cause of any disability or need to treat Employee's "chronic pain," "anxiety or panic attacks," "generalized anxiety," "depression," "somatoform disorder" or "Somatoform Symptoms Disorder"?

At hearing, the Designated Chair advised the parties that the Division's Electronic Data Interchange (EDI) showed Employer reported it paid Employee "$21,660.60" in temporary total disability (TTD) benefits and "$3,540" in permanent partial impairment (PPI) benefits on August 11, 2021, and reported it fulfilled its agreement stated on the record on August 11, 2021.

If Employer never paid Employee the full amount in the August 11, 2021 stipulation, Employee through Eppler contended Employer owes him additional TTD benefits. He contended the parties agreed on August 11, 2021 to continue a hearing in return for Employer paying him $3,540 on a two percent PPI rating, plus $21,261 in TTD benefits from May 17, 2020, through June 17, 2021. He argued that the next day Employer unilaterally reduced the TTD benefits to only $15,483. Thus, Employee contended he is entitled to an order awarding an additional $5,778. Employee arguing *pro se* also claims benefits not addressed in *Hernandez IV*, and contended that Employer owes him additional TTD benefits from August 7, 2017, through September 1, 2017.

Employer contended that if it had previously paid the full stipulated amount, the remanded TTD benefit issue was moot. Alternately, if the full amount was not paid, Employer implicitly reserved its request that it be relieved from the stipulation because it had made a calculation error that would unjustly enrich Employee. Employer argued that Employee continued to work at a light-duty position for the same pay. Therefore, it contended Employee is not entitled to TTD benefits from August 7, 2017, through September 1, 2017.

Eppler did not state a position on Employee's claim for TTD benefits from August 7, 2017, through September 1, 2017.

3) Should the August 11, 2021 oral agreement be revised to reflect the correct TTD benefits for the period May 17, 2020, through June 17, 2021, and is Employee entitled to any additional TTD benefits?

Employee through Eppler contended *Hernandez VI* required this panel to modify the August 11, 2021 oral agreement to reflect benefits owed under AS 23.30.041(k). He claimed §.041(k) benefits because Employer failed to notify the Rehabilitation Benefits Administrator (RBA) promptly when Employee became disabled for 90 consecutive days, as required by law. Employee contended that he began participating in the reemployment process on that 90th day even though Employer failed to advise the RBA, and therefore §.041(k) benefits should be paid from that date.

Employer contended that it paid all benefits due and owing Employee, and he is not entitled to any additional benefits.

4) Should the August 11, 2021 oral agreement be modified to reflect or increase benefit payments to Employee under AS 23.30.041(k)?

Employee contended he is entitled to permanent total disability (PTD) benefits from September 4, 2017, through the present and continuing.

Employer contended he has no evidence supporting this claim and is not entitled to PTD benefits.

Eppler contended he never made this claim for Employee, and did not offer a position on it.

5) Is Employee entitled to PTD benefits?

Employee and Eppler contend he is entitled to additional medical care and treatment, and related travel expenses, for his work injury.

Employer contends Employee is not entitled to additional medical care or treatment for his work injury. Thus, he is also entitled to no related travel expenses.

6) Is Employee entitled to medical treatment and travel expenses?

Employee contends he is entitled to a penalty, on several grounds.

Employer contends he is not, because all benefits were properly paid or controverted.

Eppler contends Employee is entitled to a penalty because Employer never reported Employee's inability to work for 90 days to the RBA, thus delaying payment of reemployment benefits.

7) Is Employee entitled to a penalty?

Employee contends he is entitled to interest on past-due benefits.

Employer contends Employee is not entitled to any additional benefits, and therefore, he is not entitled to interest.

Eppler offered no position on this issue.

8) Is Employee entitled to interest on any benefits?

Eppler contends he is entitled to full, reasonable attorney fees and costs for successfully obtaining benefits for Employee. He seeks an order either awarding the itemized attorney fees,

or approving the previous Eppler-Employer attorney fee and cost stipulation. He also claims additional attorney fees incurred since the Eppler-Employer fee stipulation.

Employee contends Eppler is not entitled to any additional attorney fees or costs. He contends Eppler did not do a good job, because he did not obtain all benefits to which Employee thinks he is entitled. Employee argued Eppler spent, "Too much time for nothing."

Employer's current position on attorney fees and costs is that fees and costs should be awarded based upon Employer's and Eppler's attorney fee and cost stipulation. However, it objects to the supplemental attorney fees and costs Eppler claims since the Eppler-Employer stipulation.

9) Is Eppler entitled to additional attorney fees and costs?

FINDINGS OF FACT

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

1) On August 7, 2017, Employee injured his upper back pushing a heavy cart of canned salmon while working for Employer. (First Report of Injury, August 10, 2017).

2) On August 9, 2017, Employee's supervisor completed an incident report stating Employee was placed on modified work post-injury. It recorded, "Employee says he hurt his stomach & groin area from pushing 500# Bussy carts." The injury was a "strain" from pushing the "heavy wheeled carts." The human silhouette drawings showed injuries only in Employee's right groin area. (Supervisor's Incident Report, August 9, 2017).

3) On August 9, 2017, Employer's Safety Manager advised Employee he had an appointment with "KANA [Kodiak Area Native Association] Mill Bay Health Center" for his "stomach/groin injury." The note also stated, "This has been submitted as a workers[']compensation claim," and said Employee's provider was Kayla Gordon. (Medical Appointment note, August 9, 2017).

4) On August 9, 2017, Kayla Gordon, PA-C, saw Employee for the first time, with assistance from a Spanish interpreter. Employee reported pushing a large cart and when turning felt "a pain in his belly button" and right groin pain and "bumps" in his belly. Employee reported, "Abdominal pain and Mild mid back pain when sitting." PA-C Gordon noted he, "Felt pain in his back when turning the cart. Denies any bone pain. Mostly when moving left arm."

Employee's musculoskeletal exam showed left-side trigger points in trapezius and paraspinal muscles. His psychological evaluation showed, "Normal mood and affect," and he was "pleasant and polite." PA-C Gordon assessed (1) An inguinal hernia; (2) "Back pain: muscular," and said, "He is cleared to return to light duty with the following limitations; he is not the lift anything heavier than 50 pounds, he is to limit bending and prolonged periods of standing, he is also not the push heavy carts > 50 pounds. . . ." (Gordon report; letter, August 9, 2017).

5) On August 9, 2017, Employer's Safety Manager on Employee's behalf submitted a "claim" form electronically for his August 7, 2017 injury to Employer's insurer. The confirmation report stated, "You have successfully submitted the following claim. Your claim is being directed" to Employer's insurer in Anchorage. This document contains basic information about Employee and his workplace. It also states his employment was "Seasonal," it began on July 14, 2017, and Employee injured his "Abdomen" and had a "Hernia." The form further stated Employee moved up to 12 wheeled carts weighing approximately 500 pounds each, daily. It affirmed that Employee had been paid in "Full" for the injury date. (Claim Report Confirmation, August 9, 2017).

6) On August 14, 2017, PA-C Gordon completed a Division form and diagnosed Employee with a work-related muscle strain and a likely hernia. (Physician's Report, August 14, 2017).

7) On August 18, 2017, Employer paid Employee for the pay-period ending August 12, 2017. Employee's timecard showed he worked 13.75 hours on his injury date, August 7, 2017. His "pay stub" included Employee's pay for August 7, 2017, in the hours he worked in prior two weeks. (Pay stub; Employee Timecard - Employee Timecard Report, August 18, 2017).

8) At the instant hearing, Employee testified he told Employer that he had injured his abdomen and back, "muscles in back." He testified he hs not been able to go back to work since August 10, 2017, due to shoulder, "middle of shoulder," mid-, low-back and scapular pain. Employee also testified that Employer did not pay his wages for August 7, 2017. (Record, May 8, 2025).

9) On August 29, 2017, PA-C Gordon again found during Employee's basic psychological exam, "Normal mood and affect." He said his symptoms were getting worse. PA-C Gordon diagnosed (1) Right groin pain with hernia; (2) Abdominal wall hernia; and (3) Mid-back pain, "Likely from new duty at work, or from previous injury and now exacerbated." However, PA-C Gordon added an "Addendum" stating Employee felt he was not being given adequate assistance

with his injuries and was "frustrated and . . . upset" about losing out on hours and pay, and would rather be working. (Gordon report, August 29, 2017).

10) On August 30, 2017, Employee completed a formal injury report stating, "Felt pain after repetitive pushing or pulling of carts filled with canned salmon." The injuries were "hernia and back," and the area affected was "stomach muscle and back." (Employee Report of Occupational Injury or Illness to Employer, August 30, 2017).

11) By September 6, 2017, Employee's basic psychological examination was still reflecting, "Normal mood and affect." PA-C Gordon charted that Employee said he would "very much like to work." He added, "Modified work helps, but still has pain." PA-C Gordon stated ultrasounds of both groin areas and abdomen were normal and did not demonstrate defects. However, because Employee was still having pain after 30 days, and appeared clinically to have a hernia, she wanted him evaluated by a surgeon. Employee continued to work modified duty, but accepted the surgical referral. (Gordon report, September 6, 2017).

12) On September 14, 2017, Jeffrey Larsen, MD, general surgeon, saw Employee for his hernias. Employee reported he was pushing and pulling "900 pound carts" and developed "back and abdomen and right groin pain." He had been wearing a lumbar brace that Employee said, "helped for a little while with regards to his back pain," but made his abdomen hurt more. His two hernias hurt the most, and his back the least. Employee was eager to get his hernias repaired but Dr. Larson explained it would take time. Employee stated he had to get his hernias fixed because he needed "to travel out of the country in early October to see his girlfriend." He was frustrated that the process "might take some time." (Larson report, September 14, 2017).

13) On October 4, 2017, Janet Abadir, MD, general surgeon, examined Employee who reported pushing a "900 pound cart," and when he turned, he felt pain in his belly button, right groin and upper abdomen "with visible bulges." "He also had back pain in his upper back when moving his left arm." Dr. Abadir repaired Employee's three hernias. (Abadir report, October 4, 2017).

14) On October 7, 2017, Employee had no emotional or psychological issues following discharge for his hernia surgeries. (Kodiak Island Medical Center reports, October 17, 2017).

15) On October 12, 2017, Dr. Abadir released Employee to return to work without restriction effective November 1, 2017. The report states Employee was "happy with his results." (Abadir report, October 12, 2017).

16) At the instant hearing, Employee agreed that Dr. Abadir released him to return to work without restrictions, effective November 1, 2017. But Employee testified he could not go back to work because he had "complications" with his hernias. He testified he was not happy initially with the surgical results because he had a migrating stitch, but after that was removed his surgery was "good." Employee testified he did not return to work on November 1, 2017, because he had gone "on vacation" from Kodiak to El Salvador until late December, so he could "recover from surgery." (Record, May 8, 2025).

17) On October 18, 2017, Employer's adjuster paid Employee: $49.81 to reimburse cab fare; and $429 for TTD benefits at $273 per week from October 7, 2017 to October 17, 2017. (Insurer check stubs, October 17, 2017).

18) On October 30, 2017, Employer's adjuster paid Employee $546 for TTD benefits from October 18, 2017 to October 31, 2017. (Insurer check stub, October 30, 2017).

19) On November 2, 2017, Employer reported through the Division's Electronic Data Interchange (EDI) system that it had paid Employee full wages for his injury date. (EDI report, November 2, 2017).

20) On December 19, 2017, Steven Smith, MD, emergency physician, saw Employee for upper abdominal pain following his hernia repairs. Dr. Smith charted that Employee was "very anxious," and had a headache "because he [was] worried about his job." He had taken "a month off" and gone to El Salvador to visit family and had just returned. Employee's back was hurting; he denied any specific injury or trauma to his back, and associated his pain with "heavy lifting" while working for Employer. Dr. Smith concluded Employee had a migrating stitch from hernia surgery. Employee was fixated on his back and wanted more x-rays. He "became quite concerned that he could not work." (Smith report, December 19, 2017). At the instant hearing, Employee testified that he saw Dr. Smith because he had back pain and wanted treatment. When asked why he told Dr. Smith that he was worried about his job, Employee testified he "had problems" with Employer and said it would not let him go back to work and did not "accept the injury." When asked what made his back hurt upon his return from El Salvador, Employee testified that his thoracic spine, and "middle of shoulders," were still hurting from his work injury. He admitted the plane ride from El Salvador was 10 to 12 hours long. (Record, May 8, 2025).

21) On December 20, 2017, Dr. Smith again saw Employee who said he had a headache for several days that was "unbearable." Employee was, "Holding his head and crying." Dr. Smith found Employee was a "poor historian with vague answers." He was not as "overly anxious" on this visit as compared to the day prior. Dr. Smith diagnosed chronic thoracic back pain and an acute tension-type headache. (Smith report, December 20, 2017).

22) On December 21, 2017, Dr. Abadir examined Employee again and charted he had back pain, headaches and anxiety. She again released him back to full-duty work. Dr. Abadir offered "spiritual care," which Employee accepted, and said he felt better and would try to reduce his stress through prayer. He was "happy with his care." (Abadir report, December 21, 2017). At the instant hearing, Employee testified he could not recall Dr. Abadir releasing him to full duty work in December 2017, but he recalled not going back to work at that time because he was "not able," and was "getting treatment." (Record, May 8, 2025).

23) On December 21, 2017, PA-C Gordon also saw Employee for his back and charted, "Normal mood and affect." (Gordon report, December 21, 2017).

24) On December 22, 2017, PA-C Gordon examined Employee again with assistance from an interpreter. Her report records Employee's history in pertinent part:

> Went to El Salvador 10/24-12/20 for vacation. Came back 1 month early d/t [due to] pain. States his back is very painful, states he is having headaches, his neck hurts when using his phone. States the pain in his upper back and upper right thoracic area, his neck also hurts. Feels spasms. States he has to be sitting up straight or it hurts.
>
> He went to have an x-ray done while in El Salvador and the tech told him something was wrong and to see his Doctor. He did not go to anyone there but came here to be seen. . . .
>
> He just wants to feel like he did prior to his injury and he wants to go back to work.

PA-C Gordon reviewed x-rays Employee brought from El Salvador and noted "mild scoliosis," but no obvious injuries or acute changes. She took additional x-rays, diagnosed "back pain," referred Employee to a chiropractor and encouraged "stretching, heat." PA-C Gordon completed a Division "Physician's Report" form, but said it was "Undetermined" if the slight scoliosis, which could be congenital, was work-related. (Gordon reports, December 22, 2017).

25) On January 9, 2018, Laura Creighton, DC, saw Employee on referral from PA-C Gordon. Having returned from El Salvador, Employee said his back pain had worsened and he now had pain into his neck and had "a severe headache." His pain ranged from the low back to the thoracolumbar area and up between his shoulders. She attributed Employee's "musculoskeletal complaints" to his August 7, 2017 work injury with Employer but did not elaborate. Dr. Creighton said Employee had difficulty filling out his paperwork because he said it was "difficult for him to look down." After treatment, Employee had "immediate reduction" of his cervical, thoracic and lumbar pain. She expected Employee to make "full recovery from the musculoskeletal complaints with another two or three visits." (Creighton reports, January 3-9, 2018).

26) Employee continued to see Dr. Creighton regularly for months, through at least March 6, 2018. (Creighton Health Insurance Claim Forms, January 3, 2018 - March 6, 2018).

27) On January 2, 2018, in a document dated December 27, 2017, Employer denied Employee's right to all medical treatment and benefits related to his "cervical spine." It based this denial on PA-C Gordon's December 22, 2017 note stating that December 21, 2017 cervical x-rays showed no obvious injuries or acute changes and no evidence to support a relationship between Employee's August 7, 2017 work injury and cervical spine symptoms or the need to treat them. (Controversion Notice, December 27, 2017).

28) On January 9, 2018, PA-C Gordon recorded that Employee was "feeling down," said he wanted to work, and was, "tearful at one point during appointment when discussing mood." She diagnosed muscle spasms and, "depressed mood." PA-C Gordon referred Employee to KANA Behavioral Health. (Gordon report, January 9, 2018).

29) By January 16, 2018, Employee's mood and affect were "normal," and he was "cooperative" and "appropriate." He had been to a chiropractor and felt "better after." Employee's pain was "middle of his back." He added "it makes his entire back hurt." Employee had met with a lawyer and brought some paperwork with him with "disability questions." PA-C Gordon reviewed the information Employee provided, including Dr. Creighton's notes. Dr. Creighton had diagnosed a lumbar strain with segmental dysfunction at lumbar, thoracic and cervical regions with a cervicogenic tension headache. PA-C Gordon diagnosed a lumbar paraspinal muscle spasm and recommended continued chiropractic care. She added that Employee would be able to work but it would likely exacerbate his symptoms and prolong his

healing process. PA-C Gordon did not offer a causation opinion for the lumbar symptoms and did not complete a Division "Physician's Report" for this visit. (Gordon; Angela Santiago, ANP reports, January 16, 2018).

30) On January 22, 2018, Cristin O'Grady, MD, charted Employee with "chest pain" that started when he was talking with the "safety guy" at work through an interpreter. According to Employee's report, Employer told him he could not start working until the safety person talked with Employer's insurer. "He was supposed to start back to work today." Employee said there was a meeting the previous Friday and he thought Employer did not want him to return to work. However, he conceded, "This is what I think, they did not tell me that." Employee said he had a "knot" growing in the center of his chest "covering his throat"; it felt like he could not breathe, "And he just wanted to cry." Dr. O'Grady diagnosed atypical chest pain, most likely secondary to anxiety, and an anxiety attack. She offered bloodwork but Employee declined stating "that he often has this kind of chest discomfort with anxiety." She suggested he might benefit from long-term anxiety treatment. Dr. O'Grady, "Asked a lawyer in clinic to speak with him, to help him with his workman's comp issues." She attributed Employee's atypical chest pain to "anxiety," but did not give a causation opinion for his anxiety and did not complete a Division "Physician's Report" for this visit. (O'Grady report, January 22, 2018). At the instant hearing, Employee testified that before his work injury he never felt like he had a "knot" in his chest or that he could not breathe. He said it only happened when he was speaking to his supervisor at work. Employee clarified that in his mind an "anxiety attack" is the same thing as a "panic attack." Employee testified that he had three or four of these "panic attacks" in the first six months after his work injury. He attributed these to his discussions with Employer; not being "allowed" go back to work; and Employer "not accepting" his injury. Employee said by "not accepting" he meant Employer had denied his "claim." Employee testified that Employer would not give him the telephone number for his adjuster. (Record, May 8, 2025).

31) On January 24, 2018, Curtis Mortensen, MD, emergency room physician, diagnosed Employee with an "anxiety attack" and referred him to a counselor. He reported Employee:

> [W]as feeling exceptionally anxious because he felt that maybe his employer may send someone to 'get him.' It sounds like he may have watched something like this on a movie recently. . . . [Employee] also has significant financial stressors and social stressors as he is trying to petition for his wife to come to the United States from Mexico. He is worried that his current issues with his employer may

> keep him from being able to do this. [Employee] has no history of severe mental illness. Anxiety is a relatively new complaint which has pretty much been around the issues discussed above.

Employee's past medical history included, "Chronic back pain." Notably, Employee told Dr. Mortenson that "he feels physically well." His "main symptoms [were] severe anxiety and insomnia." Dr. Mortenson said Employee was "paranoid." Employee had gone to "KANA" and "requested to be seen by his provider there," but could not get in so he came to the emergency room. (Mortensen report, January 24, 2018). At the instant hearing, Employee testified that the only stressful thing going on his life that could have caused his panic attacks was pain in his back. By January 2018, Employee was married, and his wife was in El Salvador. He was trying to get her into the United States. When asked at the instant hearing how that was going in 2018, he testified that it had been "going well" and was not stressful for him at all. Employee's wife eventually came to the states in 2019. (Record, May 8, 2025).

32) On January 29, 2018, Employee told his medical provider that from October 22, 2017, through December 20, 2017, he was in El Salvador. (Anne Marie Narog, FNP-C report, January 29, 2018). When asked at the instant hearing what he did while he was in El Salvador for that lengthy period, Employee responded "nothing." (Record, May 8, 2025).

33) On January 30, 2018, PA-C Gordon declared Employee medically stable and released him "for full duty from his previous injury." She noted "he may still have some recurrent flares" and requested accommodation with breaks during very strenuous work, or less strenuous duties as needed and as available." His mood and affect were still, "Normal." PA-C Gordon's only diagnosis was "back pain." (Gordon letter; Physician's Report, January 30, 2018). At the instant hearing, Employee testified that PA Gordon had released him to return to work, but he had not gone back to work because his shoulders and back hurt. He said he had tried to work for Employer for three hours but had to stop because of the pain. (Record, May 8, 2025).

34) On February 5, 2018, Employee told PA-C Gordon, "You want to kill me, you give me pills and tell me to go back to work, give me pills, and tell me to go back to work." He tried to return to work and said it hurt, and he felt like he was "going to die." PA-C Gordon was not sure what else she could do to assist him, and again diagnosed "back pain." Employee had been seeing "Jocelyn," whom he later identified as working at "KANA Mill Bay Clinic," and paying out of his own pocket. (Gordon report, February 5, 2018; Smith report, February 28, 2018).

35) On February 13, 2018, a radiologist read Employee's cervical and thoracic spine computerized tomography (CT) scans as unremarkable with exception of possible muscle spasms or a positional error, in the neck area. (CT reports, February 13, 2018).

36) On February 23, 2018, Employee told PA-C Gordon he still could not work, and needed "stronger medicine" for his back pain. "He [was] worried about his wife's visa and his mother is worried about him." He also reported "a lot of other stressors in his life now" and said not working was making everything worse. His mood and affect were normal, but he became tearful at times. (Gordon report, February 23, 2018).

37) On February 25, 2018, Gregory Culver, MD, emergency physician, saw Employee for "extreme anxiety." Employee had depressive thoughts of dying, fear of self-harm, hopelessness and listed many "extreme stressors." These included, chronic pain, legal issues, workers' compensation issues, job stress, inability to work, immigration "fevers" [sic], and "separation anxiety from his wife in El Salvador, and the possibility that he is having deadly medical problems." He was sobbing. Dr. Culver suspected "major depression; acute anxiety reaction." Dr. Culver did not offer a causation opinion but handed Employee off to Dr. Smith at the physicians' shift change. (Culver report, February 25, 2018).

38) At the same visit on February 25, 2018, Dr. Smith assumed Employee's care for "chest pressure." He was concerned that Employee's anxiety was made worse from depression:

> Patient states that he came here this morning because he has been awake part of the night thinking about his current situation. He states that he is worried about finances, trying to work with ongoing back pain, worried about obtaining a visa for his wife in El Salvador. He tells me that his tax return was not enough to allow him to have his wife come to the United States. He relates his financial worries started when . . . he "had an injury at work 6 months ago. . . ." He tells me he went to [KANA] clinic yesterday [and saw] provider [PA-C Gordon] who reviewed his recent CT scan of his neck and back. He was told that they did not see any obvious reasons for his pain and he should continue the muscle relaxant as needed. . . . He has significant financial stressors and that he is worried he is not working and is worried because he is paying for rent and is expensive to [live in] Kodiak and he is not making any money. [He is] also concerned about finances and the ability to bring his wife to the United States. He is worried about what his employer will do if he is not able to work and whether he will have a job. . . .

Dr. Smith diagnosed: (1) chronic bilateral thoracic back pain; (2) anxiety associated with depression; and (3) financial difficulties. He did not offer a causation opinion and did not

complete a Division "Physician's Report" for this visit. After speaking to Employee for 30 minutes, Dr. Smith canceled Dr. Culver's order to consult with mental health. "His anxiety complaints seem to be related to his financial concerns." (Smith report, February 25, 2018).

39) On March 6, 2018, Employee changed from PA-C Gordon to John Koller, MD. His main complaint was a protruding stitch at his hernia surgery site. There was no mention of anxiety or depression. Dr. Koller removed him from work for 15 days. (Koller report, March 6, 2018). When asked at the instant hearing why he switched from PA-C Gordon to Dr. Koller, Employee said he and PA-C Gordon had a "disagreement." Employee said that PA-C Gordon did not want to treat his back "because that was not the referral she got." Employee testified that PA-C Gordon referred him to Dr. Creighton, the chiropractor. (Record, May 8, 2025).

40) On March 16, 2018, in a claim dated March 15, 2018, Employee representing himself claimed a compensation rate adjustment; an unfair or frivolous controversion; and transportation costs. He said that while pushing and pulling containers with salmon cans on August 7, 2017, he felt pain in his abdomen, groin and back. Employee filed his claim because, he said, the insurer refused to cover his benefits. In an attached letter, Employee stated in part:

> . . . I work in Ocean Beauty [S]eafood in the salmon season[.] . . . My job was taking out containers of salmon cans from the ovens weighing between 900 and 1,000 pounds. After 25 days pushing and pulling containers[,] on 08/07/2017 at 10:00 PM I had an injury while I was pushing and pulling containers[.] I felt pain in my abdomen, groin and back[.] It was hard work especially when the wheels of the containers were damaged or when they get stuck inside the ovens or condition of the floor where I had to enter containers to drain the water.
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> From my first appointment I always told the doctor that my back hurt[.] She always told me they were muscle spasms take pills and go to work[;] then the safety manager moved me to another work area. . . .
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> The insurance doctor said that I have muscle spasms related to hernias[;] then my injury got worse[,] and I was referred to surgeries[.] On 10/04/2017 I had 5 hernia surgeries. . . .
> . . . .
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> [In] December the Physician [Assistant] Kayla M. Gordon referred me to the chiropractor for my back pain and to the counsellor Jocelyn Figureid at Mill Bay Health Center. I have been taking physical therapy and Psychological therapy because of the situation I am living. I have not been able to work for 5 months because of my back pain. I have not been able to continue with my wife's visa

> process because I lost the opportunity to earn enough money in the season when I had the injury.
>
> I have changed doctor[s] and his name is John M. Koller. He will be my health provider[;] he has spoke[n] with the chiropractor and he will [send] me for an M.R.I. Scans and he is going to follow up on the surgeries.

Employee also attached: The August 9, 2017 Supervisor's Incident Report referencing 500 pound carts, and Employee's report and drawings stating that he had strained only his stomach and groin area pushing the carts; Employer's August 9, 2017 medical appointment letter to Employee; Employee's August 30, 2017 injury report to Employer; Employer's December 27, 2017 Controversion Notice; earnings documents not relevant to the remanded issues; the August 9, 2017 Claim Report Confirmation; several duplicative taxicab receipts from January and February 2018; several Walmart pharmacy receipts totaling $20 from December 21, 2017, through January 22, 2018; and approximately 50 pages of Employee's medical records from various providers. (Claim for Workers' Compensation Benefits, March 15, 2018, with attachments totaling 87 pages).

41) On March 20 and 27, 2018, Dr. Koller took Employee off work for an additional 10 days. (Koller report, March 20, 2018).

42) On April 10, 2018, Dr. Koller released Employee to work with restrictions including 10-pounds lifting, and standing as close as possible to his work. (Koller report, April 10, 2018).

43) On April 18, 2018, Employee went to physical therapy (PT) and reported "he is now having panic attacks with significant daily anxiety" and sees his primary care provider for this. He denied having had any "diagnostic testing on his back." (PT report, April 18, 2018).

44) On April 18, 2018, Laura Creighton, DC, wrote a "To Whom It May Concern" letter in Employee's case to the Division, solely for litigation purposes. In it she gave a history, diagnoses and reasons for treatment as well as causation opinions. (Letter, April 18, 2018).

45) On April 30, 2018, Dr. Koller reexamined Employee who said that on the date he was to return to work he had an anxiety attack.

> He states to me today he has not been back to work and stated two conditions in which he would go back to work, one is that he is pain free regarding his back and second that his anxiety issues are under control including insomnia. . . . There is no medical indication at this time for him that would preclude his returning to work at light duty status. At least not as it relates to his work injuries. . . .

> Unfortunately, I told him the medical evidence at hand that I am having in which to make a decision would not be supportive of him remaining off work any further. There maybe [sic] some psychosocial issues not relevant to the work comp injury that might be precluding his return to work and I did spend considerable time discussing that with him here today and that it will be dealt with under a separate venue but not part of this work comp visit. I did determine during this interview that he has had the back pain issue prior to the work comp injury and also anxiety and insomnia issues as well prior and these seem to have been exacerbated by the injury. Again noted that he had a knife wound to his upper thoracic back area that was fairly considerable and evident by a large scar and this is the area in which he indicates is where the pain is emanating from. A CT scan of the region did not reveal any structural abnormality outside of what is directly seen on observation.
>
> I began discussing that I would like to receive some light duty job descriptions and asked him if he had any ideas what they might offer. A call has been put in to the adjuster to acquire some samples. The patient became very emotional, broke down, and crying dropping down to his knees and at this point, further discussion was not possible. Allowed him time alone in the room to regain his composure and after 15 minutes he seemed to regain some cognizance which we could have further productive discussion, but he did seem very resistant to returning to work.
> . . .
> . . . .
>
> . . . I also learned that he is trying to obtain a letter from Dr. Wood indicating medical necessity for family members to be allowed here to help take care of him sensing some secondary gain at hand here. . . . Back examination, he actually has fairly good movement and fluidity to his back, but he does indicate pain in his upper back area contiguous with where the knife wound scar is.
> . . . .
>
> It should be noted that there is a significant emotional component which has resulted in anxiety, depression, and insomnia, emotional lability that maybe [sic] precluding his emotional mindset to return to work and this should also be dealt with in a separate venue and I will make the appropriate recommendations for that.

Dr. Koller opined "from a work-comp stand point," Employee's thoracic back strain had "healed and resolved." "Any residual pain or discomfort maybe [sic] more likely than not contributed by the previous stab injury." His umbilical hernias were repaired and "resolved," with exception of a protruding, nonabsorbable stitch that could be removed. Dr. Koller said Employee was "ripe for return to work . . . at light duty with limited hours," but also noted there may be "some psychosocial issues not relevant to work comp injury that might be precluding his return to

work." (Koller report, April 30, 2018). At the instant hearing, Employee agreed Dr. Koller told him there was no medical reason in April 2018 that he could not return to light-duty work. He adamantly denied he ever told Dr. Koller that he had this same back pain, anxiety and insomnia before his August 7, 2017 work injury. When reminded that at a previous hearing Employee had said Dr. Koller "was crazy," Employee recalled saying that and double-downed, "Sure, he was crazy." Employee said Dr. Koller knew he had a medical problem and needed treatment. When asked if Dr. Koller told him that his upper-back pain was caused by his preexisting knife stab wound, Employee stated, "He never told me that." Employee added that even if Dr. Koller did, his pain was not in "that place." Employee clarified that the stab wound was the one clearly visible on photographs he had filed with the Division, and had nothing to do with his work for Employer. He explained that in "2003 or 4" his brother stabbed him in the back, but it was a "superficial wound." Employee added that the stabbing was "not stressful" and "just a fight between brothers." He testified that he holds no grudge against his brother. (Record, May 8, 2025).

46) On May 1, 2018, Dr. Koller responded to a question from the adjuster:

> Dr. Wood authorized 5 days off for non-work related, non-injury related reasons. I cannot forward the dictation because it was for other medical reasons -- unless patient signs consent to release. I authorized him back to work on 4/30/17 [sic]. (Koller report, April 30, 2018; emphasis in original).

47) On June 1, 2018, Welby Jensen, MD, saw Employee on referral from Dr. Koller for a psychiatric evaluation. After interviewing Employee, Dr. Jensen diagnosed an unspecified anxiety disorder" but did not give a causation opinion. He added, "It does not seem necessary that [Employee] be placed on any other psychotropic medications at this time besides continued on the trazodone from Dr. Koller." Employee was to continue with the counselor, and Dr. Jensen scheduled no follow up appointment. (Jensen report, June 1, 2018).

48) On June 9, 2018, Dr. Koller responded to another inquiry from the adjuster. He stated Employee's midthoracic back strain was "resolved," and "any further pain is attributed to previous knife impalement in area (pre-existing)" (emphasis in original). He added Employee's multiple hernias, while unusual to occur in one incident, were probably preexisting but were aggravated, repaired and stable, and needed no further treatment. Employee was medically

stable as defined in the Alaska Workers' Compensation (Act) effective May 9, 2018, without permanent impairment. (Koller report, June 4, 2018).

49) On June 19, 2018, Dr. Koller again stated:

> (1) [Employee's] mid-thoracic back strain resolved, and any further pain is attributable to previous impalement in area (pre-existing); (2) Hernia (multiple) likely pre-existing -- unusual to have multiple hernias develop over one incident. However, all are repaired and stable -- no further treatment needed. Likely aggravation of previous existing condition (multiple herniation).

Dr. Koller again stated Employee became medically stable on May 9, 2018, and would not have any permanent impairment. (Koller response, June 19, 2018).

50) On June 26, 2018, Employer denied Employee's claim for medical benefits related to his "spine condition," and his right to TTD, temporary partial disability (TPD) and PTD benefits. It based its denial on Dr. Koller's responses to the adjuster's questions in which he stated Employee's back strain had resolved and any further pain was attributable to his "preexisting condition," *i.e.*, his "previous knife impalement" (emphasis in original) in the same area. Employer attached Dr. Koller's hand-written responses to the adjuster's questions to the notice, and the hand-written notes referred to his subsequent dictated record. (Controversion Notice, June 26, 2018).

51) On June 28, 2018, David Bauer, MD, orthopedic surgeon, saw Employee for an employer's medical evaluation (EME) and found, among other things, an "admitted history of anxiety and panic attacks." He diagnosed Employee with "an unrelated anxiety and panic attack condition that is not substantially caused by work." The only remaining condition post-injury was Employee's anxiety, which was not caused by the work injury. Dr. Bauer opined that further medical treatment would not be reasonable or necessary and Employee was physiologically capable of performing his job at the time of injury. Employee reached medical stability for his work injuries by January 22, 2018, and in Dr. Bauer's view, "At that time, it became very clear that Mr. Hernandez is suffering from anxieties, and unrelated conditions." When asked if he could identify an alternative explanation for Employee's "medical complaints" that exclude his work injury as the substantial cause, Dr. Bauer stated Employee's ongoing complaints were probably related to his anxiety and psychological condition. Employee "has a history of increasing anxiety, and his current complaints are on a more-probable-than-not basis

related to his psychological condition rather than any physiologic condition." Dr. Bauer opined that Employee's thoracic back stab injury contributed nothing to his complaints as there was no evidence of any harm or change to his body. He needed no further treatment for any medical condition. (Bauer report, June 22, 2018). At the instant hearing, Employee denied he had told Dr. Bauer about an "admitted history of anxiety and panic attacks." He said he never told Dr. Bauer that and said he did not have anxiety and panic attacks before his work injury with Employer. (Record, May 8, 2025).

52) By July 2018, Employee was complaining about new, left-shoulder pain with movement. His physical therapist diagnosed probable left-shoulder impingement, but provided no causation opinion. (PT reports). At the instant hearing, when asked when his left-shoulder started hurting, Employee testified it was during PT on referral from Dr. Koller. He attributed his left-shoulder pain to his work injury because the work was "very heavy," and at some point his "body exploded," but he did not notice the pain until he went to PT in 2018. (Record, May 8, 2025).

53) On August 15, 2018, Brady Ulrich, PA-C, restricted Employee to lifting no more than 20 pounds, and no repetitive bending, stooping or squatting until after he had cervical and thoracic spine magnetic resonance imaging (MRI). (Ulrich report, August 15, 2018).

54) On July 5, 2018, Employer denied Employee's claim for medical benefits, and his right to TTD, TPD, PTD, PPI and reemployment benefits. It based this on Dr. Bauer's EME report stating Employee had reached medical stability for his work-related conditions by January 22, 2018, he had no PPI rating from his work injury, Employee needed no further treatment for the injury, there was no objective basis for any work restrictions and Employee could return to his time-of-injury job. (Controversion Notice, July 5, 2018).

55) On August 22, 2018, Employee reported his PT had been unhelpful. He reiterated his left-shoulder pain, which he again said began while working for Employer. "He goes to school and enjoys working on his computer in his spare time." Employee's past medical history included "anxiety," "depression," and "drug abuse." His diagnoses included left rotator cuff tendinitis and bursitis. (William Helmick, PA-C report, August 22, 2018). At the instant hearing, Employee denied going to school or taking computer classes in August 2018. When asked about PA-C Helmick's report including a "past medical history of anxiety, depression and drug abuse," Employee admitted he had a problem with drug abuse but stated it was after his work injury.

When pressed on this issue, Employee said he did not recall when his drug abuse problem began, but he recalled taking pills for sleep and pain post-injury. (Record, May 8, 2025).

56) At some point, Employee moved from Kodiak to Anchorage. (Record, May 8, 2025).

57) On September 6, 2018, Jonathan Van Ravenswaay, MD, family physician, saw and referred Employee to Anchorage Community Mental Health. (Referral order, September 6, 2018). At the instant hearing, Employee said he switched from Dr. Koller to Dr. Van Ravenswaay because he moved to Anchorage. He did not recall Dr. Van Ravenswaay telling him he could go back to work in October 2018. Employee did not recall telling Dr. Van Ravenswaay that he was applying for a local fish processing plant job. (Record, May 8, 2025).

58) On September 12, 2018, Employee's MRIs were read as essentially normal. (MRI reports, September 12, 2018).

59) On September 17, 2018, PA-C Ulrich saw Employee to review his thoracic MRI:

> It is noted on the soft tissues at about the T1 to T4 levels there does appear to be some disruption of the latissimus dorsi muscle just left of midline and also on the actual imaging there appears to be some atrophy of the left latissimus dorsi, as well as evidence of a wound/scar tissue in that area. This does correlate with the area where he was stabbed. I did contact the radiologist . . . for an over read on this area.

PA-C Ulrich noted "soft tissue disruption at thoracic wall" and opined Employee's thoracic pain was "likely coming from some of the atrophy of his latissimus dorsi muscle from his previous injury near that area." Employee also complained about a new symptom, paresthesia in his left hand. He was prescribed continued narcotics. (Ulrich report, September 17, 2018).

60) On September 28, 2018, Wise Physical Therapy (Wise PT) saw Employee who reported he injured his left shoulder and lower back on August 7, 2017, pushing and pulling "900# of equipment for 14 to 15 hours a day." Dr. Van Ravenswaay had done x-rays "that revealed nothing remarkable about his left shoulder." Employee said he had PT for three months while in Kodiak for his left shoulder and low back but "did not make much progress." "Patient expresses that he thinks that his body is 'broken.' He states that he is unable to work due to his disability. He states that he feels like he cannot work again." Employee's numeric pain rating was "3." He continued with PT at Wise for months. The therapist measured Employee's pain on various pain scales and his results indicated "severe activity limitation," and "severe pain." "One barrier to successful PT intervention is patient's belief that he cannot work again due to his pain." For

most of Employee's ensuing visits with this therapist, he wore a left shoulder sling upon arrival. At visit #8, "He continue[d] to wear his brace at his left shoulder despite encouragement to not wear it." During visit #18 Employee stated he felt "very tired of dealing with [his] pain and not being able to work." He expressed being "tired of living this life [he was] living." Nonetheless, Employee told the therapist that he had "been taking an antidepressant that he was supposed to take twice a day that he recently decided to take once a day due to feeling better." At this same PT visit, Employee "tolerated work related lifting activities without complaints of pain." At visit #19, Employee was tearful and stated that "he went to OPA [Orthopedic Physicians Alaska] yesterday to see an orthopedist, who stated that he is able to return to work without restrictions." At visit #22, Employee stated he was 70 percent improved, but only because he was not working, which allowed "his shoulder to rest." (Wise PT reports, September 28, 2018 - December 17, 2018).

61) On September 28, 2018, Dr. Van Ravenswaay in an office procedure, and using local anesthesia, removed a retained suture from Employee's hernia surgery site. (Van Ravenswaay report, September 28, 2018).

62) On October 6, 2018, Dr. Van Ravenswaay saw Employee and diagnosed depressive disorder, anxiety and tension-type headaches. (Van Ravenswaay report, September 6, 2018).

63) On October 10, 2018, Alaska Behavioral Health began seeing Employee. He reported being bi-lingual, had a high school diploma, did an unspecified apprenticeship and had been through the first year of college. (Alaska Behavioral Health report, October 10, 2018).

64) On October 10, 2018, Employee said he had been seeing a psychologist. (Van Ravenswaay report, October 10, 2018).

65) On October 17, 2018, Wise PT did an ultrasound on Employee's left shoulder and made findings suggestive of either a possible partial tear or inflammatory process, and effusion. (Ultrasound report, October 17, 2018).

66) On October 18, 2018, Dr. Van Ravenswaay was providing medication to Employee for his depression. He charted Employee had "chronic back and shoulder pain and went back to OPA who prescribed opiates for him again despite my warning him not to continue. I warned him of potential addiction." Dr. Van Ravenswaay said Employee needed an MRI for his left shoulder, which may need surgery. Nevertheless, Employee said he felt better, stronger and had better mood; he wanted to apply for a job at a local fish processing plant but was awaiting clearance

from an orthopedic surgeon. Employee said he missed his last "counseling appointment" but said, "I don't need it," and said he felt "fine." Employee said he felt depressed when he had pain. Dr. Van Ravenswaay told Employee to stay active to help his mood. "He is able to go back to work in my opinion." (Van Ravenswaay report, October 18, 2018). At the instant hearing, Employee testified he could not remember the above details from his visit with Dr. Van Ravenswaay in October 2018. (Record, May 18, 2025).

67) On October 22, 2018, Employee told PT that his doctor had recently told him to look for work and continue with PT. Employee said he could not work "due to his shoulder pain." (Wise PT report, October 22, 2018).

68) On October 22, 2018, PA-C Helmick saw Employee for his left shoulder. "Of note, he does state that about 12 years ago he suffered a stab wound to his back. He was treated at the emergency room and states that they washed up his incision and sewed it up and he had no issues until last summer when his back started to give him pain." This would date the stab wound at 2006. PA-C Helmick opined Employee's pain was not coming from his shoulder, because a steroid injection gave him no relief. He charted that Employee was "very upset" by his opinions and recommendations. (Helmick report, October 22, 2018). At the instant hearing, Employee recalled PA-C Helmick advising him that his pain was not coming from his left shoulder because the injection did not relieve it; he did not recall being upset about this opinion. However, Employee denied telling PA-C Helmick that he had no issues with his stab wound until the previous summer when it started to hurt. Employee testified that he never told any medical provider that he had any pain from his stab wound. Contrary to PA-C Helmick's report, Employee testified that his stab wound happened in 2003 or 2004. (Record, May 8, 2025).

69) However, by October 29, 2018, Employee had come around to think "his spine is the problem and not so much his shoulder." (Wise PT report, October 29, 2018).

70) On October 31, 2018, Employee's electrodiagnostic studies showed no radiculopathy, polyneuropathy or myelopathic processes. (Electrodiagnostic studies, October 31, 2018).

71) By November 8, 2018, Employee reported zero left-shoulder pain. He had 60 percent improvement since attending PT. (Wise PT report, November 8, 2018).

72) On November 28, 2018, Employee said he worked for two days as an office cleaner and had to quit because pushing a vacuum caused too much pain. "Patient expresses that he is not sure what kind of job he can do because of his shoulder." (Wise PT report, November 28, 2018).

73) On December 5, 2018, Employee reported his left-sided thoracic spine pain was "localized to the area where he had previous stab injury." PA-C Ulrich opined "his previous stab injury may have predisposed him to a more recent injury at work that is causing his issues now likely from a muscle strain or sprain." He limited Employee to lifting no more than 30 pounds, especially overhead, with no repetitive bending, stooping, squatting, pushing, or pulling until he completed a functional capacity evaluation. (Ulrich reports, December 5, 2018).

74) On December 6, 2018, Employee mentioned he had contacted the "Alaska Mental Health Clinic" and was receiving assistance there finding employment, and had an appointment with a different physician on December 7, 2018, to discuss a medication change. (Wise PT report, December 6, 2018).

75) On December 12, 2018, Employee reported he worked one and one-half day at Blue Moose applying labels to products and did not have "serious pain," but had left-shoulder-blade pain and had trouble going from a seated flexed position to seated extension without feeling "popping in his spine." (Wise PT report, December 12, 2018). At the instant hearing, Employee recalled this work, did not say why it stopped and said he was able to do it. (Record, May 8, 2025).

76) On December 17, 2018, Employee said his left shoulder had improved 70 percent in PT but thought this was only because he was not working, which allowed his shoulder to rest. He said when he did a hamstring stretch at a previous PT visit, it caused a three-day headache. (Wise PT report, December 17, 2018).

77) On December 26, 2018, Employee representing himself claimed TTD benefits; an unfair or frivolous controversion; medical costs; and related travel expenses. In his attached letter, Employee said PA-C Gordon on December 27, 2017, "negligently opined" about his health "because her diagnosis about my back was muscle spasms." He argued Dr. Koller "negligently opined" about his condition and had no "evidence to support" it. Likewise, Employee claimed Dr. Bauer "negligently opined" about his case and had no evidence to support his opinion either. Employee listed: Transportation expenses for an unspecified flight ticket; taxi rides; bus day-passes; 30-day bus passes; food and lodging totaling thousands "until [he finished] medical treatment"; and lost salaries. He attached an unemployment determination denying him unemployment benefits because he was "not considered able to work," based on an unspecified medical opinion. Employee attached nearly 100 pages of his medical records from various

providers and a few receipts for People Mover bus passes and one airline ticket from Kodiak to Anchorage. (Claim for Workers' Compensation Benefits, December 26, 2018).

78) On December 29, 2018, Dr. Van Ravenswaay saw Employee and diagnosed chronic low-back pain and a depressive disorder. He prescribed a lumbar "back brace to use when heavy lifting and strenuous activity to avoid injury." (Van Ravenswaay Report, December 29, 2018).

79) On January 8, 2019, in a January 7, 2019 claim, Employee representing himself claimed TTD and medical benefits, travel costs and an unfair or frivolous controversion, and amended his December 26, 2018 claim to request a functional capacity examination (FCE), an unspecified penalty and interest. (Claim for Workers' Compensation Benefits, January 7, 2019).

80) On January 16, 2019, Employee said he had changed a tire five days earlier and now had new, right-shoulder pain. He repeatedly told PT he was not able to work due to pain. (Wise PT report, January 16, 2019). At the instant hearing when asked about this, Employee said he hurt his right shoulder at work for Employer too. He testified he told Dr. Abadir at her first visit that he had right-shoulder pain. Employee attributed this to "pushing and pulling" on August 7, 2017. He testified that he did not tell Wise PT that he had changed the tire, but only that he had "tried" to change it but could not do it. (Record, May 8, 2025).

81) By January 2019, Employee had at least 36 PT treatments for thoracic pain, during which his physical complaints spread to his neck, low-and back, left and right shoulders and left hand. Although he said he had improved 70 percent overall since initiating therapy, Employee said he still could not work because of pain. (Wise PT reports).

82) On January 26, 2019, Dr. Van Ravenswaay reviewed Employee's records and opined his "left shoulder injury" occurred on August 7, 2017, and was "still active." Employee denied having any residual pain from a stab wound. Dr. Van Ravenswaay reviewed Employee's medical records and concluded his "left shoulder pain was never really resolved, and contrary to my initial assessment, in my opinion, is still needing treatment as a result of the initial work injury." He did not elaborate. (Van Ravenswaay reports, January 26, 2019).

83) On February 12, 2019, Alaska Behavioral Health discharged Employee from mental health treatment, which had been paid by Medicaid. "Client is being discharged due to nonparticipation." (Alaska Behavioral Health Discharge Summary, February 12, 2019).

84) On February 4, 2019, in a document dated January 29, 2019, Employee representing himself requested a second independent medical evaluation (SIME). (Petition, February 4, 2019).

85) On February 13, 2019, Employer denied Employee's claims for TTD and medical benefits including an FCE, and his right to TPD, PTD, PPI and reemployment benefits. It based this denial on Dr. Bauer's medical opinions. (Controversion Notice, February 13, 2019).

86) On February 15, 2019, Dr. Van Ravenswaay saw Employee and diagnosed a depressive disorder. At this visit Employee's mood was "euthymic" [*i.e.* normal], and he was "pleasant, happy, and congruent to thought content." (Van Ravenswaay report, February 15, 2019).

87) On February 26, 2019, Employee insisted his left-shoulder pain "started as a result of his work injury and is not related to a previous stab injury of the upper back." He was feeling "more depressed" and wanted to have "a normal life" post-injury. Dr. Van Ravenswaay diagnosed left-shoulder bursitis, and prescribed medication. (Van Ravenswaay Report, February 26, 2019).

88) On March 4, 2019, Dr. Van Ravenswaay opined Employee had left-shoulder pain since August 7, 2017. In his opinion, this was a result of the work injury "and not related to a prior stabbing injury of the left upper back." (Van Ravenswaay report, March 4, 2019).

89) On March 8, 2019, Dr. Van Ravenswaay encouraged Employee to "apply for work." He was working "occasionally in a body shop." (Van Ravenswaay report, March 8, 2019). At the instant hearing, Employee admitted that Dr. Van Ravenswaay "encouraged" him to look for work in March 2019, and he did. He said he tried to work for a cleaning company for one day, but said he could not use a vacuum cleaner because it made both shoulders hurt. Employee said he took Dr. Van Ravenswaay's counsel as "motivating him" to look for work. He testified that in June 2019 he worked for pay "wet sanding" on a car for one day but could not do that either because his shoulders hurt. (Record, May 8, 2025).

90) On April 2, 2019, a radiologist interpreted Employee's left-shoulder MRI as showing only bursitis. (MRI report, April 2, 2019).

91) On April 10, 2019, Dr. Van Ravenswaay reviewed Employee's left-shoulder MRI, which he said showed bursitis but no abnormality or injury. (Van Ravenswaay report, April 10, 2019).

92) On May 16, 2019, Martin Glaves, DO, saw Employee for persistent pain and left-shoulder bursitis. Dr. Glaves recommended "multiple treatments, perhaps several times over the course of his life" for his initial injury on August 7, 2017. For his left-shoulder bursitis, Employee

required PT, steroid injections, anti-inflammatories and osteopathic manipulation therapy. For Employee's hernia, Dr. Glaves recommended a support belt and possible surgery "if symptoms are uncontrolled." (Glaves report, May 16, 2019).

93) On May 20, 2019, Employee representing himself again claimed TTD benefits; an unfair or frivolous controversion; transportation costs; and an unspecified penalty. He attached a note stating he had not been able to perform his job at the time of his August 7, 2017 work injury since that date and continued to receive treatment and take medication. Employee also attached Dr. Van Ravenswaay's January 26, 2019, March 4, 2019, and April 10, 2019 letters; Dr. Glaves' May 16, 2019 report; and a Medicaid co-pay bill for $12 from OPA. (Claim for Workers' Compensation Benefits, May 20, 2019).

94) On June 7, 2019, Employer denied Employee's claims to TTD and medical benefits, and his right to TPD, PTD, PPI and reemployment benefits. It based this denial on Dr. Bauer's medical opinions. (Controversion Notice, June 7, 2019).

95) On June 20, 2019, Employee reported "no depression, no anxiety, and no insomnia." He had back and inguinal pain that started two days earlier "after helping a friend take a bumper off a car." Employee contended this pain resulted from his subject injury with Employer. He complained that his legs were unequal length. (Van Ravenswaay report, June 20, 2019). At the instant hearing, Employee could not recall telling Dr. Van Ravenswaay that his mental health issues were resolved. He did recall telling Dr. Van Ravenswaay that he "tried" to help a friend take a bumper off of a car but could not do it. (Record, May 8, 2025).

96) On July 15, 2019, Justin Carricaburu, DO, saw Employee for "leg pain." Dr. Carricaburu charted that Employee had pain from August 7, 2017, "while he was pushing a box." He reported having an injury to his right groin and shoulder, with five surgical hernia repairs. Employee said he, "Recently lost his job." A "significant effort" two weeks earlier had resulted in a significant increase in his leg pain. Employee said he "works as a cook." He was well-dressed and groomed and showed no agitation or depression. Dr. Carricaburu charted, "Diffuse pain with firm palpation pretty much any area of the body. Pain out of proportion to exam findings." Dr. Carricaburu referred Employee to Denali PT. (Carricaburu report, July 15, 2019).

97) On July 16, 2019, Employee told Dr. Van Ravenswaay he "paints and thinks painting is better than lifting heavy objects at work," because he had "no pain when painting." He reported no depression, anxiety or insomnia. (Van Ravenswaay report, July 16, 2019). At the instant

hearing, Employee could not recall telling Dr. Van Ravenswaay he had no mental health symptoms. He verified that in July 2019 he was painting cars but he "could not do it" even though he tried "many times"; each time he "hurt himself." He could not recall if that employer was the same as his employer the prior month when he was wet-sanding cars. (Record, May 8, 2025).

98) On July 17, 2019, Employee had x-rays to measure "unequal limb length." The radiologist determined, "No limb length discrepancy." (X-ray report, July 17, 2019).

99) On July 25, 2019, on Dr. Van Ravenswaay's referral, Employee had an ultrasound examination that ruled out a right inguinal hernia. (Ultrasound report, July 25, 2019).

100) On September 4, 2019, Dr. Van Ravenswaay saw Employee and diagnosed (1) acute thoracic back pain; (2) chronic back pain; and (3) a depressive disorder. He recommended counseling and a possible psychiatric referral. (Van Ravenswaay report, September 4, 2019).

101) On October 17, 2019, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 19-0107 (October 17, 2019) (*Hernandez I*) granted Employee an SIME. (*Hernandez I*).

102) On December 23, 2019, Eppler in a document dated December 20, 2019, entered his appearance as Employee's attorney and in a same-dated claim stated Employee had incurred hernias, which required surgeries, and shoulder, thoracic spine and low-back injuries, and anxiety as a result of his August 7, 2017 work injury with Employer. On Employee's behalf, Eppler claimed TTD, TPD and PPI benefits; a compensation rate adjustment; medical costs; attorney fees and costs; and "other," which was an SIME request; and sought a vocational rehabilitation eligibility evaluation, alleging "Employer did not make this referral." (Entry of Appearance; Claim for Workers' Compensation Benefits, December 20, 2019).

103) On January 10, 2020, Employer denied Employee's claims for TTD, TPD, PPI, medical care and reemployment benefits, and his right to PTD benefits. It based this denial on Dr. Bauer's medical opinions. (Controversion Notice, January 10, 2020).

104) On March 18, 2020, Dr. Van Ravenswaay required a first-class plane ticket for Employee to San Diego, California so he could attend his SIME. (Van Ravenswaay note, March 18, 2020).

105) On April 9, 2020, Dr. Van Ravenswaay referred Employee to Birchwood Behavioral Health for evaluation and treatment for depression. (Van Ravenswaay letter, April 9, 2020).

106) On April 21, 2020, Paul Murphy, MD, orthopedic surgeon, saw Employee for an SIME. When asked if he had symptoms to his back before the work injury, Employee stated about 10

years earlier he had an injury to his "middle back." He explained "someone had thrown an object and struck him." Employee described this as a laceration with some stitches but "nothing internal." He had no bilateral discrepancies in his upper extremity motion. All provocative shoulder testing bilaterally was negative. The only thoracic spine abnormality found on examination was "slight scoliosis." Dr. Murphy diagnosed multiple hernias and a thoracic spine strain substantially caused by the work injury, and a history of anxiety, depression and panic attacks. He found no objective evidence of a structural disorder within Employee's thoracic spine. Dr. Murphy opined Employee became medically stable on September 17, 2018, when his thoracic spine diagnostic workup was completed. He further stated Employee had "clinical diagnoses of anxiety and panic attacks, which are not substantially caused by this work injury." Dr. Murphy stated the work-related disability was no longer present effective September 17, 2018. Employee needed no further medical treatment. He did not think the work injury caused Employee's left-shoulder symptoms. Dr. Murphy did not think the "prior stabbing injury" to the upper back contributed to Employee's symptoms. He mentioned PA-C Ulrich's September 17, 2018 note on page 34 of Dr. Murphy's report, but he did not discuss, "Pain in thoracic spine with soft tissue disruption at thoracic wall on thoracic MRI." Dr. Murphy provided a two percent PPI rating for Employee's chronic strain or non-specific back pain. (Murphy report, April 21, 2020). At the instant hearing, Employee could not recall if he told Dr. Murphy he had a history of anxiety, depression and panic attacks, but said "it's possible." (Record, May 8, 2025).

107) On May 17, 2020, Dr. Van Ravenswaay opined "the August 7, 2017 injury is the most likely cause of [Employee's] anxiety, panic attacks, depression, pain, shoulder and spine complaints and his inability to work." He stated it was well known that depression can worsen chronic pain and cause disability. Dr. Van Ravenswaay found no symptom magnification. He did not think Employee could return to work as a fish processor because he needed treatment for his anxiety, depression and chronic pain to rehabilitate. Dr. Van Ravenswaay opined Employee needed counseling and possibly psychiatric evaluation and treatment from a pain specialist. In his opinion, the August 7, 2017 injury was the substantial cause of Employee's need for continued medical treatment. Dr. Van Ravenswaay stated Employee was not medically stable on September 17, 2018, and would improve with counseling and psychiatric care, along with better pain control. (Van Ravenswaay letter, May 17, 2020).

108) On May 27, 2020, Employer denied Employee's right, and any claim, to left-shoulder benefits, all time-loss benefits for a thoracic strain after September 17, 2018, medical benefits and his right to reemployment benefits. It based this denial on Dr. Murphy's report that there was no evidence of a left-shoulder injury, Employee had suffered a thoracic strain and disability that ended on September 17, 2018, he did not need any further treatment resulting from the August 7, 2017 work injury and there were no work for restrictions because there was no objective testing supporting an injury or work restrictions. (Controversion Notice, May 27, 2020).

109) On June 24, 2020, Eppler on Employee's behalf requested a second SIME for psychological issues. (Petition, June 24, 2020).

110) On September 16, 2020, Dr. Murphy testified he is "well-versed in psychiatric illnesses, including anxiety, panic attacks and depression," but would "defer the psychology discussion to an expert in that field." He said that while Employee had chronic pain, it was medically stable, and was unlikely to change with further treatment. Dr. Murphy opined his prior opinion regarding Employee's ability to return to work remained unchanged but with "regards to anxiety, depression and panic attacks," he would defer to a psychologist. Orthopedically, Employee required no further treatment. (Zoom Deposition of Paul C. Murphy, MD, September 16, 2020).

111) On September 24, 2020, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 20-0085 (September 24, 2020) (*Hernandez II*), denied Employee's request for another SIME. *Hernandez II* found the first SIME already addressed Employee's medical and mental health conditions. (*Hernandez II*).

112) On September 30, 2020, Luke Liu, MD, pain specialist, saw Employee for trigger-point injections to the left thoracic region for "medically refractory myofascial pain and muscle spasm." He did not offer a causation opinion. (Liu report, September 30, 2020). At the instant hearing, Employee testified that this was the only treatment he received that helped relieve his thoracic back pain. (Record, May 8, 2025).

113) On October 6, 2020, Dr. Van Ravenswaay referred Employee to Wisdom Traditions Wellness Center (Wisdom Traditions) for counseling. (Referral Order, October 6, 2020).

114) On October 23, 2020, Anna Sappah, PsyD, with Wisdom Traditions saw Employee by Zoom for assessment and treatment of depression from a three-year history of chronic pain that Employee said came from a work injury. He presented with back, groin and shoulder pain that

he contended also arose from his work as a seafood processor. In the prior 12 months, Employee said he had experienced feeling fear or panic, heard voices or saw things, and felt paranoid that others were out to get him. He reported no history of drug or alcohol use. She did not expressly give a causation opinion. (Sappah report, October 23, 2020). At the instant hearing, when asked about hearing voices, Employee evaded the question but said "thoughts were coming to [his] mind." He admitted that he thought people were "out to get" him and he was afraid of "something happening." When asked why he had these thoughts, Employee said it was because Employer "hated him." (Record, May 8, 2025).

115) On November 5, 2020, Jon Paff, MA, at Wisdom Traditions, set forth Employee's initial treatment plan with short- and long-term goals. (Paff report, November 5, 2020).

116) On December 2, 2020, Dr. Van Ravenswaay's office referred Employee to Providence PT for an FCE. (Referral Order, December 2, 2020).

117) On December 2, 2020, Employee's FCE showed he was able to perform full-time (eight-hour days and 40-hour weeks) light-duty work although Employee demonstrated "self-limiting behavior" on 50 percent of the 20 tasks. The FCE emphasized, "*Please note that the overall level of work was significantly influenced by the client's self-limiting behavior. Therefore, the light level of work indicates a minimum ability rather than a maximum ability. A maximum overall level of work cannot be determined at this time due to the self-limiting behavior* (italics in original)." The report noted three possible reasons for self-limiting behavior: (1) pain; (2) psychosocial issues including fear of reinjury, anxiety, or depression; or (3) attempts to manipulate test results. The provider stated, "Although it is difficult to determine the causes of self-limiting behavior, our research indicates that motivated clients self-limit on no more than 20% of test items. If the self-limiting behavior exceeds 20%, then psychosocial and/or motivational factors are affecting test results." Employee's statements about his self-limiting behavior during his FCE included: Mid-back pain, pain and fatigue, upper-back pain, fear of reinjury and being sore in subsequent days. (Physical Work Performance Evaluation, December 2, 2020). At the instant hearing, Employee recalled the FCE but disagreed with the therapist's opinions and said he could not work eight hours a day, 40 hours a week because he was in "too much pain." Employee admitted he did not try to find light-duty work in December 2020, but did not recall why. (Record, May 8, 2025).

118) On February 5, 2021, Eric Olson, DO, with OPA saw Employee for an "out-of-pocket" PPI rating. Employee explained that he had numerous injections that were "temporarily helpful," but after the injections he "would attempt to go back to work at a sedentary level and his pain would return very quickly and was unable to maintain work at a sedentary level." He described himself as a "former alcohol drinker." Dr. Olson found him in no acute distress. On examination, Employee demonstrated "a lack of volition and giveaway weakness" due to pain in the left upper extremity. Employee's "main issue" was "in the thoracic and parascapular region on the left side." Dr. Olson did not offer a causation opinion but diagnosed low-back pain at multiple sites; deep inguinal pain on the right; a snapping scapula syndrome in the left shoulder; and neck pain on the right. He referred Employee for PT. (Olson report, February 5, 2020 one).

119) On March 11, 2021, Dr. Van Ravenswaay testified he is a board-certified, family medicine physician. He said that in May 2020, he opined the work injury was the most likely cause of Employee's anxiety, panic attacks, depression, chronic pain, shoulder and spine complaints and his inability to work, and that remained his opinion. In his view, Employee's anxiety, depression and chronic pain arose from his work injury with Employer. "I think it's the substantial cause as it relates to his complaints of chronic pain, panic attacks, depression, anxiety." Dr. Van Ravenswaay opined Employee was not medically stable for his "panic and worry and depression regarding his injury"; he needs coordinated care to address these issues. He found no evidence of symptom magnification during his physical examinations. Dr. Van Ravenswaay opined Employee still needed treatment for anxiety, depression and chronic pain so he could return to work as a fish processor. (Deposition of Jonathan Van Ravenswaay, MD, March 11, 2021).

120) Dr. Van Ravenswaay said he referred Employee for an FCE, which in December 2020 limited him to light-duty work. He too would limit Employee to light-duty office work, sales, and perhaps light cleaning but not heavy janitorial work. Dr. Van Ravenswaay said Employee needed to work regularly with a psychologist or behavioral health counselor, his medical doctor, and a pain specialist; he referred him to pain specialist Dr. Liu and to Wisdom Traditions for counseling. He did not know the legal definition of "the substantial cause," but said, "I would guess that it would be the main reason for the condition." Dr. Van Ravenswaay had not reviewed formal job descriptions. He could not recall any research about the connection between chronic pain and depression. (Deposition of Jonathan Van Ravenswaay, MD, March 11, 2021).

121) Dr. Ravenswaay's initial treatment was to "tell [Employee] to go to work. I said you just need to go to work. You just need to find a job. You just need to try something." Employee took his advice, but reported that returning to work "triggered his pain." (Deposition of Jonathan Van Ravenswaay, MD, March 11, 2021).

122) On cross-examination, Dr. Van Ravenswaay said he is not board certified in pain medicine, pain management or orthopedics. He does, however treat chronic pain as part of his practice, but "not a lot." Dr. Van Ravenswaay expects Employee to make significant improvement in his ability to work, "to overcome his sort of stuck in a rut kind of behavior where he is cycling down into depression and pain cycle." He thinks with treatment Employee could break that cycle so he could "hold down a job." Dr. Van Ravenswaay disagreed with Dr. Murphy's statement regarding chronic pain and not anticipating any significant change in his condition even after treatment by a pain specialist. However, Dr. Van Ravenswaay agreed with Dr. Murphy's opinion that Employee "needs more than just a pain specialist." He needs "psychiatric care, counseling, medical doctor, orthopedic doctor, probably some voc rehab to work together in concert and not just with a pain specialist." Dr. Van Ravenswaay relied on an informal consult he had with psychiatrist "Dr. Rodriguez" who recommended an inter-disciplinary approach to treating Employee, and there are none in Anchorage. (Deposition of Jonathan Van Ravenswaay, MD, March 11, 2021).

123) On March 18, 2021, Eppler on Employee's behalf amended his December 20, 2019 claim to clarify "he is seeking 2% PPI on his thoracic spine," and "2% PPI for chronic pain," and a Board order requiring a PPI evaluation for Employee's bilateral inguinal hernias and left shoulder. He also clarified that the unfair or frivolous controversion claim was per the *Vue* Alaska Supreme Court (Court) decision. He claimed TTD, TPD, and PPI benefits; a compensation rate adjustment; an unfair or frivolous controversion; attorney fees and costs; medical and transportation costs; a late-payment penalty based on *Vue*; interest; and the above-referenced "Other" relief. (Amended Claim for Workers' Compensation Benefits, March 18, 2021).

124) On June 17, 2021, Arthur Williams, PhD, psychologist, saw Employee for an EME and diagnosed an unspecified anxiety disorder and somatic symptom disorder, which involves excessive thoughts, feelings, or behaviors related to somatic symptoms or associated health concerns as manifested by at least one of the following: (1) disproportionate and persistent

thoughts about the seriousness of one's symptoms; (2) persistently high level of anxiety about health or symptoms; and (3) excessive time and energy devoted to symptoms or health concerns. He opined the work injury was not the substantial cause of Employee's current condition, and from a psychological perspective, he had been medically stable since January 30, 2018, when PA-C-Gordon released him to full duty. Dr. Williams stated, "any psychological treatment would be unrelated to [the work injury]." He found Employee's symptoms excessive and disproportionate based on no objective findings. Employee had no work restrictions from a psychological perspective. (Williams report, June 17, 2021). At the instant hearing, Employee testified that in his opinion his work-related pain causes his depression. He added it is possible that his depression causes his pain. Employee clarified that the "pain" he was referring to that causes his depression was in his "back around the spine" where his muscles were "too tense" in the "thoracic spine" area. In his opinion if he did not have that pain, he "probably" would not have depression, anxiety or panic attacks. Employee testified that his "chronic pain" was in the same area in the muscles around his thoracic spine, but also his shoulders and scapula would start bothering him when he tried working. When asked about his December 20, 2021 testimony at a prior hearing, Employee confirmed that when he returned to work cleaning with his wife, bending caused back pain which caused "more worry, more anxiety," and it was the thoracic back pain that caused his worry and anxiety. Employee testified that he began taking prescription painkillers in 2017 after his work injury, and continues to take them currently. When asked if they help, Employee says they help "keep a balance." He did not elaborate. (Record, May 8, 2025).

125) On July 27, 2021, Dr. Williams testified about his EME. Regarding depression:

> He said he was first depressed when he was in Kodiak in 2018. So there was a lag between the injury which occurred on 8-7-17 and his first exposure of being depressed. He was not sure how long he was depressed. He did go to counseling. He is not sure when he was last depressed.
>
> Now, one of the differential diagnoses I needed to make was whether he suffered from injury depressive disorder. So I asked him about the duration of his depressive feelings. He said they did not last all day. So that means he did not meet that criteria for injury depressive disorder. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

126) Dr. Williams said Employee attributed his depression to his pain. When he had pain, he would argue with his wife; he did not say depression lead to pain. Employee was vague about "panic attacks." He could not say when they began, but said the last one was about one week before the EME. Employee felt "very anxious," and said these feelings may have been panic attacks. His panic attacks all occurred with a "precipitant," and therefore Dr. Williams opined "he did not meet the criteria of panic disorder." He added, "panic attacks themselves are not a diagnosis." (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

127) Dr. Williams opined that if a person is depressed it may cause neurochemical changes that make that person more likely to have increased pain. Also, if a person is depressed, agitated or anxious, this can cause muscular and neurochemical changes that can lead to increased pain. Dr. Williams wanted to see if Employee's depression or anxiety preceded pain or if it was the other way around. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

128) Dr. Williams found Employee "quite dramatic" in his pain presentation and comments about his pain. Employee wanted to take off his shirt and show Dr. Williams that he was wearing "straps" to show he was in pain. Dr. Williams relied on medical opinions from physicians as he is not a medical doctor; if medical doctors say there are no objective findings, he gives those opinions great weight. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

129) On the American Medical Association *Guides to the Evaluation of Permanent Impairment*, Sixth Edition (*Guides*) Pain Disability Questionnaire, Employee scored 129, which placed him "in the severe range." Dr. Williams found Employee rated many of his scales at "10," the highest rating, meaning he was "unable to work at all, unable to lift overhead." The scale that stood out to Dr. Williams the most was the scale where Employee indicated he "could not walk or run at all, which would indicate to me that he needed to be in a wheelchair." Yet, from Dr. Williams' perspective as a psychologist, Employee had no gait problems and "seemed to walk normally." (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

130) Employee told Dr. Williams he had "severe depression." Dr. Williams has seen people with severe depression and Employee did not function like them in "psychomotor retardation, very slow movement and speech, crying throughout the interview," and so forth. In his opinion Employee did not "meet their criteria for major depressive disorder." Dr. Williams opined, "So

for him to give himself a ten on that scale was very [concerning]." (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

131) Dr. Williams performed the third Pain Disability Questionnaire on Employee. With Dr. Bauer, Employee's score was 95 and with Dr. Murphy it was 107. Dr. Williams opined that "this scale has very good reliability, which means it is consistent over time." Therefore, the scores should be consistent. But when Employee scored 129 with Dr. Williams, they were not. He opined pain does not usually get dramatically worse unless there is an intervening factor. Dr. Williams said there were no objective physical findings by Employee's examining physicians. He said the variation from 95 to 129 raised concern about Employee's self-reporting. According to the *Guides*, "Subjective complaints that are not clinically verifiable are generally not ratable under The Guides." (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

132) To meet the DSM-5 criteria for Major Depressive Disorder, Employee would have to be depressed "most of the day, nearly every day, as indicated by either subjective report or observation by others." He would have "significant weight loss," decrease or increase in appetite nearly every day, insomnia or hypersomnia, or psychomotor agitation or retardation. Employee did not "exhibit any of that nearly every day, observable by others." He made a point to tell Dr. Williams "depression and anxiety were not the cause of his inability to work and that both of those emotional factors followed pain rather than precipitated it." Dr. Williams further opined Employee's catastrophizing score at 38, was eight points above the cutoff for elevation, meant he catastrophizes, which would exacerbate his "pain perception." (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

133) Dr. Williams reviewed Dr. Van Ravenswaay's reports and deposition and disagreed the work injury with Employer caused Employee's psychological issues. He found Dr. Van Ravenswaay did not perform a systematic evaluation of depression, anxiety and chronic pain like he did. And while Dr. Williams respects family physicians, the *Guides* say that treating physicians' reports need to have more scrutiny because "they are definitely on the side of the patient." He was concerned about how Dr. Van Ravenswaay reached his conclusions other than just taking "at face value" what Employee told him. Dr. Williams saw no explanation for how Dr. Van Ravenswaay assessed Employee with a depressive disorder. In Dr. Williams' opinion, psychological factors four years post-injury "to a reasonable psychological certainty" were not related to the injury. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

134) Dr. Williams said the *Guides* specifically state in respect to mental illness, "Treating clinicians should not become involved in forensic issues, such as causation involving their patients. Forensic evaluators should not provide treatment for forensic examinees. Treatment [and] forensic roles should be completely and permanently separated for any individual case." Dr. Williams was "very concerned" about Employee continually using prescription narcotic medication. Employee was not using any active modalities to manage his pain. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

135) On cross-examination, Dr. Williams said Employee told him he had no prior workers' compensation claims and no personal injuries prior to his August 2017 work injury with Employer. He also reported no psychological diagnoses or treatment prior to his work injury. Dr. Williams diagnosed Employee with somatic symptom disorder and an unspecified anxiety disorder. Referring to the DSM-5, Dr. Williams agreed that an individual suffering from somatic symptom disorder could have significant distress and impairment. He also agreed that individuals who have this diagnosis have "authentic distress and authentic impairment." The "new" diagnosis of somatic symptom disorder is designed to include patients with chronic pain conditions. When asked if, given this diagnosis, Employee was "significantly impaired from functioning or trying to function in an occupational environment," Dr. Williams said, "Well, he says it is not because of emotion factors. So, from my perspective, it would be related to his perception of his pain symptoms." He further explained:

> So it is his perception, pain perception, and it's his suffering and his pain behaviors rather than the actual evidence of any underlying disorder.
>
> And he specifically said several times that the pain, the depression and anxiety themselves were not the factors that were interfering, it was a disability to work, his disability to function, it was the pain itself. . . . It was his perception of the pain that led to anxiety and depression.

Dr. Williams had no reason to believe Employee was not experiencing physical pain from his hernia and thoracic region from his 2017 work injury. He agreed Employee's diagnosis should also include him having "predominant pain." Dr. Williams agreed with the definition of "chronic pain" as stated in the *Guides*, Sixth Edition. He also agreed that under the *Guides*, chronic pain can be considered a disease entity in its own right, and in certain people it can be very debilitating. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

136) Dr. Williams had no medical records from before the work injury and he cannot rely solely on Employee's self-reporting, according to the *Guides* and the *Guides to Evaluation of Disease and Injury Causation*. Employee's complaints were disproportionate to the objective measures found in his medical records and disproportionate to other criteria he must follow in the *Guides*, that he said Employee's attorney failed to quote in his previous questioning. Dr. Williams has concerns about Employee's self-limiting behavior seen in occupational and physical therapy reports He found a "consistent picture here of discrepancies between what [Employee] does and says and how he presents and what would be expected," as addressed in Chapter 3 of the *Guides*. Dr. Williams would leave it to medical doctors who stated Employee can return to full employment. As for the psychological aspect, Employee's anxiety and depression are not interfering with his ability to work. The same is true of the Somatic Symptom Disorder, which "in and of itself is not sufficient to interfere with his ability to work." Dr. Williams opined, "work is in an inverse relationship to depression." In other words, "going back to work may be a therapeutic thing for him." When asked why Employee's August 7, 2017 work injury is not the substantial cause "of his current condition," Dr. Williams stated:

> Yes. So just go to the . . . Guides. It is on page 38. And there are four criteria here in evaluating the reliability and credibility of pain behaviors among patients undergoing PPI assessments. "Examiners should consider the following: Congruence with established conditions."
>
> How likely is it that somebody who had an injury like this in 2017 is having disabling and, in fact, worse symptoms based on the pain disability questionnaire of 129 compared to 95 with Dr. Bauer in 2021 from an accident in 2017?
>
> "Consistency over time in situation." Again, the consistency of the disability is not there because of the increasing disability, which is not expected in this type of situation.
>
> "Consistency with anatomy and physiology." Again, the doctors have repeatedly said that there was no underlying indication of objective findings.
>
> "Agreement among observers." Some of the doctors agree. A lot of the medical practitioners agree, and the family doctor disagrees.
>
> "Inappropriate illness behavior." He is wearing straps. I believe it is the physical therapist that says he doesn't have to wear them. He engages in self-limiting behavior, which according to the . . . Guides could be considered to be symptom-magnification, according to the occupational therapy record.

> Also, the physical therapy record from Wise Physical Therapy of 1-16-2019. . . . It says that he denies any pain in his spine upon arrival but was explaining there were so many things that he could do that would hurt him, and he just wasn't going to do them to avoid pain.
>
> So again, that would also raise questions about symptom-magnification, as it is defined on page 24 of the . . . Guides. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

137) Dr. Williams declined to state Employee was faking his symptoms because "faking implies intent," and he could not comment on Employee's intent. However, he found a "discontinuity between the pain disability questionnaire, the catastrophizing questionnaire, and the survey of pain attitudes and the type of injury that he had. So that discrepancy would be an invalidity sign." When asked, "So if his work injury is not the substantial cause of his current condition, then what is the substantial cause of his current condition?" Dr. Williams stated:

> All I can do is hypothesize about that. I think there have been some unfortunate teratogenic factors involved here in terms of the way he has been treated, which Dr. Van Ravenswaay even acknowledged in terms of his own treatment approach with this person.
>
> I think there may be cultural factors. Some cultures are more expressive of pain behaviors than others.
>
> And I think that his beliefs, that some of his maladaptive beliefs about pain have been reinforced rather than treated in an adaptive way.

When asked if this opinion was based on speculation and without an underlying factual basis, Dr. Williams said, "That's based on my way of looking at the case and looking at other factors that may have influenced his current presentation." He definitively stated it would not be speculation to rule out work as the substantial cause of Employee's current condition, based on the *Guides* criteria he previously mentioned. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

138) When asked why he recommended Employee have therapy with a pain psychologist for a month to treat depression, when Dr. Williams did not diagnose him with depression:

> Whenever somebody says he has suicidal thoughts, I always say somebody needs to be looking at those. . . .

With one month of therapy on a weekly basis, Dr. Williams hoped Employee could learn about catastrophizing and depressive symptoms and anxiety and learn a more adaptive way of dealing with "cognitive and emotional factors" related to his pain perception. (Videoconference Deposition of Arthur D. Williams, PhD, July 27, 2021).

139) On August 5, 2021, and a document dated August 4, 2021, Employer denied Employee's right to all benefits for Somatic Symptom Disorder and Anxiety Disorders based on Dr. Williams' June 17, 2021 report. (Controversion Notice, August 5, 2021).

140) In his August 6, 2021 hearing brief, Employee acknowledged his prior TTD benefits had been paid at $273 per week from October 4, 2017, through June 20, 2018. He contended that prior to his work injury there was no medical history Employee "suffered from anxiety, depression, somatic symptom disorder or chronic pain." Employee relied on *Leigh*, *Vue* and *Huit* to support his contention that he raised the presumption as to his disability and need for treatment, and Employer failed to rebut it with substantial evidence; he relied on *Hibdon* to support his claim for ongoing medical care. He acknowledged that Dr. Koller found Employee had anxiety and insomnia issues before his work injury but had also opined these were exacerbated by it. Employee conceded "that he is medically stable with respect to his thoracic spine." However, he contended he is not medically stable for his persistent pain, anxiety, and somatic symptom disorder, based on Dr. Van Ravenswaay's opinion. Employee contended Medicaid asserts a $32,711.65 lien for past medical treatment. He further contended he was entitled to a reemployment benefits eligibility evaluation. Consequently, Employee contended he should be entitled to "stipend" benefits during the time to which he should have been, or was, involved in the reemployment process. (Employee's Hearing Brief, August 5, 2021).

141) On August 10, 2021, Schwarting sent Eppler an email stating:

> Per our discussion, my client is willing to enter a check tomorrow, which would mail on Thursday, for the following benefits:
>
> 1. The 2% PPI initially assessed by Dr. Murphy, which is worth $3,540.00 and
> 2. TTD for the period of 5/17/20-6/17/21, which is worth $21,261.00.
>
> In exchange for this, we would continue tomorrow's hearing and promptly schedule mediation on the remaining benefits. This is a good-faith offer to get Mr. Hernandez some funds while we negotiate the remainder of the claim. . . . (Schwarting email, August 10, 2021).

142) On August 11, 2021, the parties agreed to continue a hearing set for that day on the merits of Employee's claims. The day prior, the parties had agreed Employer would pay some benefits at issue to Employee and schedule mediation to resolve the rest. Schwarting stated:

> So, what the employer and insurer are agreeing to pay now, is a two percent PPI rating that was issued -- or assessed by Dr. Murphy. And so we are also paying a period of temporary total disability benefits, and that period is between May 17, 2020, and June 17, 2021. And that period of TTD benefits totals $21,261. . . . He is not waiving anything beyond those specific benefits and everything else will be submitted to mediation.

Eppler agreed to these terms. The panel reluctantly continued the hearing based on these representations. (Transcript of Proceeding, August 11, 2021).

143) On August 12, 2021, Employer told Employee it had incorrectly calculated the TTD benefits for May 17, 2020, through June 17, 2021, his TTD weekly rate was $273, and the amount should have been $15,483 not $21,261. (Notice of Correction, August 12, 2021).

144) On August 17, 2021, Eppler on Employee's behalf claimed an unfair or frivolous controversion; a related penalty; interest; and attorney fees and costs on grounds Employer unilaterally changed the terms of the August 11, 2021 oral agreement. He claimed Employer improperly reduced the agreed TTD amount to $15,483. Thus, Employee filed this new claim, "To enforce settlement." Although he did not state the exact amounts requested, $5,778 in TTD benefits were not paid and were at stake, and a 25 percent penalty on that amount equals $1,444.50. Interest would depend upon when Employer paid the difference, or was ordered to pay it. (Claim for Workers' Compensation Benefits, August 17, 2021; observations).

145) On September 10, 2021, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 21-0082 (October 17, 2019) (*Hernandez III*), memorialized the continued August 11, 2021 hearing to allow the parties time to mediate the case. (*Hernandez III*).

146) On October 21, 2021, a Board designee set a new hearing on the merits of Employee's claims for December 22, 2021. (Prehearing Conference Summary, October 21, 2021).

147) In its December 15, 2021 hearing brief for the December 22, 2021 hearing, Employer conceded "the employer and insurer miscalculated" the TTD benefits due for the period May 17, 2020, through June 17, 2021. It argued Employee's TTD rate was known to both parties as was the period during which the stipulated benefits were to be paid. Employer contended paying the miscalculated amount would have been a "windfall" to Employee. It also argued Eppler lacked

experience, his paralegal's rate was excessive, Eppler and his paralegal did "concurrent work," the time spent on some tasks "far exceeds what it should," and Employee did not prevail on all issues for which Eppler charged attorney fees. (Employer's Hearing Brief, December 15, 2021).

148) In his December 15, 2021 hearing brief, Employee objected to the unilateral change in the parties' agreed-upon TTD benefits and said he had received a check for $19,023 and "has not cashed the reduced check." He argued that on August 21, 2021, the parties entered an enforceable stipulation when, in exchange for $21,261 Employee agreed to continue the hearing and submit to mediation. Employee relied on various legal theories, most notably contract law, estoppel, and the stipulation regulation, and requested an order requiring Employer to pay him $21,261 and not consider this an "overpayment" or allow it to be "recharacterized" or "recouped" in any manner. (Employee's Supplemental Hearing Brief, December 15, 2021).

149) On December 17, 2021, Eppler submitted an amended affidavit for his attorney fees and costs. He had clerked while in law school for a leading workers' compensation firm. This involved appearing at prehearing conferences and preparing clients for depositions. Eppler was admitted to the Colorado Bar in November 2012, and the Alaska Bar in October 2015. In Colorado, he represented clients in probate, contested guardianships, estate litigation and estate planning. He also worked for a family-law firm including litigating divorce, child custody and child support cases. When Eppler moved to Alaska in 2015, he worked for a family-law firm and in October 2015, started his own practice focusing on probate and estate planning. His work required him to review medical reports and testimony from expert witnesses. As of 2021, Eppler had been representing workers in workers' compensation cases for two years. He also counseled and advised numerous injured workers without entering an appearance. Since 2012, Eppler was the lead attorney on approximately 200 cases in addition to those on which he assisted another attorney. Eppler received no attorney's fees in Employee's case since he began representing him in December 2019. As of his affidavit date, Eppler had obtained $19,023 in benefits for Employee that were previously denied. He is a solo-practitioner and uses contract paralegal assistance when needed. When accepting a new case, Eppler must consider the contingency factor in workers' compensation cases, whereas he can take other clients who pay an hourly fee. Eppler served on the SIME selection panel in 2021, as a public service to the Division. He contended the medical issues in this case were complex and involved numerous treating, EME and SIME physicians. Eppler further noted Employee was previously represented by two

experienced attorneys who were unable to obtain any benefits for him. He declined approximately 10 probate and five workers' compensation cases, in part to handle Employee's case. Eppler further noted that sometimes it takes years to obtain attorney fees in a given case. (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021).

150) On December 22, 2021, a panel heard Employee's claim. Dr. Van Ravenswaay testified at hearing and said he had read Dr. Williams' deposition transcript and stood by his own prior testimony. He said, Employee, even with his help, had difficulty accessing psychiatric care because Employer controverted his case, and he had only Medicaid insurance. Dr. Ravenswaay opined Employee has "some sort of syndrome of depression" and anxiety. As far as he could tell, Employee "didn't have any of these symptoms before." (Record, December 22, 2021).

151) At the December 22, 2021 hearing, Employee said Dr. Koller stopped treating him because he could not find out what was wrong with him. Employee said prior to his 2017 work injury with Employer, he never had "a diagnosis or ever received treatment for" anxiety, depression, or panic attacks. He had limited Zoom meetings with the counselor at Wisdom Traditions, which Employee said made him feel good because he had someone to talk to about his situation. Employee said when he tried to return to work cleaning with his wife, bending caused back pain which caused "more worry, more anxiety." He objected to Dr. Williams' examination and said Dr. Williams did not allow him to talk about his situation. (Record, December 22, 2021).

152) At the December 22, 2021 hearing, Employee argued that Dr. Williams did not rebut the raised presumption on anxiety, depression and panic attacks. He contended Employer never asked a physician to offer a causation opinion on those issues. Dr. Williams simply stated, "it's not related," but provided no explanation. Employee contended Dr. Bauer's opinion made the same conclusory statement that his mental health conditions were not related. In short, he contended the EME reports were not legally sufficient evidence, making weighing them irrelevant. Employee contended, "there is no evidence that Employee had [anxiety and depression, pain, and panic attacks] prior to the 2017 work injury." He contended Dr. Williams' opinion failed because he could not provide an alternate explanation for Employee's mental health conditions. Employee contended Employer never asked anyone to address psychological issues until it sent Employee to Dr. Williams; thus, he contended Employer had an obligation to pay for mental health treatment at least until August 4, 2021, when it first controverted benefits based on Dr. Williams' report. Employee contended he needs a "comprehensive treatment plan"

to determine when he is medically stable from all his maladies. He relied on the *Rusch* decision to support his attorney's increased fee rate. (Record, December 22, 2021).

153) Employer at the December 22, 2021 hearing contended the Board should rely more heavily on Dr. Williams and on the orthopedic physicians, all of whom said Employee needed no further medical care or psychological treatment for his work injury, and he was long-ago medically stable. It argued in respect to its controversion notice, "What happened here is the Employer agreed to pay a period of past benefits. It happens all the time. It's not a settlement, and [*Stenseth*] is about a settlement agreement." Employer stated that Eppler and his paralegal were charging too much per hour for attorney fees and paralegal costs compared to other practitioners. It contended that Eppler admitted he had done three merits hearings before the Board and had no workers' compensation appellate experience. Employer did not object to Eppler's billed hours. (Record, December 22, 2021).

154) On January 21, 2022, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 22-0005 (January 21, 2022) (*Hernandez IV*), addressed the parties' August 11, 2021 oral agreement:

> 47) On August 11, 2021, the parties agreed to settle the case and set the terms on the record as follows: Employer will pay $3,540 based on a two percent PPI rating plus $21,261 in TTD benefits from May 17, 2020, through June 17, 2021. (Record). (*Hernandez IV* at 14).

155) At that time, Eppler had billed $80,992.25 for 190.57 attorney hours, $20,562.75 for 111.15 paralegal hours, and $1,803.94 in litigation costs, totaling $103,358.94. At hearing, Eppler testified he was entitled to $425 per hour based on the quality of his legal work, and contended his billed hours were reasonable. He also requested six hours additional time bringing his total to $105,908.94. However, *Hernandez IV* awarded Eppler only $20,639.85 in attorney fees and $6,944.63 in costs. *Hernandez IV* determined that of the eight factors set out in the Alaska Rules of Professional Conduct, Rule 1.5(a), only factors (1), (3), (4) and (7) applied. It further found that experienced claimant attorneys received $425 per hour, and decided Eppler lacked relevant workers' compensation legal experience. *Hernandez IV* made specific factual findings regarding attorney fees and costs as follows:

> 54) On December 17, 2021, Eppler billed 4.4 paralegal hours: (1) .6 hours for "Draft entry of Appearance" on "12/19/2019"; (2) .6 hours for "Draft Amended WCC" on "12/19/2019"; (3) .6 hours for "Draft AWCB medical summary" on

"12/19/2019"; (4) .6 hours for "Draft Request for Conference" on "12/19/2019"; and (5) two hours to "Finalize WCC, AWCB M/S, Req. for Conference, Entry of Appearance" on "12/20/2019." (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021; Entry of Appearance; Request for Conference; Workers' Compensation Medical Summary; Claim for Workers' Compensation Benefits, December 23, 2017).

55) On December 17, 2021, Eppler billed a total of .8 paralegal hours and .2 attorney hours to file a "Request for Prehearing Conference" as follows: .6 paralegal hours for "Draft Request for Prehearing Conference" on "3/6/2020," .2 paralegal hours for "Revise/finalize Request for Conference" on "3/24/2020," and billed .2 attorney hours to "Review, revise, finalize and file Request for Prehearing Conference" on "03/24/2020." (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021).

56) On December 17, 2021, Eppler billed .4 paralegal hours on "02/10/2021," .3 paralegal hours on "4/13/2021" for "Draft ARH," and billed .2 attorney hours to "Review, revise, finalize, file and serve Affidavit of Readiness for Hearing. E-mail to Client" on "04/14/2021." (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021).

57) On December 17, 2021, Eppler billed (1) 7.15 paralegal hours consisting of .8 hours on "06/09/2020," .6 hours on "06/24/2020," 4.5 hours on "08/05/2020," and 1.25 hours on "08/07/2020," and (2) 2.57 attorney hours consisting of .6 hours on "06/24/2020" and 1.97 hours on "08/19/2020" for the written record SIME hearing. (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021).

58) On December 17, 2021, Eppler billed 8.9 attorney hours consisting of 3.2 hours on "12/06/2021," 3.4 hours on "12/13/2021," and 2.3 hours on "12/15/2021," in preparation for "Employee's Supplemental Hearing Brief" related to the enforcement of the August 11, 2021 agreement. (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021; Employee's Supplemental Hearing Brief, December 15, 2021).

59) On December 17, 2021, Eppler billed 36.9 attorney hours and 28.7 paralegal hours for Employee's August 6, 2021 hearing brief. (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021). This 23-page long brief did not cover all hearing issues; it provided insufficient assistance to fact-finders to ascertain factual or legal bases to support Employee's claims. (Judgment).

60) An "Entry of Appearance" is a one-page document with boilerplate language. A "Claim for Workers' Compensation Benefits," commonly referred as "WCC," is a one-page form with fillable fields and checkboxes. Employee's December 23, 2019 medical summary contains a cover page and four pages of scanned documents. A "Request for Conference" is a one-page document with fillable fields and checkboxes. An "Affidavit of Readiness for Hearing," commonly referred as an "ARH," is a one-page form with fillable fields and checkboxes. (Observation). These documents do not require specific training, expertise, research or analysis to be completed. A legal assistant, paralegal or attorney may adequately complete such a document in five to 10 minutes without further reviews or revisions. (Knowledge; judgment).

> 61) In Paragraph 1 of the December 17, 2021 Amended Affidavit of Attorney's Fees and Costs, Eppler states, "I am the owner and manager of the Law Office of Justin S. Eppler, LLC, the attorney of record for Todd Christensen, the employee in the above claim." (Amended Affidavit of Attorney's Fees and Costs, December 17, 2021). Christensen is not Employee; this editing error shows that Eppler uses templates. Lawyers regularly use document templates to save time and money. (Observation; knowledge).
> 62) At hearing on December 22, 2021, the panel noted a lack of evidence supporting Employee's compensation rate adjustment or TPD benefit claims. Eppler said Employee was withdrawing his compensation rate adjustment claim, but Employee orally disagreed. After a brief discussion with his client, Eppler said Employee was still seeking a compensation rate adjustment. Employee did not provide any evidence to support his compensation rate adjustment claim. (Agency file; record). When the panel inquired about Employer's position regarding reemployment benefits, Schwarting responded that she would communicate with the adjuster, but it did not dispute the claim or offer any defenses. Employee said he could not obtain a PPI rating for his hernias because Employer declined payment. Employer admitted the compensability of Employee's hernias. Employee provided no evidence or argument for the medical transportation costs issue. (Record).
> . . . .
>
> 65) Eppler appeared in two merits hearings and several procedural hearings; he has no experience in workers' compensation appellate proceedings. (Eppler). He was awarded $385 per hour in *Cohen-Barce v. Vanstrom*, AWCB Decision No. 21-0010 (February 2021), an uninsured employer case. In such cases, reasonableness of attorney fees are rarely challenged. (Knowledge; observation). (*Hernandez IV* at 15-17).

156) *Hernandez IV* reduced Eppler's fees and paralegal costs, finding he and his paralegal overcharged, were not credible and took too long to perform simple services. (*Hernandez IV*).

157) *Hernandez IV* made the following conclusions of law and orders:

CONCLUSIONS OF LAW

> 1) Employee's September 23, 2021 email will not be stricken from the record.
> 2) The parties' August 11, 2021 agreement is not enforceable.
> 3) Employee is not entitled to TTD benefits.
> 4) Employee is not entitled to TPD benefits.
> 5) Employee is entitled to a PPI rating for his hernias.
> 6) Employee is not entitled to a compensation rate adjustment.
> 7) Employee is entitled to a reemployment evaluation.
> 8) Employee is entitled to past medical benefits. He is not entitled to past transportation costs.
> 9) Employee is entitled to a penalty.

10) Employer did not unfairly or frivolously controvert any benefits.
11) Employee is entitled to interest, attorney fees and costs.

ORDER

1) Employee's September 23, 2021 email will not be stricken from the record.
2) The parties' August 11, 2021 agreement is void and unenforceable.
3) Employee's TTD claim is denied; he is not entitled to TTD benefits from June 20, 2018, and continuing.
4) Employee's TPD claim is denied.
5) Employee's request for a PPI rating or PPI benefits for his psychological conditions is denied.
6) Employer shall pay for a PPI rating for Employee's hernias.
7) Employee's compensation rate adjustment claim is denied.
8) Employee is hereby referred to the Rehabilitation Benefits Administrator for a vocational reemployment eligibility evaluation.
9) Employee shall be deemed to be in reemployment process beginning December 23, 2019, and continuing until the reemployment process is complete in accordance with the Act and regulations.
10) Employer shall pay Employee the §.041(k) stipend from December 23, 2019, through August 11, 2021. Employer shall reclassify the TTD benefits paid from May 17, 2020, through June 17, 2021, as §.041(k) stipend. From August 12, 2021, forward, the §.041(k) stipend will be suspended until TTD and PPI benefits are prorated and exhausted, respectively.
11) Employer shall pay Employee's past medical benefits for his thoracic spine injury from June 20, 2018, through September 17, 2018, subject to the Alaska Medical Fee Schedule, the Act and applicable regulations.
12) Employee retains his right to seek future medical benefits for his work injury that are necessary and reasonable; Employer retains its defenses.
13) Employee's claim for past transportation costs is denied.
14) Employee retains his right to future medical transportation expenses for the work injury to the extent he provides appropriate documentation; Employer retains its defenses.
15) Employee's request for a finding of unfair or frivolous controversion is denied.
16) Employer shall pay a late-payment penalty on (1) past medical benefits for his thoracic spine injury from June 20, 2018, through September 17, 2018; (2) the §.041(k) stipend from December 23, 2019, through August 11, 2021; and (3) PPI benefits commensurate to a two percent rating, all in accordance with the Act and regulations.
17) Employer shall pay Employee interest on unpaid benefits pursuant to the Act and regulations.
18) Employer shall pay Eppler $20,639.85 in attorney fees and $6,944.63 in costs, totaling $27,584.48. (*Hernandez IV* at 47-48).

158) On January 26, 2022, the RBA's technician sent the parties an email stating that, based on *Hernandez IV*, Employee was being referred to reemployment specialist Jackie Doerner for a vocational reemployment eligibility evaluation. (Darlene Charles email, January 26, 2022).

159) On February 18, 2022, Loretta Lee, MD, internal medicine, performed an EME. She opined Employee had a zero PPI rating for his hernias because there were no defects in the fascia. Dr. Lee stated he could have ratable impairments for his back pain and psychiatric issues, "However, these would be due in part or in whole to a preexisting condition." She reasoned that most people who have a lifting injury requiring surgery do not have protracted issues with depression and anxiety as Employee did. Dr. Lee concluded there was a preexisting condition or predisposition for these issues to develop regardless of any work events. She found Employee had no structural damage on imaging and may have had a muscle strain in his back that resolved over "weeks to months." She could not attribute all post-injury issues to the work event. "There has to be a plausible mechanism of injury that is supported by objective evidence. In this case, that criteria was not met." (Lee report, February 18, 2022).

160) From February 25, 2022 through May 2, 2022, Douglas Luther, DC, at Luther Chiropractic treated Employee for "somatic dysfunction" in his spine from his neck to his pelvis, and occasionally including his ribs. As a comorbidity that could retard Employee's progress, was "prior surgery in area of complaint." Dr. Luther's treatments included trigger point injections and common chiropractic modalities. Employee reportedly made "slow but steady improvement" and, on May 2, 2022, Dr. Luther declared him at "Maximum Medical Improvement." His condition was "not well stabilized yet" and was likely to change over the next year, so Dr. Luther decided treatment should be discontinued. Dr. Luther's records reference other reports from his chart that are not included. This includes the history and chief complaints Employee presented upon his first visit. Dr. Luther offered no causation opinions in the reports Employee provided. (Luther reports, February 25, 2022 through May 2, 2022; Medical Summary November 7, 2023).

161) On March 1, 2022, Doerner called the RBA to determine to whom she should sent her medical questionnaires. The RBA noted that Employee had named his attending physician during his interview with Doerner, and she should provide her questionnaires to that physician. Doerner told the RBA that Employee "mentioned only physical work related injuries during the interview." (Agency file: Reemployment, Communications, Phone Call tabs, March 1, 2022).

162) On March 2, 2022, Doerner sent Dr. Van Ravenswaay a letter seeking opinions on "currently accepted" injuries to Employee's hernias and thoracic spine. Doerner's letter asked Dr. Van Ravenswaay to predict if Employee would have permanent partial impairment greater than zero percent resulting from his August 17, 2017 work injury under the applicable *Guides*. It also asked Dr. Van Ravenswaay to review and return attached job descriptions and predict whether Employee would be able to return to those positions: Waiter/Waitress (light-duty); Fish Roe Processor (medium duty); Cleaner, Commercial or Institutional (heavy duty); Laborer, Stores (medium duty), Fish Cleaner (medium duty); Cannery Worker (light-duty); Laborer, Landscape (heavy duty); and Construction Worker II (very heavy duty). (Doerner letter, March 2, 2022).

163) On March 9, 2022, Dr. Lee predicted Employee would have permanent physical capacities to perform physical demands for: Stores Laborer, Informal Waiter, Fish Cleaner, Fish Roe Processor, and Cannery Worker. (Dr. Lee responses, March 9, 2022).

164) On March 17, 2022, Employer denied Employee's claim for PPI benefits for his hernias. It based this denial on Dr. Lee's opinions stating he had no ratable PPI because there were no residual defects in the fascia. (Controversion Notice, March 17, 2022).

165) On March 29, 2022, Doerner prepared a vocational reemployment eligibility evaluation report on Employee for the Division. Doerner had received an email from Employee on February 11, 2022 stating, "I have no intention of working until I receive the medical treatment that my doctor has recommended." She had sent Employee the applicable job descriptions for his review or comment but, "Unfortunately, [she] never received a response." Doerner operated under her understanding that Employee's hernias and a "thoracic spine injury," both of which were at "maximum medical improvement," were the only accepted injuries and Employee's left-shoulder and psychological conditions were deemed not related in *Hernandez IV*. (Eligibility Evaluation Report, March 29, 2022).

166) Doerner explained that she determined Dr. Van Ravenswaay was Employee's attending physician, and sent him job descriptions for his review and comment. When Dr. Van Ravenswaay did not respond, Doerner spoke directly with him and learned he did not want to offer opinions because he was treating Employee for other injuries that Dr. Van Ravenswaay believed should be included in his claim. Dr. Van Ravenswaay also stated he had not received payment for services he had provided Employee and suggested Employer obtain its own medical

opinion as he did "not feel he [had] enough information to provide a prediction as requested." Doerner later learned that Employer's adjuster had already sent the same job descriptions to EME physician Dr. Lee. (Eligibility Evaluation Report, March 29, 2022).

167) In response to the job description questionnaires, Dr. Lee predicted Employee would have permanent physical capacities to perform: Stores Laborer; Informal Waiter; Fish Cleaner; Fish Roe Processor; and Cannery Worker (his job at the time of injury). She predicted he would not have permanent physical capacities to work as a Construction Worker II; Landscape Laborer; or Commercial or Institutional Cleaner. (Eligibility Evaluation Report, March 29, 2022).

168) While interviewing Employee, Doerner learned that he had worked post-injury as a Landscaper Laborer in 2020, but stated he could only do it for a few hours because he could not tolerate it physically. Employee had also worked post-injury in 2019 as an office cleaner but ceased doing that job after a few hours as well for the same reason. He told Doerner that post-injury in 2019 he also worked for two days sanding cars in preparation for painting. Employee also reported that he had worked for Employer post-injury as a Fish Cleaner from January 2, 2018 to March 23, 2018, and post-injury in 2017 as a Fish Roe Processor while working "light duty" for Employer for 30 days or less. Most notably, Employee told Doerner that from April 2018 through 2019 he had, "No work." (Eligibility Evaluation Report, March 29, 2022). At hearing, when asked repeatedly to list all his post-injury employment, Employee did not include any work as a Landscaper Laborer. He also testified at hearing that he worked only one day wet-sanding a car, not two. (Record, May 8, 2025).

169) After completing her research and interviews, Doerner went through the statutory analyses to determine Employee's eligibility. Relying on Dr. Lee's opinion, Doerner predicted Employee would have permanent physical capacities to perform the physical demands of his Cannery Worker job held at the time of his injury with Employer, as well as: Stores Laborer; Informal Waiter; Fish Cleaner; and Fish Roe Processor. Doerner added:

> Labor market research for these occupations was not necessary as [Employee] is not eligible based on Dr. Lee's prediction that he will have the permanent physical capacities to perform the physical demands of the job of injury. It is noted that if I had conducted labor market research, I am confident that I would be able to document that all of the aforementioned jobs exist not only in [Employee's] current geographic region (Anchorage), but elsewhere in significant numbers.

Doerner concluded that Employee was not eligible for reemployment benefits based on Dr. Lee's predictions. (Eligibility Evaluation Report, March 29, 2022).

170) On April 7, 2022, Employee appealed *Hernandez IV* to the Commission. (Notice of Appeal, April 7, 2022). Employer did not cross-appeal. (Agency file).

171) Employee's grounds for appeal included:

> (1) The Board erred as a matter of law in finding that Drs. Bauer and Williams' opinions that the employee's psychological and pain conditions were not work-related, which are based on speculation and unknown causes, were insufficient to rebut the presumption of compensability; and these opinions are also not supported by substantial evidence.
> (2) The Board erred as a matter of law in not addressing the employee's argument that persistent pain is a physical disease entity from which the employee suffers and is a contributing cause of the employee's disability and need for medical treatment. In doing so, the Board failed to consider Dr. Murphy's deposition testimony that persistent pain can be a disease entity, that the diagnosis of chronic pain applies to Mr. Hernandez, and that Mr. Hernandez's chronic pain was a contributing cause to his disability and need for medical treatment.
> (3) The Board erred as a matter of law in finding that Dr. Murphy stated Employee's anxiety and panic attacks were not substantially caused by the August 7, 2017 work injury; and this finding is not supported by substantial evidence.
> (4) The Board erred as a matter of law in finding the agreement/stipulation between the parties for the payment of benefits, which was placed on the record at hearing on August 11, 2021, was unenforceable.
> (5) The Board erred as a matter of law in finding the employee was only entitled to AS 23.30.041(k) stipend from December 23, 2019, as opposed to the date when he was supposed to be referred for an eligibility evaluation under AS 23.30.041(c).
> (6) The Board erred as a matter of law in discounting Dr. Van Ravenswaay's opinion because he does not specialized in psychology or psychiatry, and/or because at the time of his deposition he did not state specifically the definition of "substantial cause."
> (7) The Board erred as a matter of law in discounting Dr. Van Ravenswaay's opinion on the employee's inability to return to work because he did not review any United States Department of Labor's [sic] "Selected Characteristics Of Occupations Defined In The Revised Dictionary Of Occupational Titles"; and said ruling was arbitrary and capricious.
> (8) The Board erred as a matter of law in finding the employee was medically stationary; and said finding is not supported by substantial evidence.
> (9) The Board erred as a matter of law in not assessing whether the employee rebutted medical stability by clear and convincing evidence.
> (10) The Board erred as a matter of law in not finding that the employer frivolously and unfairly controverted employee's claim when employer stopped paying all benefits regarding employee's diagnosed anxiety, depression, and

> chronic pain, which were not controverted until August 4, 2021, four years after the date of injury.
> (11) The Board erred as a matter of law in ordering reclassification of past TTD benefits as AS 23.30.041(k) stipend benefits.
> (12) The Board erred as a matter of law in awarding the employee only 30% of his attorney's fees at $350 per hour under the guise that he only prevailed on 30% of the issues without considering that the employer paid TTD benefits and a 2% PPI rating in the amount of $19,023 prior to the hearing on the merits.
> (13) The Board erred as a matter of law in reducing many of the employee's attorney's fees and costs including the attorney's hourly rate; and many of the reductions are arbitrary, capricious, and contrary to the complexity and length of this claim and experience of employee's counsel. (Appellants' Statement Of Grounds For Appeal, April 7, 2022).

172) On April 8, 2022, Eppler wrote the RBA-designee to voice concerns about Doerner's evaluation and recommendations. He contended that Dr. Lee and Doerner failed to consider Employee's alleged psychological components "that are a part of this claim" including "anxiety, panic attacks, depression, and diagnosed somatoform disorder." He also asked that Dr. Lee's report be stricken from the record. (Eppler email, April 8, 2022).

173) On May 13, 2022, the RBA-designee determined Employee was "not eligible" for reemployment benefits based on Doerner's March 29, 2022 Eligibility Evaluation Report and Dr. Lee's predictions. (RBA-designee letter, May 13, 2022).

174) On May 23, 2022, Employee petitioned for review of the RBA-designee's decision. His petition stated *Hernandez IV* was pending appeal before the Commission, and therefore, he requested that the "deadline to appeal the RBA's decision be tolled until 10 days following a full and final order" from the Commission. (Petition, May 23, 2022).

175) On June 2, 2022, Michael Dyches, PA-C, with OPA saw Employee. Employee said that on August 7, 2017, while working for Employer, he had been pushing and pulling containers weighing up to "1400 pounds." He did not report "any one particular incident but more due to repetitive pushing and pulling of heavy containers." Employee's past medical history included anxiety, "blood coagulation disorder" with prolonged bleeding time, depression, "drug abuse," hernia, joint swelling, low back pain, muscle pain and numbness and tingling of skin. PA-C Dyches on physical examination found:

> There is a scar just to the left of midline at his upper thoracic spine which is adjacent to his most painful area in the mid upper thoracic spine. He states that

> this was a result of a stabbing injury at the age of 18 when he was attacked by his brother.
>
> . . . He has full active range of motion of his cervical and lumbar spine without difficulty. No spasm or deformity of the spine as noted. . . .

Employee reported that Dr. Liu's injections gave him "temporary relief at best." His pain level was "5/10" at best taking medications, and "9/10" otherwise. Employee said he was a "former alcohol drinker." PA-C Dyches recommended cervical and thoracic spine MRI studies. (Dyches report, June 2, 2022).

176) On June 29, 2022, notwithstanding the May 23, 2022 petition appealing the RBA-designee's decision, the parties at a prehearing conference stipulated to a written-record hearing on Employee's May 23, 2022 petition. (Prehearing Conference Summary, June 29, 2022).

177) On July 20, 2022, Michael Dyches, PA-C, wrote a "to whom it may concern" letter. In it, he offered several medical opinions and made referrals. However, this letter was written for litigation purposes, and Employer later requested cross-examination of PA-C Dyches. To date, PA-Dyches has not been made available for Employer's cross-examination. (Dyches letter; experience, observations and inferences from the above; Request for Cross-Examination, December 11, 2023).

178) On July 26, 2022, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 22-0054 (July 26, 2022) (*Hernandez V*), affirmed the RBA-designee's finding that Employee was not eligible for reemployment benefits. (*Hernandez V*).

179) Employee did not seek appellate review of *Hernandez V*. (Agency file).

180) On July 29, 2022, Paola Kennah, PA-C, with Neuroversion, saw Employee for bilateral shoulder pain and mid-back pain. He was last seen here on January 17, 2021. OPA referred Employee to treat suspected Chronic Regional Pain Syndrome (CRPS) of the left upper extremity. "Since going back to work, he notes increased mid-back pain and a pulsating pain in the right shoulder." His entire back had "5/10" pain most prevalent in the mid-back. Of all the medications Employee had used, only "Hydrocodone, Norco/Vicodin" had improved his "condition." Physical therapy, massage therapy, chiropractic adjustments, and psychotherapy resulted in "no change in condition." PA Kennah diagnosed subacromial bursitis based on radiographic imaging. He also determined Employee had no limb-length discrepancies. PA Kennah assessed: CRPS I in the right upper-extremity; other mononeuropathies in the right

upper-extremity; right upper-extremity causalgia; right-shoulder pain; mononeuropathies in the left upper-extremity; left-upper extremity causalgia; left-shoulder pain; mid-back pain; thoracic radiculitis; myofascial pain; and muscle spasms. As for the CRPS I diagnosis, "The patient reports a history of 4 out of 4 Budapest criteria including: Sensory dysfunction, vasomotor dysfunction, skin changes, sudomotor dysfunction, and motor/trophic function changes." PA-C Kennah stated he found on examination hyperesthesia and allodynia of the right upper extremity, temperature asymmetry with one extremity colder to touch compared to the other with color and swelling variations, and mild decreased range of motion and weakness noted. He recommended right and left stellate-ganglion blocks for diagnostic and therapeutic purposes for several assessed maladies, above. PA-C Kennah recommended trigger point injections for mid-back pain; continuing with Employee's medications for thoracic radiculitis; hot and cold compresses, magnesium supplements and physical therapy for myofascial pain; and continued medication for muscle spasms. He offered no causation opinions for all the above diagnoses and impressions. (PA-C Kennah report, July 29, 2022).

181) On August 22, 2022, Dr. Liu gave Employee a right stellate-ganglion block. (Liu report, August 22, 2022).

182) On August 23, 2022, Dr. Liu gave Employee a left stellate-ganglion block. (Liu report, August 23, 2022).

183) On September 7, 2022, Employee reported 50 percent relief from his bilateral distillate-ganglion blocks. (PA-C Kennah report, September 7, 2022).

184) On September 29, 2022, Dr. Liu gave Employee another right stellate-ganglion block. (Liu report, September 29, 2022).

185) On September 30, 2022, Dr. Liu gave Employee another left stellate-ganglion block. (Liu report, September 30, 2022).

186) On October 6, 2022, Employee reported improvement in his bilateral upper extremity pain but was then experiencing trapezius tightness bilaterally. He reported "5/10" constant mid-back pain and tense muscles. He also reported an 80 percent pain decrease with his "current medication regimen." Notwithstanding his reported improvement, "Of note, the patient is expressing frustration and signs of worsening depression due to his chronic pain symptoms." Employee still reported, "Tenderness to patient to cervical paraspinal muscles, tenderness to bilateral trapezius muscles, tenderness throughout the thoracic scapular and upper back region

bilaterally." PA-C Kennah no longer recorded CRPS as an assessment. (Kennah report, October 6, 2022).

187) On October 27, 2022, Dr. Liu gave Employee bilateral trigger-point injections to his cervical paraspinals, trapezius muscles and upper back.. (Liu report, October 27, 2022).

188) On November 17, 2022, Employee reported 75 percent relief from the trigger-point injections. Nevertheless, Employee felt his shoulder and back muscles were still "too tense." Notwithstanding his reported improvement, Employee still could not lift his three-year-old daughter without pain. (Kennah report, November 17, 2022).

189) On December 2, 2022, Travis King-Weaver, MD, at Anchorage Neighborhood Health Center saw Employee on referral from Dr. Van Ravenswaay. Employee was consuming "3-4 shots at night," and said he did not want to become an alcoholic. Dr. King-Weaver did not offer an independent causation opinion. He thought Employee may have CRPS. Employee denied a history of mood disorders prior to his back injury in 2017. Dr. King-Weaver diagnosed chronic pain syndrome and depressive disorder. (King-Weaver report, December 2, 2022).

190) On January 20, 2023, Phillippe Lindsay-Thomas, PsyD, evaluated Employee, then age 38, who "reported no progress with symptoms and endorsed feelings of helplessness and hopelessness regarding his chronic pain, anxiety and depressive" symptoms. He revealed that he had "been incarcerated multiple times" for "having problems with [his] co-workers." Employee stated the co-workers "mistreated him" and made him "act that way." He reported his symptoms have "been worsening for a time period of 5 years." They were "severe." Dr. Lindsay-Thomas diagnosed depressive disorder due to another medical condition with mixed features, and chronic pain syndrome. While Employee ascribed causation for his maladies to his August 7, 2017 work injury with Employer, Dr. Lindsay-Thomas did not offer a causation opinion and stated that Employee understood "this evaluation will have no determination on his workman's compensation case and is for clinical purposes only." (Lindsay-Thomas report, January 20, 2023).

191) On January 20, 2023, Dr. King-Weaver also evaluated Employee, who spoke about his open workers' compensation case and pending appeal. Employee was seeking assistance with his claim from a mental health professional and continued to report anxiety, and ability to work "primarily due to anxiety apparently," and pain while sitting and with activity, depression and severe financial stressors. For example, he owed the bank $25,000 and had "loans." Dr. King-

Weaver recorded having spoken with Dr. Liu briefly and having reviewed his November 2022 note where Dr. Liu said Employee was "overall doing quite well" and reported 80 percent improvement in his symptoms while taking Celebrex, Duloxetine and Gabapentin, and improvement in his bilateral upper extremity pain following stellate-ganglion blocks. Employee reported having been seen at Alaska Behavioral Health weekly and "did find it helpful at the time." Dr. King-Weaver was "unclear if there were any premorbid symptoms." He concluded Employee's primary impairment limiting employment and overall function was "psychiatric." Dr. King-Weaver told employee his exam and evaluation would "likely not add anything" to Employee's case, he would refer him to other resources. (King-Weaver report, January 20, 2023).

192) On February 7, 2023, Philip Mendoza, MD, saw Employee for "bilateral low back pain with pain scale of 10/10." Employee was also having an "anxiety/panic attack due to his pain," and attributed all the symptoms to his work injury with Employer. His problems included: Anxiety (Onset: 07/25/2022); Initial insomnia (Onset: 01/11/2023); Depressive disorder; Chronic pain syndrome; Migraine; Indigestion (Onset: 07/25/2022); Acute thoracic back pain (Onset: 07/13/2019); Thoracic back pain (Onset: 06/11/2022); Chronic low back pain (Onset: 07/08/2022); Inguinal pain (Onset: 07/13/2019); and Pain of left shoulder joint. Dr. Mendoza charted:

> 38 y/o [year-old] with h/o [history of] mood disorder and chronic back pain here for f/u [follow-up]. Was working on a car and back pain flaired [sic] up, low and mid back, non radiating, no leg weakness or numbness + worsening anxiety and depressive sxs [symptoms], poor sleep, taking meds as directed, having some gi [gastrointestinal] upset from taking otc [over-the-counter] and px [prescription] nsaids [nonsteroidal anti-inflammatory drugs]. drinking 1-2 drinks etoh [alcoholic] hs [bedtime]. [D]enies other drug use asked for a few Vicodin due to flair [sic] up of pain. is waiting to get in with behavioral health for counseling services. Pt asks for something that he can take during daytime because flexeril and gaba [gabapentin] combo make him sleepy/drowsy. (Mendoza report, February 7, 2023).

193) On February 21, 2023, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCAC Dec. No. 300 (February 21, 2023) (*Hernandez VI*), which the Commission initially titled a "Final Decision" addressed Employee's appeal from *Hernandez IV*. It also stated Employer's position on each issue in Employee's appeal. (*Hernandez VI*).

194) *Hernandez VI* made some notable statements:

- "The Commission notes Dr. Bauer did not explain to what the anxiety and panic attacks were attributable" (page 5).
- "The Commission notes Dr. Murphy did not discuss the cause or origin of the anxiety and panic attacks" (page 8).
- "He [Dr. Williams] did not discuss or provide an opinion as to the origin and cause of Mr. Hernandez's anxiety and panic attacks" (page 9-10).
- "The Commission notes Dr. Williams did not address the cause of the chronic pain, just noting [Employee] had it" (page 11).
- "The Commission notes the Board did not discuss the basis for its conclusions about the time involved in [Eppler's] activities and did not provide Mr. Eppler with an opportunity to respond" (page 12, n. 53).
- "[Dr. Williams] did not provide an alternative explanation for the causation of either the chronic pain, depression, or the anxiety" (page 17).
- "Based on *Vue* and *Huit*, Ocean Beauty did not rebut the presumption because no alternative cause for the chronic pain [was] discussed" (page 21).
- "Dr. Murphy . . . stated . . . the anxiety/panic attacks were 'not substantially caused by this work injury.' However, he did not explain why this is so or point to an alternative cause" (page 22).
- "[Dr. Bauer] further states, 'Mr. Hernandez has a history of increasing anxiety, and his current complaints are on a more-probable-than-not basis related to his psychological condition rather than any physiologic condition.' However, he does not indicate what that psychological condition is nor does he indicate the cause or origin of the condition" (page 21-22).

195) *Hernandez VI* also stated the following in its analysis and in one order, which seemed inconsistent: "Therefore, the Commission remands the question of the terms of the stipulation and whether Ocean Beauty has good cause for seeking a change in the terms" (page 19). "The matter is remanded to the Board to enforce the stipulation/Board order with regard to the payment of TTD as agreed on August 11, 2021, and to recalculate when .041(k) benefits should start" (page 20). "The Board needs to determine whether the agreement put on the record on August 11, 2021, should be revised to reflect the correct sum of TTD benefits for the period of May 17, 2020, through June 17, 2021" (page 30). (*Hernandez VI*). At the instant hearing, upon learning that the Division's EDI data showed that Employer said it had paid the stipulated $21,261 in full, Employer stated it was not interested in seeking relief from the August 11, 2021 stipulation, if the issue was moot. Nonetheless, Employer agreed to provide payment information post-hearing to resolve the question of if and when the full $21,261 was paid. (Record, May 8, 2025).

196) *Hernandez VI* remanded *Hernandez IV* to the Board with the following in its "Conclusion and Order" section:

> [1] "The Board needs to determine whether the agreement put on the record on August 11, 2021, should be revised to reflect the correct sum of TTD benefits for the period of May 17, 2020, through June 17, 2021."
> [2] "The Board also needs to determine if the terms of the agreement, i.e., payment of TTD benefits, should be modified to reflect payment of .041(k) benefits."
> [3] "The Board also needs to revisit the question of Mr. Hernandez's chronic pain and his anxiety/panic attacks, and to ascertain if the work injury is the substantial cause of either or both."
> [4] "The Board further needs to consider whether the presumption of compensability of ongoing disability and need for medical treatment for the chronic pain condition and/or anxiety/panic attacks was overcome with substantial evidence as required, since none of the experts relied on by the Board: Drs. Murphy, Bauer, and Williams, addressed the relative causes of the need for medical treatment for chronic pain and anxiety/panic attacks, merely stating that they could not connect these problems to the work injury and, therefore, work was not the substantial cause."
> [5] "Once the Board reconsiders these issues, the Board will then need to readdress the issue of attorney fees, pursuant to the Court directive that an award of fees must be made utilizing the criteria in Rule 1.5 of the Rules of Professional Conduct and the contingent nature of representing injured workers." (*Hernandez VI*).

197) On February 24, 2023, the Commission issued an errata to *Hernandez VI* changing its title from a "Final Decision" to a "Memorandum Decision," and changing the appeal procedures previously set out on page 31 to procedures for filing a petition for review of a non-final decision with the Court. (Errata, February 24, 2023).

198) On March 6, 2023, Employee asked the Commission to reconsider *Hernandez VI*. He contended (1) Employer needed substantial evidence to rebut the presumption that the work injury was a substantial cause of Employee's chronic pain and anxiety; and (2) the Commission overlooked or failed to consider Employee's argument regarding Employer's alleged unfair and frivolous controversion. In its response, Employer contended the compensability issue was properly remanded to the Board because "the Commission cannot reweigh evidence. . . ." Employer noted the Commission had addressed both the §.041(k) reemployment issue and compensability of the psychological condition in detail and did not ignore the controversion issue. (Motion for Reconsideration, March 6, 2023).

199) On March 13, 2023, Employee told PA-C Kennah that whenever he rested his back on something it flared up and he had pain. His mid-back pain was "4/10." Employee said he was, "currently working in an auto body shop." He said he did "a lot of listing [sic] and manual work which can exacerbated his pain." PA-C Kennah recommended repeat trigger point injections in the mid-back from T-2 through T-9. (Kennah report, March 13, 2023).

200) On April 4, 2023, Dr. Liu gave Employee bilateral and-back trigger point injections. (Liu report, April 4, 2023).

201) On April 7, 2023, Employee reported 70 percent pain relief in his upper-mid-back. However, now his pain was in his upper-back and scapular region with radiation into the top of his spine and bilateral shoulders. He rated his new pain at "9/10." PA-C Kennah recommended repeat trigger point injections in the new pain areas. (Kennah report, April 7, 2023).

202) On April 11, 2023, in response to Employee's March 6, 2023 motion, the Commission clarified its comments about the "presumption of compensability" from *Hernandez VI*. In *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCAC Order on Motion for Reconsideration (April 11, 2023) (*Hernandez VII*) it stated:

> [Employee] requests reconsideration, contending the Commission found that [Employer] had not rebutted the presumption of compensability and the Commission should have reversed the Board. The Commission, he asserts, should not have remanded the issue for further consideration. However, the Commission addressed the legal analysis the Board needed to apply, but did not. It is not for the Commission to reweigh the evidence presented nor to choose between doctors' reports and testimony.

Hernandez VII further stated that on remand the Board, using the analysis in *Huit* and *Vue*, needed to determine if Employer provided substantial evidence to rebut a raised presumption. It added that *Hernandez VI* had "remanded issues of reemployment and compensability" so the Board could "address the facts" and utilize "the correct legal standards." The Commission stated the unfair or frivolous controversion issue could not be considered by the Board or the Commission until the remanded issues were decided. (*Hernandez VII*).

203) On April 17, 2023, Employee began PT with Arctic Rehabilitation & PT with Lisa Radley, DPT, and others. He attributed his symptoms to his August 7, 2017 work injury and said he had, "Chronic entire back pain, worse at thoracic spine, difficulties sitting and standing, unable to work or pick up three-year-old daughter." Although he said his recent injections reduced his

pain, Employee at his first visit stated his pain at best was "8/10," and at worst was "10/10." Employee had dozens of PT visits with this provider. (Arctic Rehabilitation & PT records, April 17, 2023 through November 3, 2023).

204) On April 27, 2023, Employee reported "5/10" pain in his mid-back and bilateral shoulders. (Kennah report, April 27, 2023).

205) On May 12, 2023, Dr. Liu gave Employee repeat trigger-point injections to his mid-back bilaterally by the scapular region. (Liu report, May 12, 2023).

206) Neither PA-C Kennah nor Dr. Liu provided causation opinions for the treatments they provided to Employee. (Kennah and Liu records).

207) On July 19, 2023, Katherine Robins, a clinician at Alaska Behavioral Health stated Employee's "Past Medical Conditions" included "chronic pain from fibromyalgia and work injury." Employee declined an interpreter at this and all other visits at this clinic. (Alaska Behavioral Health record, July 19, 2023).

208) On June 26, 2023, Employee filed a request for an extension of time to "Request a Hearing under AS 23.30.~~110~~ 130" (strikethrough in original). He made this request to "toll the one-year statute of limitations" under §.130 to request modification of *Hernandez V*, contending "good cause exists." Employee argued that until the Board addresses the "issue of causation on remand" regarding Employee's anxiety, panic attacks and chronic pain, he could not in good faith determine "whether a mistake of fact and/or change of condition has occurred." He requested 45 days from the date the Board decided the remanded issues, to petition for a factual error or change of condition under §.130. Employee contended this request satisfied his requirement of substantial compliance for requesting an extension of time to request modification pursuant to the *Kim* Court decision. (Petition, July 26, 2023).

209) On July 31, 2023, a hearing officer mediated Employee's case and, according to his agency file, "partially resolved" the claims by resolving the attorney fee issue only. (Agency file; Judicial; Mediation Details tabs, July 31, 2023).

210) On August 4, 2023, Schwarting and Eppler signed and filed a stipulation for approval of Eppler's attorney fees. They agreed Eppler provided valuable services to Employee and his efforts expedited Employee's receipt of benefits. Schwarting and Eppler agreed that upon Board approval, Eppler would receive $63,250 in attorney fees and costs through August 4, 2023. "It is [Eppler's] intent to withdraw as counsel for Mr. Hernandez following the approval of this

stipulation." There was no evidence that Schwarting or Eppler served this stipulation on Employee. (Stipulation for Approval of Employee's Attorney Fees, August 4, 2023).

211) On August 15, 2023, the hearing panel sent a letter to Employee, Schwarting and Eppler advising them that the Division would serve Employee with Schwarting's and Eppler's August 4, 2023 cover letter and attorney fee stipulation. The letter gave Schwarting and Eppler until 5:00 PM on August 18, 2023, to file and serve comments regarding the question of whether Employee had a right to notice and an opportunity to be heard on Schwarting's and Eppler's attorney fee stipulation. It gave Employee until 5:00 PM on August 23, 2023, to file and serve on Schwarting and Eppler any written comments he had regarding the attorney fee stipulation. The letter also asked Eppler to file and serve a current attorney fee and cost affidavit supporting an award of $63,250 in attorney fees and costs by 5:00 PM on August 18, 2023. The affidavit was to address Rule 1.5, commonly referred to as the *Rusch* factors. (Letter, August 15, 2023).

212) On August 18, 2023, Eppler filed and served on Schwarting, but not on Employee as directed, an attorney fee and cost affidavit. This affidavit was similar to Eppler's December 17, 2021 attorney fee affidavit. It addressed the *Rusch* factors. Eppler added that he had succeeded on his appeal from *Hernandez IV*, and the Commission awarded him full, reasonable attorney fees at $425 per hour. (Second Amended Affidavit of Attorney's Fees and Costs, August 18, 2023).

213) On August 18, 2023, Schwarting responded to the panel's August 15, 2023 letter and confirmed that a recent mediation had resolved only Eppler's attorney fees. Employer deferred to the Board as to whether a hearing was necessary to address Employee's rights in respect to the fee stipulation. (Schwarting letter, August 18, 2023).

214) On August 18, 2023, Eppler at the Board's request filed and served a supplemental attorney fee and cost affidavit. In summary, he affied:

- Eppler is an attorney and began representing Employee in December 2019;
- He graduated from law school with a joint JD/MBA degree in May 2012;
- Eppler clerked while in law school for a workers' compensation law firm representing injured workers;
- As a law student, he appeared at prehearing conferences and prepared claims for depositions;
- Eppler was admitted to the Colorado Bar in November 2012 and the Alaska Bar in October 2015;

- In Colorado, Eppler represented clients in probate, contested guardianship and conservatorships, and estate litigation and planning. He also worked for a family-law firm litigating divorce, child-custody and child-support cases;
- Eppler moved to Alaska in February 2015 where he worked as a family-law attorney litigating cases. In October 2015, Eppler started his own law firm focusing on probate and estate-planning. Many such cases involve assessing disability and reviewing medical records and testimony from expert medical witnesses.
- He has been representing injured workers in workers' compensation cases since December 2018.
- Eppler relies on his overall legal experience to support his fees;
- He requests $425 per hour and relies on Board decisions to support his request;
- Eppler is a solo-practitioner and uses contract paralegal help when needed. He carefully monitors his caseload and must balance his hourly cases versus his contingency cases;
- He has successfully negotiated settlements for clients in very complex cases including a worker who suffered a massive stroke at a remote site, a person with a traumatic brain injury and a worker with an amputation case, all of which involved a medically complex issues;
- Eppler successfully and quickly obtained an order and notice of default against an uninsured employer;
- He successfully represented numerous injured workers in mediations;
- Eppler successfully obtained benefits for injured workers simply by entering an appearance and obtaining admissions without Board hearings are mediations;
- He has reviewed medical records to advise or assist numerous injured workers navigate the workers' compensation system;
- Eppler has reviewed settlement agreements for injured workers and advised them as to additional benefits to which they may have been entitled;
- Division staff invited Eppler to sit on the 2021 SIME panel, which he did;
- The medical issues in Employee's case are complex with multiple treating physicians, two EME physicians and an SIME physician. Employer's defenses required extensive preparation and questioning along with legal research in a case where Employee represented himself at times;
- Two very experienced attorneys previously represented Employee but were unable to obtain any benefits for him. Eppler got Employee PPI and TTD payments and possibly additional benefits to be determined at the instant hearing;
- Because these cases are contingent by statute, Eppler financed Employee's claim. He objected to Employer's scrutiny on his bills and the Board reducing his billable hours by 70 percent. These cases may take years to resolve. His other cases are paid monthly "like clockwork." Employers have an advantage because they do not need Board approval for their lawyer's fees. Eppler relies on *Bignell* and *Rusch*.
- After accepting Employee's case, Eppler declined other employment and was not able to work on billable matters. He considers the instant case exceptionally drawn out, delayed and complex, warranting his full actual attorney fees at $425 per hour;
- On appeal, the Commission awarded him full actual attorney fees for the appeal at $425 per hour;
- His attached attorney fee itemization totaled $85,336.96 in fees and costs, which deduct the $27,584.48 previously paid pursuant to *Hernandez IV*.

- The parties attempted mediation but were only able to resolve Employee's attorney fee and costs in a compromised amount of $63,250 as reflected in the Employer-Eppler August 4, 2023 stipulation. (Second Amended Affidavit of Attorney's Fees and Costs, August 18, 2023).

215) The balance remaining from the second amended attorney fee affidavit was $75,774.46. Eppler also itemized additional fees and costs since the Employer-Eppler fee stipulation. The resultant total attorney fee and cost balance was $85,336.96. (Second Amended Affidavit of Attorney's Fees and Costs, August 18, 2023).

216) On August 22, 2023, Employee filed with the Division and served on Eppler and Schwarting a response to Eppler's fee stipulation with Employer. He stated, "My attorney did not fully [sic] his responsibility in representing me, he should not get pay." He did not further explain this position. (Employee email, August 22, 2023).

217) On August 31, 2023, the hearing panel sent the parties a letter reopening the hearing record, because while reviewing Employee's agency file, the panel determined many mental health records appeared to be missing. Because a major issue in this case is mental health care, the panel directed the parties to obtain, file and serve all mental health medical records by no later than September 22, 2023, and if there were no additional records, to so state and explain how this was determined. (Letter, August 31, 2023).

218) On September 19, 2023, Employee personally filed and served additional medical records, mostly including records for mental health treatment. Many were for treatment prior to the hearing for *Hernandez IV*. (Medical Summaries, September 19, 2023).

219) On September 22, 2023, Employer objected to the panel reopening the record and argued:

> (1) The record on remand from the Commission should be the same as when *Hernandez IV* heard the matter in December 2021;
> (2) Records that pre-dated the December 22, 2021 hearing should have been submitted as evidence prior to that hearing;
> (3) Records after December 22, 2021 should not be considered because they were not part of the record for the *Hernandez IV* hearing;
> (4) Reopening the record violates Employer's due process rights because it did not have an opportunity to have its experts review these records or allow Employer to depose the providers if necessary;
> (5) In April 2021, Eppler filed an affidavit stating that Employee had completed all necessary discovery, had all required evidence and was fully prepared for a hearing, so "they should not be now allowed" to submit additional evidence for a

> remanded hearing. (Employer's Objection to Reopening the Hearing Record, September 22, 2023).

220) On September 22, 2023, Employee through Eppler responded to Employer's objection to the panel reopening the hearing record:

> (1) The subsequently obtained and filed records were done at the Board's direction;
> (2) Employer had medical releases all along and it could have obtained and filed medical records as well; and
> (3) With or without the recently filed records, Employee prevails on compensability of his mental health and chronic pain disability need for treatment claims because Employer never rebutted the presumption for those conditions. (Employee's Response to Employer's Objection to Reopening the Hearing Record, September 22, 2023).

221) The Commission in *Hernandez VI* did not limit the evidence on remand to the evidence in the agency file on the date *Hernandez IV* was heard. (*Hernandez VI*).

222) On October 4, 2023, Employee tested positive for Hepatitis B. (Alaska State Public health Laboratory report, October 17, 2023).

223) On October 19, 2023, Dr. King-Weaver had his office call Employee to give him the "good news" that his labs showed his "history of hepatitis B" had apparently been cleared by his body on its own. (King-Weaver note, October 19, 2023).

224) On October 20, 2023, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 23-0057 (October 20, 2023) (*Hernandez VIII*), reopened the record again for more evidence and argument to address Employer's concerns and to allow Eppler to defend his attorney fees that were reduced in *Hernandez IV*. After citing its authority to reopen the record, *Hernandez VIII* stated:

> In this case, the panel has determined the remand hearing was not completed. Employee has objected to his attorney's stipulated attorney fees. The parties have a right to be heard on Eppler's fees and he has a right to explain his bills, with which *Hernandez IV* had difficulty. Important medical records were absent from the agency file prior to the *Hernandez IV* hearing, and have now been provided. Employer has not had an opportunity to have its experts address those records to determine if their opinions have changed, or been strengthened. *Hernandez VI* did not limit the panel on remand to considering only the evidence in the agency file at the time the hearing occurred. Given these changed circumstances since

> *Hernandez VI* issued, the hearing record will be reopened for an in-person hearing at which the following issues will be addressed:
>
> **1)Eppler's attorney fees, including but not limited to what effect if any does Employee's objection to his attorney's fees have on the pending fee stipulation.**
> **2)If the panel should consider Employee's newly filed medical records on remand.**
> **3)If so, the additional time Employer needs to address those records.**

225) Effective October 30, 2023, Employee terminated Eppler as his attorney, "Due [to] many complications and disagreements" he had with Eppler. (Employee letter, October 30, 2023).

226) On November 3, 2023, Dana Strager, DPT with Arctic Rehabilitation & PT discharged Employee with diagnoses including: Low back pain unspecified; thoracic spine pain; cervicalgia; back muscle spasms; and generalized muscle weakness. His current pain was "5/10," at best it was "2/10" and at worst it was "6/10." The three goals from Employee's first visit in April 2023, (1) patient will be able to hold his three-year-old daughter without back pain; (2) he will sleep without back pain; and (3) he will return to work without back pain, had not been met. (Arctic Rehabilitation & PT reports, April 17, 2023 through November 3, 2023; observations; Medical Summary, December 26, 2023).

227) On November 3, 2023, Eppler withdrew as Employee's attorney, gave notice that he had an attorney fee lien of $63,250, and relied on his previously filed attorney fee affidavit and the attorney fee stipulation between him and Employer. Attached to Eppler's withdrawal was an email from Employee stating in part, "You are a witness to the injustice and suffering that I have experienced here in Alaska[.] I will no longer continue my case here in Alaska[.] I will no longer need your services[. . . .] (Notice of Withdrawal of Attorney; Affidavit of Justin S. Eppler and Notice of Attorney's Fee Lien, November 3, 2023; Employee email, January 23, 2023).

228) On November 6, 2023, Employee again *pro se* filed a new claim dated November 7, 2023, for TTD; TPD; PTD; PPI and medical benefits; a compensation rate adjustment; an unfair or frivolous controversions finding; and "other," the latter pertaining to a discrimination claim and a request that Employer be "investigated." Attached to this claim were: The Supervisor's Incident Report; the Employee Report of Occupational Injury or Illness to Employer; and Employee's pay stubs and "Employee Timecard - Employee Timecard Report" records from Employer. (Claim for Workers' Compensation Benefits, November 7, 2023).

229) There is no timely controversion to this claim in Employee's agency file. (Agency file).

230) On November 7, 2023, Employee *pro se* filed and served several medical summaries with attached records. The first summary included 81 pages from Drs. King-Weaver, Covone and Thomas all at Anchorage Neighborhood Health Center, and scanned records from OPA and other providers. The second summary included 26 pages from Dr. Luther, and records from OPA and PA-C Beigle. The third summary included 74 pages from physicians and assistants at Neuroversion. (Medical Summaries, November 7, 2023).

231) On December 4, 2023, Employee filed two lengthy, typed documents purportedly to amend his November 7, 2023 claim and as briefs in reply to Employer's answer. He attached documents, some of which he previously attached to his November 7, 2023 claim, and added numerous receipts for prescription co-pays, and included various photographs with explanatory annotations. Some photographs appear to depict carts loaded with salmon in cans, as well as ovens in which they were cooked. Two photographs showing Employee's back appear contemporaneous with his injury because they are labeled, "After my injury I took these photos in case I needed them due to the injustices that were coming." Attached spinal x-rays clearly show the mild scoliosis identified in other medical records. Other photographs depict Employee post-hernia-surgeries and after a stitch was removed from one hernia scar. On one series of photographs that Employee said were taken at Dr. Koller's office in Kodiak, he said if someone were to relate his symptoms to a "small wound on [his] back, they are lying. . . ." He also attached several pay stubs for a former coworker at Ocean Beauty Seafoods whose name is redacted for that worker's privacy, but whose initials are JR. Employee explained his experience and work injury with Employer as follows:

> . . . [O]n **August 7-2017** I was injured during I was pushing and pulling containers full of cans of salmon for my employer weighing **1200 to 1400** pounds. . . . I was working 16 to 17 hours per day. . . . I felt pain in my abdomen, groin and back and, I informed the process supervisor . . . and to the safety manager. . . . . . .
>
> I stopped working because too much pain in my body **(back muscles, abdomen, groin and spine)**[.] [W]hen I could not continue working on **August 30-2017** [I] filled out a report about my back and muscles injury and I handed it over to my employer . . . but however my employer continued [to deny] my right to receive medical treatment and he fired me on **[M]arch 23-2018**.

I got too much stress and insomnia because of the bad treatment I was receiving for my employer because he denied all the benefit I have the right to receive as an injured worker[. . . .]

. . . .

I deserve to have **Temporally [sic] Partial disability** during the days I was doing partial work and taking medical treatment starting **August 15-2017 until August 30-2017, under** . . . [AS 23.30.200]. See my hourly works reports copies on the next pages.

. . . .

I deserve my employer pay me **Temporally [sic] total disability** during the time I was taking medical treatment and trying to go back to work starting **August 13-2017 until February 25/2022 under** . . . [AS 23.30.185].

. . . .

I deserve to have permanent total disability starting February 25/2022 [continuing] until death because I can no work due to (back chronic pain and shoulders pain[,] psychologic mental health conditions like depression, somatic symptoms disorder, anxiety disorder and panic attacks I am suffering as a result of my work injury on August 7-2017) under [AS 23.30.180].

. . . .

I deserve to have 20 percent regarding my employer did not follow the [following]. . . .

TO THE EMPLOYER

> The information on this form (07-6100) and the information on form 07-6101 must be submitted to the [division] immediately and in no case later than ten (10) days after you have knowledge that your employee has been injured, or claims to have been injured or become ill while working for you. Failure to file these reports within the required time may subject you and/or your insurer to a penalty equal to 20 percent of the amount of compensation due to the injured worker.

I deserve my employer pay me penalty and interest from my employer for the six pass [sic] years I being not able to work and have not received payment from him under . . . [AS 23.30.155].

. . . .

I deserve to have earning readjustment because my employer used the wrong information [in] his favor, his did not accept my earning records to calculate the right amount to pay me under . . . **[AS 23.30.220(a)(5)].**

My coworker [JR] salary was equal to **$25,349.66** net pay, this right way to adjust my income **under . . . [AS 23.30.220(a)(5)].**

. . . .

> Copy of [those] document[s] already being served since **December 2017** to **SHERRY [ARBUCKLE]** adjuster of **Liberty Mutual Insurance** at that moment, but another copy will be served with this and others [sic] documents see next pages.

Between some paragraphs above, Employee cited the referenced statutes. After the second-to-last paragraph above, he inserted a chart showing calculations based on coworker JR's work and earnings during the year Employee was injured. Using JR's net pay, Employee multiplied JR's net earnings by six years or 300 weeks, and added 25 percent interest and a 20 percent penalty, to calculate $220,542.04, plus Employee's medical co-pay of $457.35, to total $220,999.39 that Employee contends Employer owed him. Employee also appears to have calculated that his weekly PTD rate should be $506.99. His coworker JR's earning records were not among those included in previous filings set forth in Table II, above. Employee's letter continued:

> About unfair or frivolous controversy[,] deny my employer [denial of] my benefit following doctors[']s speculations without having proof to support such [] comments.
> . . . .
>
> There [is] not prior medical history about me before **August 7-2017**, any medical condition[.] I have anxiety like panic attacks, depression, insomnia, Somatic Symptoms Disorder [,] muscles skeletal disorder, back muscles, shoulders and mid thoracic pain conditions are related to my injury on **August-7-2017**. (Employee Amended Claim letter, December 4, 2023; all bold-faced emphasis in original).

Employee sought an order requiring Employer to reimburse Medicaid for money it paid for his treatment. In his other document, Employee stated he wanted the Board to "fine" Employer for its alleged failure to follow "employment laws." (Documents, December 4, 2023).

232) On December 11, 2023, Employer filed and served a request to cross-examine Michael Dyches, PA-C, regarding his July 20, 2022 medical opinions. (Request for Cross-Examination, December 11, 2023).

233) On December 26, 2023, Employee filed a "petition," which appears to be his briefing. In it, Employee contended Schwarting and Eppler were "playing games cheating to me and wasting time." He challenged Employer's proof to support denying his claims. He requested swift action on his claims contending he has not been able to work for six years. Employee referred

the panel to his medical records and prescription information. He appeared to contend that his work injury caused the slight scoliosis found in his spine x-rays. (Petition, December 26, 2023).

234) On January 29, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 24-0002 (January 29, 2024) (*Hernandez IX*) held (1) a decision on Eppler's attorney fees and costs should be held in abeyance pending results from the remanded merits hearing; (2) the panel on remand would consider medical records filed after December 22, 2021, in fairness to Employee and to best ascertain the parties' rights; and (3) in fairness to Employer, granted additional time until July 31, 2024, to complete discovery related to Employee's new medical records. (*Hernandez IX*).

235) On January 31, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 24-0003 (January 31, 2024) (*Hernandez X*) denied Employee's petition to reconsider *Hernandez IX*. (*Hernandez X*).

236) On or about March 12, 2024, Travis King-Weaver, MD, at Anchorage Neighborhood Health Center received a call from Employee seeking a letter supporting his workers' compensation claim; Dr. King-Weaver declined to write the letter, but suggested Employee obtain and file the chart notes instead. Employee reported ongoing chronic back pain, which had increased recently after "shoveling snow again." He did not want to go to PT again because he was afraid he would make his symptoms worse. (King-Weaver note, March 12, 2024).

237) On March 27, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCAC Order on Petition for Review and Cross-Petition for Review (March 27, 2024) (*Hernandez XI*) reiterated its order from *Hernandez VI* and further clarified its language regarding the "presumption of compensability":

> The Board ordered admission of the newly filed medical records and gave [Employer] six months to review the medical records. The Board also deferred making a decision about whether to approve the stipulation on attorney fees.
> . . . .
>
> . . . This decision to consider these records is important in protecting [Employee's] legal rights. [Employer] also has legal rights that must be protected and the method the Board chose to do this was to allow [Employer] six months in which it and its experts could review these records and decide on a course of action. This decision protects [Employer's] due process rights by allowing it to be heard regarding these medical records in a meaningful time and manner.

> . . . [Employee's] legal rights are not unduly impaired by the delay of six months given to [Employer] and the delay is necessary. . . .
> . . . .
>
> There is no evidence the Board departed from the usual course of proceedings in this matter. In fact, the Board seems to have acted prudently in accepting [Employee's] additional medical records for review and in granting [Employer] six months for review and analysis of these records. The decision to postpone a ruling on the attorney fees stipulation also is prudent in case it might need to be revised after a hearing on the merits. . . .
> . . . .
>
> . . . The Commission finds that the Board properly protected [Employer's] due process rights through a time-honored judicial practice of permitting additional time to review and analyze the materials when new materials come into evidence.
> . . .
>
> While there may be additional expense incurred for reviewing the new medical records and for preparing for a hearing including these records, this cost is insignificant in comparison to the harm to [Employee] from excluding these records. Part of his claim involves his mental health and many of the new records are mental health records.
> . . . .
>
> . . . The legal rights of both parties have been fully protected by the Board here and its decision moves forward [Employee's] claim as efficiently, quickly, and fairly as possible under the circumstances of this claim. . . .

Hernandez XI denied Employee's and Employer's petitions for review. (*Hernandez XI*).

238) On April 18, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 24-0023 (April 18, 2024) (*Hernandez XII*) denied Employee's petition to reconsider a prehearing conference summary. *Hernandez XII* found that the Board's prehearing conference designee tried to call Employee when he did initially appear for the prehearing conference, and left a message with him. It further found that Employee later called the Division and reported he had overslept and missed the prehearing conference. Ultimately, after reviewing Employee's subsequent petition, *Hernandez XII* found that Employee's contention that he did not have a "fair opportunity to participate in the prehearing conference" was "not credible." Moreover, *Hernandez XII* found Employee's request to reconsider *Hernandez VIII* or *IX* was too late. (*Hernandez XII*).

239) On June 4, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCAC Order on Petition for Review (June 4, 2024) (*Hernandez XIII*) denied Employee's petition to review *Hernandez XII*, as having no basis in law. (*Hernandez XIII*).

240) On June 28, 2024, Employer denied Employee's benefits as a matter of law for failure to attend a properly noticed EME on June 25-26, 2024. (Controversion Notice, June 28, 2024).

241) On July 1, 2024, Employer denied Employee's benefits as a matter of law for failure to attend a properly noticed EME on June 25-26, 2024. (Controversion Notice, July one, 2024).

242) On September 3, 2024, after having his exam rescheduled, Dr. Williams saw Employee the second time for an EME. His opinions were discussed in detail during his deposition, summarized below. (Williams EME report, September 3, 2024).

243) On September 4, 2024, after having his exam rescheduled, James Schwartz, MD, orthopedic surgeon, saw Employee for an EME. His opinions were discussed in detail during his deposition, summarized below. (Schwartz EME report, September 4, 2024).

244) On October 31, 2024, Dr. Schwartz testified regarding his EME report. He examined Employee through a Spanish interpreter, although Employee did not actually need one. Employee's primary injury complaint was a hernia after pushing a large cart. Dr. Schwartz reviewed Employee's medical records, interviewed him and did a physical examination. Employee complained of pain in his right groin and inflammation in his back muscles. The back pain was relatively diffused. Employee also complained of pain in both shoulders when he did repetitive or heavy lifting. Dr. Schwartz reviewed Employee's pictures of his back, which included taping, and "cupping" skin patterns, the latter which Dr. Schwartz had not seen in "decades." Employee was "reasonably well muscled," more than Dr. Schwartz would expect from someone who had not been working for years. Dr. Schwartz found Employee's exam "normal" overall including spinal and shoulder motion, neurologic, and muscle testing. Employee had no tenderness in the trapezius, supraspinatus, infraspinatus or scapulothoracic muscles. (Deposition of James Schwartz, MD, October 31, 2024).

245) Dr. Schwartz diagnosed a "normal exam" with some mild tenderness over the left humeral head. He concluded this latter finding was, "Pain probably brought on by work." Dr. Schwartz explained, "That means when he went to work he began having severe pain in his entire body." He filled out a Pain Diagnosis Quotient (PDQ) and scored 150. "There is no higher score on the PDQ than 150, which means he was saying that he had intolerable pain. More than -- he could

not be in any more pain." Dr. Schwartz found this did not correlate with a normal physical examination; it indicated "very marked pain behavior." Employee's complaints "far exceeded anything that would accompany his physical exam." Dr. Schwartz explained:

> Physiologically accepting his claim that he mainly starts working, shoots up from essentially none to the absolute maximum pain a human being can tolerate, and then drops back to essentially no pain after a week of stopping work, is frankly absurd.
> . . . .
>
> It does not make physiologic sense to have a perfectly normal exam and no pain a week after being in absolutely maximum human intolerable pain because he went back to work. It does not make rational sense.

246) Dr. Schwartz could ascribe no physical condition that was substantially caused by Employee's work injury, "None." Employee met none of the required objective physical findings for mild CRPS. Dr. Schwartz essentially agreed with PA-C Gordon who released Employee to return to work on January 29, 2018 (it was actually January 30, 2018), and understood PA-C Gordon declared Employee was medically stable on that date. Dr. Schwartz also reviewed Dr. Murphy's SIME report and would not quarrel with his opinion that Employee became medically stable effective September 17, 2018, and had a normal physical exam on that date. Employee, with a normal physical exam, has a "zero" PPI rating. Dr. Schwartz stated Employee needed no further medical treatment for his work injury. However, he probably needed a psychiatric evaluation, but deferred to Dr. Williams for a causation opinion on that. Dr. Schwartz found evidence of "symptom magnification" and "secondary gain." Employee had no work restrictions, physically. Dr. Schwartz also reviewed Dr. Van Ravenswaay's reports and disagreed with his chronic pain, shoulder and spine diagnoses, although he noted Dr. Van Ravenswaay also suggested psychiatric care. Dr. Schwartz opined Employee needed no further pain management for any orthopedic condition. (Deposition of James Schwartz, MD, October 31, 2024).

247) When asked to identify possible causes of Employee's "condition," Dr. Schwartz stated:

> I will read it to you: The history and physical exam suggests simply that [Employee] does not want to work. Claiming that any work produces excruciating intolerable pain, which he clearly understands is not a visible manifestation, seems to be an insurmountable obstruction to his returning to work.

When asked what he would say is the substantial cause of his chronic complaints, Dr. Schwartz stated, "It is not an orthopedic physical injury." He further noted that as he reviewed PDQ scores from other physicians, Employee's scores were trending up. "Yes. It keeps going up. He is not working, and his pain keeps increasing." Dr. Schwartz correlated a 150 PDQ score with someone hospitalized with a painful situation. (Deposition of James Schwartz, MD, October 31, 2024).

248) On January 13, 2025, Employee filed a document specifically calculating his requested compensation rate adjustment. He also attached photographs depicting his back and some payroll information from Employer. (Document, January 13, 2025).

249) On January 28, 2025, Employee saw a new provider Krista Cook, NP, at Anchorage Neighborhood Health Center for medication management. He reported "my employer is getting me crazy," and he felt that the orthopedic doctor he recently saw [Dr. Schwartz] was "lying in favor of my employer." (Cook report, January 28, 2025).

250) On February 3, 2025, Employee filed a document in which he conceded that he had received $6,177.60 in TTD benefits from October 4, 2017 through June 20, 2018, and $25,361.70 in §.041(k) benefits from June 21, 2018 through May 12, 2022, from Employer. He also provided a re-calculation for his compensation rate adjustment claim. (Document, February 3, 2025).

251) On February 5, 2025, Employee filed a document specifically identifying Neuroversion's bill and requesting payment. He attached an itemized statement along with additional photos depicting his back. (Document, February 5, 2025).

252) On February 11, 2025, Employer deposed Dr. Williams, who had interviewed and evaluated Employee twice. He reviewed Employee's medical records on both occasions and for this evaluation used a Spanish interpreter. Dr. Williams found numerous discrepancies between Employee's 2021 and 2024 reports. For example, in 2021, Employee told Dr. Williams he had worked at a body shop, but said he never had any legal problems at that time. In 2024, he told Dr. Williams when he worked at the body shop there was a legal problem, and he had been arrested at that time. He also found Employee's answers "vague and evasive." "Self-reporting is the weakest form of evidence," so if Employee's self-reporting is "unreliable and invalid and disproportionate to the symptoms that he is having or to the medical condition that he has," that

unreliability makes self-reporting evidence "even weaker than it usually is." Employee was agitated and wanted the evaluation over. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

253) Dr. Williams further opined:

> It makes no sense in terms of his underlying medical condition -- or, quote, unquote, "medical condition," because the symptoms -- this was in 2017 that he was apparently injured or reportedly injured, and this was years later.
>
> Typically symptoms improve from this type of condition. In his case they are dramatically worse, so it is counter to the typical course of symptoms. And the AMA Guides to the [E]valuation of [P]ermanent [I]mpairment in the pain-related impairment chapter talks about congruence between the medical condition and what the patient is reporting. And so when there is not congruence there or there is a discrepancy, it is a concern for invalidity. In other words, his self-report is not reliable or valid.

Dr. Williams noted that prior physicians had measured Employee's PDQ scores at 95, which is in the moderate disability range, but it steadily increased to 107, which is in the severe disability range, up to 129, which is also severe, and finally up to 150, which is in the "extreme disability range." In both of Dr. Williams' evaluations, Employee marked "10 out of 10" on "inability to walk," which Dr. Williams surmised "would mean that he would need to be in a wheelchair." Nonetheless, Employee was able to walk without any gait problems in both of Dr. Williams' evaluations. When Dr. Williams asked, Employee could not explain how he was able to function with pain at that level. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

254) When Dr. Williams asked Employee about his friend not paying him for doing body work on a car, Employee damaging the car, being criminally charged and going to jail for two days, Dr. Williams inferred that Employee's emotional response in that situation and the stress of that event led to his reported pain increasing to "10 out of 10." Employee was very evasive about whether his pain increased permanently since February 2021. Employee told him that he had been to court three times: Once, Employee pushed a man who he said was trying to steal his car, but he was vague on the details. On another occasion, Employee forcibly kissed a woman when he was "a little intoxicated." Dr. Williams opined that this shows Employee is becoming more impulsive and disinhibited especially when using alcohol, which Employee said he "drinks daily." Other reports Dr. Williams reviewed showed inconsistent reporting from Employee on

his alcohol consumption. Employee also told Dr. Williams he thought about "killing his employer" and it was "the devil in him." He had "mixed" explanations about how these thoughts came to him. Employee said he wanted to "get those who had destroyed his life" and might kill himself later. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

255) Dr. Williams found Employee did not meet the criteria for "major depressive disorder" or "generalized anxiety disorder" under the DSM-5. Employee again stated that his depression was secondary to pain; in other words the depression did not cause pain, but the pain caused depression. This is typical with people who are having a "great deal of pain" who then have depressive symptoms. Conversely, returning to work is therapeutic for depression. When asked, Employee said he was not able to work, but "again he did not specify if that was related to pain or depression or other factors." Employee "repeatedly said he was going to kill the people at Ocean Beauty Seafoods." (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

256) Dr. Williams found Employee did not meet the criteria for a "panic disorder." For a panic disorder, panic attacks need be "unprecipitated." In his case, Employee's self-reported panic attacks were precipitated by specific events. For example, his purported "health situation," and not being able to pay his bills, precipitated his panic attacks. Employee later veered from his initial 2021 report to Dr. Williams and now stated some of his panic attacks were "out of the blue." Dr. Williams found this another example of Employee's ever-changing and unreliable self-reporting. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

257) Dr. Williams found Employee met the DSM-5 criteria for "Somatic Symptoms Disorder." However, Employee "has no diagnoses related to the injury from a psychological perspective." A Somatic Symptoms Disorder diagnosis required Dr. Williams to rely on the medical doctors' opinions regarding any medical condition Employee may have to see if his reported pain is congruent with what is expected with a medical condition. Dr. Williams explained:

> Now, what we did look at here is back in my first evaluation back in 2017 and 2018 there are medical notes about him being able to return to work, and I believe it was 2018 he was able to be released to return to work without restrictions. So whatever physical problems he may have had related to the injury in the medical opinion of these doctors had resolved at least to the extent that he could return to work, and then that was in 2017 when the supposed injury occurred.

> I saw him in 2021. Now we are in 2024, and he is still complaining about disabling symptoms related to this injury. So again the incongruence about the injury itself and the disorder needs to be looked at.

Dr. Williams relied on Dr. Schwartz's explanation regarding the discrepancy between Employee's expected pain behavior with his diagnosed conditions. He also relied on the AMA *Guides*, and considered Employee's weak, un-reliable self-reporting subjective, and under the *Guides*, not ratable. Employee does not require treatment at a pain center because he has "a very strong conviction that this is a medical problem, first of all, and a pain center would deal with it in a multidisciplinary way." Moreover, Employee's pain is disproportionate to his physical condition according to medical doctors. Any treatment Employee needs for his self-reported pain and Somatic Symptoms Disorder is not substantially caused by his work injury. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

258) Dr. Williams opined that Employee does not suffer from CRPS because he does not meet the Budapest criteria as stated in the *Guides*. He has none of the signs and symptoms under the Budapest criteria. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

259) Dr. Williams does not recommend any work restrictions for Employee from a psychological perspective, because of the inverse relationship between work and depression. So, if Employee has true symptoms of depression, they will likely improve if he went to work. Somatic Symptoms Disorder "is not disabling." Dr. Williams was also concerned about Employee's unreliable self-reporting regarding substance abuse. If Employee were diagnosed with Alcohol Use Disorder, it would not be work-related because he had been drinking since he was 19. Work would not be the substantial cause of any Alcohol Use Disorder. Moreover, Dr. Williams found Employee had the highest score possible on the Pain Catastrophizing Scale. He explained:

> So even though he has had numerous sessions of psychotherapy, he has not availed himself and said he did not learn anything from these treatments, and he continues to rigidly adhered to very maladaptive perceptions of pain and maladaptive suffering and pain behaviors. (Deposition of Arthur Darrell Williams, PhD, February 11, 2025).

260) On February 18, 2025, Employee filed the document akin to a brief, suggesting the value of his PTD claim. Attached was a Health Summary from an unidentified medical provider. (Document, February 18, 2025).

261) On February 24, 2025, Employee re-filed his November 7, 2023 claim, dated November 6, 2023, and refiled the February 17, 2025 document above, and a new February 24, 2025 document making additional arguments about his claim. (Claim for Workers' Compensation Benefits, November 7, 2023; document, February 17, 2025; document, February 24, 2025).

262) On February 26, 2025, Eppler, Schwarting and Employee attended a prehearing conference. The designee identified three issues for a 2025 hearing: (1) Employer's petition to strike Employee's photographs; (2) Employer's petition for a pre-litigation screening order reviewing and limiting Employee's filings; and (3) Eppler's claim for his attorney fees and costs. The designee also identified issues for the May 8, 2025 hearing, did not cite any specific claim for hearing other than Eppler's attorney fee claim, but listed: (1) the AWCAC remand issues; (2) TTD benefits from August 7, 2017 to September 1, 2017; (3) TTD benefits from September 4, 2017 through the present and continuing; (4) an unfair or frivolous controversion finding; (5) a compensation rate adjustment; (6) medical costs; (7) medical transportation costs; (8) a penalty; (9) interest; and (10) Eppler's December 20, 2024 claim for attorney fees and costs. (Prehearing Conference Summary, February 26, 2025).

263) On April 4, 2025, *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCB Dec. No. 25-0022 (April 4, 2025) (*Hernandez XIV*) denied Employer's request to strike Employee's photographs and its request for a "screening order" against Employee's filings, and continued holding Eppler's attorney fee and cost request in abeyance until the merits were resolved. (*Hernandez XIV*).

264) Twenty days before the May 8, 2025 hearing was April 18, 2025. (Observations).

265) On May 1, 2025, Employer in its hearing brief contended that Employee's subsequent medical records do not support his claim for his psychological and pain conditions. It noted that at the *Hernandez IV* hearing Employee did not present evidence supporting his TPD benefit claim and consequently, *Hernandez IV* denied the TPD claim. It contended Employee failed to present evidence supporting additional TTD benefits. Employer argued it paid TTD benefits according to the EME and SIME reports, and for a time after he claimed TTD benefits related to a psychological condition until it later controverted that condition. It noted that *Hernandez IV* found Employee's hernia, thoracic and left-shoulder conditions were all medically stable, and *Hernandez IV* correctly gave less weight to Dr. Van Ravenswaay's opinions. Moreover, it relied

on Dr. Williams' EME opinions to satisfactorily rebut any raised presumption regarding CRPS as well as any mental health condition. (Employer's Hearing Brief, May 1, 2025).

266) As for Employee's PTD claim, Employer contended no physician suggested Employee is unable to work at any consistent, readily available employment, whereas Drs. Schwartz and Williams stated he could. It contended Employee was unable to even raise the presumption, so his PTD claim should be denied. (Employer's Hearing Brief, May 1, 2025).

267) Employer further contended that Employee had an opportunity to present evidence supporting a compensation rate adjustment at the *Hernandez IV* hearing, but did not, so the Board denied that claim. It argued that Employee should not have another opportunity to relitigate that claim. Moreover, Employer argued that Employee failed to present evidence to support a rate adjustment, and that claim should be denied. (Employer's Hearing Brief, May 1, 2025).

268) Employer contended that *Hernandez IV* considered all controversion notices in effect and found all were issued in good faith pursuant to *Harp*. It further argued that post-*Hernandez IV* controversions were all based on recognized legal principles and documents in the record, and were likewise made in good faith per *Harp*. (Employer's Hearing Brief, May 1, 2025).

269) As for medical and transportation costs, Employer contended Employee failed to produce evidence to support these benefits. It relied on Dr. Williams' opinions, and the lack of a transportation log supporting any travel benefit claim. Employer argued these claims should also be denied. (Employer's Hearing Brief, May 1, 2025).

270) Employer asserted that since there are no late-paid benefits or any additional benefits owed, Employee's claim for a penalty and interest should be denied. Likewise, as Employee is entitled to no further benefits, Employer contended that the only attorney fees and costs that should be paid on Employee's behalf are those agreed to in the Employer-Eppler stipulation. (Employer's Hearing Brief, May 1, 2025). At the instant hearing, Employer objected to Eppler's claim for attorney fees to obtain his attorney fees. (Record, May 8, 2025).

271) On May 2, 2025, Eppler's brief contended that on remand the Board must reconsider his attorney fee award in accordance with *Hernandez VI* and *Rusch*. He noted that two experienced attorneys had previously represented employee, but had obtained no benefits for him. By contrast, Eppler contended he obtained "24,801" in the on-record stipulation, which constituted a Board order. He objected to *Hernandez IV* reducing his original billings both on an hourly basis

and by approximately 70 percent on the hours billed. Eppler called attention to his identifying Employee's chronic pain, anxiety, depression and obtaining a somatic symptoms disorder diagnoses, which he argued are complex matters that required great legal skill. (Hearing Brief for May 8, 2025 Hearing on the Merits, May 2, 2025).

272) Eppler also noted that the hearing officer at the *Hernandez IV* hearing placed him under oath but only asked one question regarding how many workers' compensation cases he had handled. His brief implied that either the Board or Schwarting could have and should have asked him questions about any specific billing entries that concerned them, but did not. Eppler further objected to Employer not filing any written objections to his attorney fees, noted there was no Board regulation requiring it to do so. However, he asserted a due process violation because he was not aware the Board had concerns with his billings until he read *Hernandez IV*:

> The Employee [Eppler] maintains that the Board needs to adopt rules outlining that any objection to fees and costs must be submitted in writing prior to a hearing by either the Employer or the Board. This requirement ensures that an employee's attorney can adequately prepare and defend his or her paralegal's entries, especially when the Board states in writing that the attorney is not credible based upon "alleged" duplicative or excessive billings!

The balance of Eppler's brief cited his attorney fee affidavit and explained why he contended the time spent on various tasks to which the *Hernandez IV* Board objected, were not unreasonable or excessive. (Hearing Brief for May 8, 2025 Hearing on the Merits, May 2, 2025).

273) Lastly, Eppler objected to what he considered "arbitrary," punitive," capricious," devoid of evidence and "manifestly unreasonable" reductions in his attorney fees and costs. He also objected to the Board imposing attorney fee guidelines that do not exist in law or case precedent. (Hearing Brief for May 8, 2025 Hearing on the Merits, May 2, 2025).

274) On May 6, 2025, Eppler filed and served an attorney fee and cost affidavit, which mirrored his August 18, 2023 fee and cost affidavit. In it, he asked the Board to approve the stipulated $63,250 and award additional attorney fees and costs incurred after July 31, 2023 as reflected in an attached billing statement. Alternately, if the Board declined to approve the stipulated amount, Eppler requested the Board award the full amount of all fees and cost itemized in the attached billing statement. He sought an additional $13,982.50 solely for his attorney fees from March 3, 2023 through May 5, 2025. (Affidavit Of Attorney's Fees And Costs, May 6, 2025).

275) At the instant hearing on May 8, 2025, Employee testified through interpreters for several hours. In addition to the testimony referenced in the factual findings above, he also testified: In Employee's opinion, he cannot work physically, but mentally he is "not sure." He denied that his employment with Employer was exclusively seasonal. Employee had some minor out-of-pocket expenses, but Employer did not owe him any money for past medical costs; in his view, Employer owed Medicaid. (Record, May 8, 2025).

276) Since his work injury, Employee said he has tried returning to work at several jobs, some of which were mentioned above. He did a job for a person in 2022 doing body work on a car for about three days. In Wasilla he also worked for a friend for about four days painting cars, but had to stop because his back hurt. Employee reemphasized his previous testimony and stated that when he tried working with his wife cleaning offices, bending caused back pain, which caused his worry and anxiety. The "back pain" to which he was referring was his upper back, the same place he had been complaining about since his work injury -- the thoracic spine area. Since she has been here, Employee's wife works and helps pay the bills. (Record, May 8, 2025).

277) Employee testified that after his work injury he continued working for Employer, but not for the same pay, until August 30, 2017. He now claims PTD benefits from September 4, 2017, through the present and continuing. However, Employee admitted he could not point to a medical opinion that states he is so limited physically that he could not do any work at all on a full-time basis. Employee disagreed with the December 2020 FCE that released him to light-duty work full-time because in his view he cannot work full time. (Record, May 8, 2025).

278) As for treatment, Employee said the only thing that helped were injections into his back and shoulder. He noted they relieved pain, but when he worked his pain increased and injections did not relieve that pain. The only treatment Employee's physicians recommend now are injections. When asked if his symptoms that he claims arose from his work injury have changed since his work injury, Employee said they have remained "the same." (Record, May 8, 2025).

279) Employee could not recall if Employer paid him the full $21,261 from the August 11, 2021 stipulation. The chair advised that the Division's EDI system showed Employer reported, "WE HAVE FULFILLED AGREEMENT TO PAY RETROACTIVE BENEFIT AS AGREED TO ON 8/11/21," reported it made payment on August 11, 2021, and reported it paid "$21,660.60" in TTD benefits and $3,540 in PPI benefits. The chair provided each party present with the EDI report. Eppler queried why this information was not provided earlier while the parties were

litigating that issue before the Commission. Given this EDI payment information, the chair questioned if the first remanded issue was moot. Employer expressed surprise by this payment revelation as well and could not immediately provide evidence showing if and when the additional $5,778 had been paid to Employee. Schwarting agreed to obtain this information from Employer and provide it to the Division and the parties by no later than May 14, 2025, and agreed that this issue may be moot. (Record, May 8, 2025).

280) At hearing, the Chair again asked Eppler if he wanted to testify concerning his attorney fees and costs; he did not expressly decline but did not testify. However, he argued that each case is unique and there is no "standard amount of time" that a panel can affix to any particular legal duty. Eppler contended that Employer's prior objections to his attorney fees were "typical arguments" and "conclusory." When asked how the panel should utilize Rule 1.5(a) to determine what is or is not a "reasonable" amount of time for an attorney to perform a task, Eppler argued that the time he spent in performing each legal duty in this case was the "time required" to do it. He faulted the *Hernandez IV* hearing officer for believing a legal task should take a certain amount of time. Eppler contended that there must be room for "nuances" in a complicated claim. He noted that Employee represented himself before he hired Eppler and many claims had already been filed. Eppler had to review the case and "figure it out." Eppler contended that Employee was not objecting to the amount of time he took to perform his tasks. He stated that Employer and he had a stipulation that the panel could simply approve. As for "results obtained," Eppler referred to his brief and contended he had prevailed on 13 out of 18 issues raised. In his view, the amount of compensation obtained does not correlate to the amount of work to obtain it. When asked hypothetically about a lawyer charging 10 hours to review a prehearing conference summary, Eppler agreed that a client does not have to rely on what an attorney bills, but in this instance he argued that *Hernandez VI* found the previous panel's factual findings were not adequate to make drastic reductions in his attorney fees. Eppler further noted that his attorney fees should not be reduced if Employee loses on his PTD benefits claim because Employee made that claim, not him. Moreover, if the panel reduced Eppler's stipulated fees, he asked that it consider his supplemental fees incurred in obtaining any additional attorney fees. (Record, May 8, 2025).

281) On Eppler's attorney fees, Employer argued that a panel can appropriately consider what the panel has seen in other cases regarding attorney fees and costs. When asked about its prior

statements before the Board and the Commission alleging that Eppler's billable hours were "duplicative and excessive," Employer argued that "the parties" came to an agreement on the proper amount for Eppler's attorney fees, and the panel should take Employer's current position into account. Nonetheless, Employer objected to Eppler's supplemental fee affidavit noting that Employer did not resist paying the fees set forth in the stipulation. It questioned if there is a "benefit" under Rule 1.5(a) to Employee from Eppler fighting for his attorney fees after Employer had already agreed to pay the stipulated amount. Employer argued it was wrong for Eppler to seek attorney fees to get attorney fees. It contended that since Employer did not resist the stipulated fees it should not have to pay the supplemental attorney fees. (Record, May 8, 2025).

282) On Eppler's attorney fees, Employee argued that Eppler had not gotten him sufficient money given that he has not worked for eight years post-injury. When asked if he thought Eppler had spent too much time on his case given the benefits he had obtained for him, Employee implicitly agreed stating, "Too much time for nothing." (Record, May 8, 2025).

283) When invited at hearing to assist the panel in understanding how to apply Rule 1.5(a) and its eight factors to determine what is a "reasonable" amount of time it should take an attorney to perform a task, no party offered an opinion. (Record, May 8, 2025).

284) On May 14, 2025, pursuant to the panel's request, Employer filed and served on all parties a copy of a check dated August 11, 2021, made out to Employee in the amount of $19,023. Notwithstanding that the check states on its face "VOID IF NOT PRESENTED WITHIN 90 DAYS OF DATE OF CHECK," the back-side of the check bears Employee's signature showing a mobile deposit on January 26, 2022. The check shows the deposit was at a Wells Fargo Bank branch on January 26, 2022, and shows Employer posted it on January 27, 2022. Employer also filed and served a "spreadsheet of indemnity payments" to Employee. This document also suggests that on April 11, 2021, Employer paid Employee $19,023, which consisted of two amounts ($3,540 + $15,483 = $19,023). (Notices of Filing, May 14, 2025).

285) Employee's delay in depositing the August 11, 2021 check may be explained in part by language from Employee's December 15, 2021 hearing brief, where he acknowledged receiving the $19,023 check, but objected to the unilateral change in the parties' agreed-upon TTD benefits and said he had "not cashed the reduced check." (Employee's Supplemental Hearing Brief, December 15, 2021; observations and inferences drawn from the above).

286) Employer's post-hearing spreadsheet shows it paid the following to Employee, who is identified as the claimant (CLT):

LnNo	Payee	IndCode	FromDate	ThruDate	Dys	Ls	WklyRate	Charge	RedCode	RedAmt	Paid	Is/Rvl	St	
1	PRV	72	4/12/2023	4/12/2023		1	Y	273	46472.6			46472.6	10	4/20/2023
2	PRV	51	1/27/2022	3/29/2022		62	Y	273	5060			5060	10	5/26/2023
3														
4														
5	CLT	50	4/29/2022	5/12/2022		14	N	232.05	464.1			464.1	10	5/10/2022
6	CLT	50	4/15/2022	4/28/2022		14	N	232.05	464.1			464.1	10	4/26/2022
7	CLT	50	4/1/2022	4/14/2022		14	N	232.05	464.1			464.1	10	4/12/2022
8	CLT	50	3/18/2022	3/31/2022		14	N	232.05	464.1			464.1	10	3/29/2022
9	CLT	50	3/4/2022	3/17/2022		14	N	232.05	464.1			464.1	10	3/15/2022
1	CLT	50	2/18/2022	3/3/2022		14	N	232.05	464.1			464.1	10	3/1/2022
2	CLT	50	2/4/2022	2/17/2022		14	N	232.05	464.1			464.1	10	2/25/2022
3	PRV	72	1/21/2022	1/21/2022	ADJ		Y	273	6944.63			6944.63	10	2/2/2022
	CLT		12/23/2019	8/11/2021	INT/PEN				6422.22			6422.22	10	2/2/2022
4	PRV	72	1/21/2022	1/21/2022	ADJ		Y	273	20639.85			20639.85	10	2/2/2022
5	CLT	50	7/19/2021	2/3/2022		200	Y	232.05	6630			6630	10	2/2/2022
6	CLT	94	6/21/2018	1/16/2020	ADJ		Y	232.05	3540			3540	10	8/11/2021
7	CLT	50	6/21/2018	1/16/2020		575	Y	232.05	15483			15483	10	8/11/2021
8	CLT	10	10/4/2017	10/6/2017		3		273	117	B	23.4	93.6	10	6/27/2018
9														
1	CLT	10	6/7/2018	6/20/2018		14		273	546			546	10	6/19/2018
2	CLT	10	5/24/2018	6/6/2018		14		273	546			546	10	6/5/2018
3	CLT	10	5/10/2018	5/23/2018		14		273	546			546	10	5/22/2018
4	CLT	10	2/10/2018	5/9/2018		89		273	3471			3471	10	5/8/2018
5														
6	CLT	10	10/18/2017	10/31/2017		14		273	546			546	10	10/30/2017
7	CLT	10	10/7/2017	10/17/2017		11		273	429			429	10	10/17/2017
8	CLT	10	10/4/2017	10/6/2017	ADJ			273	117	L	117	0	10	10/17/2017

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 on direct testimony, medical findings, tangible evidence, and 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).

In *Dieringer v. Martin*, 187 P.3d 468, 474-75 (Alaska 2008), the Court explained the "law of the case" doctrine in an estate matter. *Dieringer* stated:

> The doctrine of the law of the case prohibits the reconsideration of issues which have been adjudicated in a previous appeal in the same case. Even issues not explicitly discussed in the first appellate opinion, but directly involved with or "necessarily inhering" in the decision will be considered the law of the case.
>
> The law of the case is both a doctrine of economy and of obedience to the judicial hierarchy. The doctrine applies to all previously litigated issues unless there are "exceptional circumstances presenting a clear error constituting manifest injustice."

In *Dieringer*, all factual topics were initially litigated, a probate master made factual findings, and the superior court adopted those in its decision. In the first *Dieringer* appeal, the Court reversed the superior court and remanded with specific instructions. On remand, the probate master deemed the case "completely open again," and held a full evidentiary hearing. The master's new findings covered "the whole history of the case," including an attorney fee award and matters the Court had considered in its first opinion. This time, the superior court rejected the master's findings, and the aggrieved party appealed. In the second appeal, the Court in *Dieringer* stated, referring to the initial hearing before the probate master, "all of the factual topics now raised on appeal were litigated at that hearing." *Id*. at 474. Nevertheless, the aggrieved party contended "new evidence" supported his original position. *Dieringer* observed:

> He does not explain his apparent failure to present this evidence at the initial hearing. The probate master, in her new recommendation, likewise did not explain why this evidence was not adduced at the original hearing. In the absence of any such explanation, there are no exceptional circumstances to justify departing from the law of the case doctrine. . . .
>
> Moreover, the probate master ignored the scope of this court's remand order when she allowed a hearing covering issues that spanned the history of the estate. Our prior decision was clear. We concluded the opinion by stating, "[f]or the foregoing reasons, we . . . REMAND this case for reconsideration of attorney's fees and fees of the personal representative in light of the conclusions expressed herein." *Id*.

Fox v. Alascom, Inc., 783 P.2d 1154, 1157 n. 4 (Alaska 1989) suggested the "law of the case" doctrine applied to workers' compensation cases. *Fox* cited:

> 1B J. Moore, J. Lucas & T. Currier, *Moore's Federal Practice* ¶0.404[10], at 174 (2d ed. 1988) ("In the case of a remand for further proceedings, the mandate constitutes the law of the case only on such issues of law as were actually considered and decided by the appellate court, or necessarily to be inferred from the disposition on appeal. In the course of subsequent proceedings directed or permitted by the mandate, the district court otherwise will apply the law as it reads it, subject to correction on a second appeal.")

In *Groom v. State of Alaska, Dept. of Transportation*, 169 P.3d 626, 635-36 (Alaska 2007), the Court addressed the "law of the case" doctrine and inadequate notice the Division had given to an injured worker concerning issues the Board intended to resolve in a subsequent hearing. In 1999, the Board determined the worker had suffered a work-related injury. However, after the injured worker filed numerous other claims for additional injuries, a different panel in 2003 revisited the first decision and found the employee had not been injured as the Board had originally stated in 1999. The Superior Court affirmed, and the injured worker appealed. *Groom* stated:

> Both parties referred to the previous superior court decision as the law of the case. The law of the case doctrine "maintains that issues previously adjudicated can only be reconsidered where there exist 'exceptional circumstances' presenting a 'clear error constituting a manifest injustice.'" Even if the board could reconsider the issue -- in a modification for example -- it could not do so without giving the parties some notice that it was considering doing just that.
> . . . .
>
> Given the continuing uncertainty as to the procedural status and interrelationship of Groom's original and subsequent claims, we conclude that Groom did not receive clear notice that the 2003 hearing might be regarded by the board as an occasion for revisiting its 1999 decision on his original claim. Because the board provided inadequate notice to Groom that it might reconsider its earlier factual determination that he had slipped and fallen in March 1999, its decision that the slip and fall did not occur must be reversed.
>
> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
>
> (e) A member of one panel may serve on another panel when the commissioner considers it necessary for the prompt administration of this chapter. Transfers

> shall be allowed only if a labor or management representative replaces a counterpart on the other panel.
>
> **AS 23.30.007. Workers' Compensation Appeals Commission.** (a) There is established in the Department of Labor and Workforce Development the Workers' Compensation Appeals Commission. The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter. . . .
>
> **AS 23.30.008. Powers and duties of the commission.** (a) The commission shall be the exclusive and final authority for the hearing and determination of all questions of law and fact arising under this chapter in those matters that have been appealed to the commission, except for an appeal to the . . . Court. . . .

White v. Alaska Commercial Fisheries Entry Commission, 678 P.2d 1319, 1322 (Alaska 1984) held that the "threshold question in an administrative appeal is whether the record is adequate to permit meaningful judicial review." *White* further stated that if it is not, "and the basis of an administrative decision is unclear, it may be necessary to remand the case for preparation of a record revealing the agency's reasoning process." A reviewing body must be able to determine whether the administrative ruling was based on factual issues, legal grounds or both. *Id*.

The Alaska Workers' Compensation Board (Board) and Alaska Workers' Compensation Appeals Commission (Commission) have limited jurisdiction over workers' compensation claims only. *Alaska Public Interest Research Group* (*AKPIRG*) *v. State*, 167 P.3d 27 (Alaska 2007).

> **AS 23.30.010. Coverage**. (a) . . . [C]ompensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . or the employee's need for medical treatment arose out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment.
>
> **AS 23.30.041. Rehabilitation and reemployment of injured workers**. . . .
>
> (c). . . If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive days as a result of the injury, the

> administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. . . .
> . . . .
>
> (k) . . . If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease, and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment process, the employer shall provide compensation equal to 70 percent of the employee's spendable weekly wages, but not to exceed 105 percent of the average weekly wage, until the completion or termination of the process. . . . If permanent partial disability or permanent partial impairment benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until permanent partial disability or permanent partial impairment benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j). . . .

Carlson v. Doyon Universal-Ogden Services, 995 P.2d 224 (Alaska 2000), said if an injured worker presented evidence showing she repeatedly attempted to reinitiate the reemployment process while she pursued other benefits, or showed her employer had used tactics delaying reemployment benefits, a retroactive reemployment benefit award might be appropriate.

Carter v. B&B Construction, Inc., 199 P.3d 1150, 1159-60 (Alaska 2008), asked "when does an employee begin participating in the reemployment process?" Answering, *Carter* stated:

> When an employee exhausts PPI benefits before completion or termination of the reemployment process, AS 23.30.041(k) 'provides a fall-back source of income.' Given this purpose, we think that the legislature did not intend that there should be a gap between the expiration of PPI benefits and the commencement of reemployment benefits for employees who are vigorously pursuing eligibility evaluations before their PPI benefits expire. We therefore conclude that the reemployment process begins when the employee begins his active pursuit of reemployment benefits (*id*.).

Carter then addressed the implied second question: When does a person begin actively pursuing reemployment benefits? *Carter* answered:

> Because Carter began to actively pursue reemployment benefits on April 27, 1993 when he requested an eligibility evaluation, and because he continued to actively pursue those benefits by petitioning the board for review of the division's May 4,

1993 'decision,' by petitioning the board for a rehearing, and by appealing to the superior court, we conclude that the board did not err in awarding him reemployment benefits, beginning when his PPI payment was exhausted on July 14, 1994, for the statutory maximum period that a reemployment plan can last -- two years.

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;
(2) the name, address, and occupation of the employee;
(3) the cause and nature of the alleged injury or death;
(4) the year, month, day, and hour when and the particular locality where the alleged injury or death occurred; and
(5) the other information that the division may require.

. . . .

(f) An employer who fails or refuses to file a report required of the employer by this section or who fails or refuses to file the report required by (a) of this section within the time required shall, if so required by the board, pay the employee or the legal representative of the employee or other person entitled to compensation by reason of the employee's injury or death an additional award equal to 20 percent of the amounts that were unpaid when due. The award shall be against either the employer or the insurance carrier, or both.

AS 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

. . . .

(d) If at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.

. . . .

> (o) Notwithstanding (a) of this section, an employer is not liable for palliative care after the date of medical stability unless the palliative care is reasonable and necessary (1) to enable the employee to continue in the employee's employment at the time of treatment, (2) to enable the employee to continue to participate in an approved reemployment plan, or (3) to relieve chronic debilitating pain. . . .
>
> **AS 23.30.120. Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter. . . .

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). To attach the presumption, and without regard to credibility, an injured employee must establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). "In claims based upon highly technical medical considerations, medical evidence is often necessary to make the connection between a disabled worker's employment and his disability." *VECO, Inc. v. Wolfer*, 693 P.2d 865, 870 (Alaska 1985). Once the presumption attaches, and without regard to credibility, the employer must rebut the raised presumption with "substantial" evidence that either, (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability ("affirmative-evidence"), or (2) directly eliminates any reasonable possibility that employment was a factor in causing the disability ("negative-evidence"). *Huit v. Ashwater Burns, Inc*., 372 P.3d 904, 919 (Alaska 2016).

"Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion given the whole record. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of evidence. *Huit*. This means the employee must "induce a belief" in the fact-finders' minds that facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the last step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*. An injured worker is entitled to a

presumption of continued work-related disability. *Kodiak Oilfield Haulers v. Adams*, 777 P.2d 1145 (Alaska 1989).

An employer has always been able to rebut the presumption with an expert opinion that the claimant's work was probably not a substantial cause of the disability. *Childs v. Copper Valley Elec. Ass'n.*, 860 P.2d 1184;1189 (Alaska 1993). In such a case, the expert is not required to offer an alternative explanation. *Id*. For example, in *Norcon v. Alaska Workers' Compensation Bd.*, 880 P.2d 1051; 1055 (Alaska 1994), the Court held the employer successfully rebutted the presumption in a case involving the fatal cardiac arrest of an employee where two doctors testified that they did not believe the employee's work was a substantial factor in bringing about his death. An employer also successfully rebutted the presumption when its medical evaluator testified the employee's work was not a substantial factor in causing her fibromyalgia, even though he also testified that the causes of fibromyalgia are unknown. *Safeway, Inc. v. Mackey*, 965 P.2d 22 (Alaska 1998).

However, the mere possibility of another injury is not "substantial" evidence sufficient to rebut the presumption. *Huit.* Medical testimony cannot constitute substantial evidence if it simply points to other possible causes without ruling out work-related causes. *Childs*. The employer's evidence is viewed in isolation, without regard to an employee's evidence. *Miller*.

Huit addressed the presumption analysis under AS 23.30.120 as it applies following 2005 legislative changes to the Act. The claimant in *Huit* contended a scratch at work caused an infection leading to disability and need for treatment. In noting there was no other cause identified as contributing to the infection, *Huit* said the Board did not need to evaluate the relative contribution of different causes. However, in the presumption analysis' second stage, the employer had to produce substantial evidence showing the disability or need for medical treatment did not arise out of and in the course of employment. *Huit.*

Finding the statute ambiguous, *Huit* reviewed the legislative history associated with the 2005 changes. It found legislative history suggested the presumption analysis remained intact and there was no indication the legislature intended to change the way an employer rebutted the

presumption. *Huit* further noted rebutting the presumption required the employer to show the infection did not arise out of the claimant's employment. The employer had to show the work-related scratch could not have caused the infection (the negative-evidence test) or another bacteria source caused it (the affirmative-evidence test). Simply stating the "magic words," *i.e.*, "work was not the substantial cause," was not enough to rebut the presumption because the employer must provide "substantial evidence" stating the disability was not work-related. *Huit*.

Huit concluded that no doctors' opinions met the "negative-evidence" test because none eliminated the work-related scratch as the entry point for infection-causing bacteria. To the contrary, the medical experts agreed bacteria could enter the bloodstream through minor scratches. *Huit* further noted that for doctors' opinions to meet the "affirmative-evidence" standard they needed to provide substantial evidence ruling out the work-related scratch by identifying another explanation for the bacteria's presence in the claimant's bloodstream. No doctor provided substantial evidence of another cause. Consequently, *Huit* found the employer had not rebutted the presumption and the claimant was entitled to benefits.

Vue v. Walmart Associates, Inc., 475 P.3d 270 (Alaska 2020) held the Board could not ignore an employee's testimony about his ability to work. He said he had debilitating eye pain from the pellet lodged near his optic nerve. The shooting event and related pain triggered post-traumatic stress disorder as stated by his attending physicians. This was ample evidence to raise the presumption of compensability. *Vue* held the employer failed to rebut the raised presumption of compensability that the worker was, and continued to be, disabled by his mental condition. It found while medical evidence said the employee was medically stable from the physical injury, none said he was in respect to his mental injury. A doctor's statement that he "may have preexisting psychological issues" was not enough to show a competing cause for his disability because it was speculation. The employer had to provide substantial evidence that showed Employee was medically stable from all his work-related conditions. The evidence the Board and Commission had relied upon to find Employee medically stable for his mental health issue did not support these findings. The worker thus prevailed on the raised but unrebutted presumption.

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). When doctors' opinions disagree, the Board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Dec. No. 087 at 11 (August 25, 2008).

> **AS 23.30.125. Administrative review of compensation order.** (a) A compensation order becomes effective when filed with the . . . board as provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside the order are instituted as provided in this chapter, the order becomes final on the 31st day after it is filed.
>
> (b) Notwithstanding other provisions of law, a decision or order of the board is subject to review by the commission as provided in this chapter.
>
> (c) If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in the commission brought by a party in interest against all other parties to the proceedings before the board. . . .

> **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. . . . 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. . . . 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. . . .

Rose v. Alaskan Village, Inc., 412 P.2d 503 (Alaska 1966) explained:

> We construe AS 23.30.145 in its entirety as reflecting the legislature's intent that attorneys in compensation proceedings should be reasonably compensated for services rendered to a compensation claimant. . . .

Haile v. Pam American World Airways, Inc., 505 P.2d 838, 841 (Alaska 1973) reasoned:

> The attorneys who represented the claimants are certainly entitled to an award of reasonable fees. That is provided for by the act. But there is no reason why they

> should receive a sum out of all proportion to the services performed. Alaska's provision allowing attorney's fees is unique in its generosity to the claimants and their counsel. . . .

Wien Air Alaska v. Arant, 592 P.2d 352, 365-66 (Alaska 1979) (*reversed on other grounds*) stated:

> AS 23.30.145 seeks to insure that attorney's fee awards in compensation cases are sufficient to compensate counsel for work performed. Otherwise, workers will have difficulty finding counsel willing to argue their claims. Also, high awards for successful claims may be necessary for an adequate overall rate of compensation, when counsel's work on unsuccessful claims is considered.

Whaley v. Alaska Workers' Compensation Board, 648 P.2d 955, 959 (Alaska 1982) stated §.145 "is unique in its generosity to claimants and their counsel." *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 975 (Alaska 1986), a controverted case, addressed fees under §.145(c) and applied factors from what was then known as the Alaska Code of Professional Responsibility, DR-106(B), to determine a "reasonable fee":

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly.
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
> (3) The fee customarily charged in the locality for similar legal services.
> (4) The amount involved and the results obtained.
> (5) The time limitations imposed by the client or by the circumstances.
> (6) The nature and length of the professional relationship with the client.
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
> (8) Whether the fee is fixed or contingent.

Bignell expanded this holding to all workers' compensation fees and further noted:

> . . . If an attorney who represents claimants makes nothing on his unsuccessful cases and no more than a normal hourly fee in his successful cases, he is in a poor business. He would be better off moving to the defense side of the compensation hearing room where attorneys receive an hourly fee, win or lose, or pursuing any of the other . . . practice areas where a steady hourly fee is available.

Bailey v. Litwin Corp., 713 P.2d 249, 259 (Alaska 1986) reversed and remanded a fee award and "instructed the Board to award the injured worker's attorney fees . . . pursuant to [145(a), (b)]."

On remand the employee requested $21,700 in fees, which were double his "normal hourly rate," but the Board awarded him only $5,156.25. He appealed again. *Bailey v. Litwin Corp.*, 780 P.2d 1007, 1011-12 (Alaska 1989) reviewed the latter ruling and stated:

> In this case, the Board determined that Bailey was not limited to the minimum fee calculated under [145(a)], but that he was entitled to additional compensation because of the nature, length and complexity of the services performed. Bailey's actual attorney's fees were $10,850, representing 62 hours at $175 per hour. He requested $21,700. The Board adjusted the hourly rate from $175 to $125 (footnote omitted). The Board also reduced the number of compensable hours from 62 to 55, because the Board found that Bailey had already been paid for seven hours of work. This finding is supported by the record. *Id*.

The Board had declined to apply a contingency factor and found the employee did not prevail on all issues in his claim. *Bailey* affirmed the Board's attorney fee award. *Id*.

In *Cortay v. Silver Bay Logging*, 787 P.2d 103, 108-09 (Alaska 1990), an injured worker lost at hearing on a controverted disability claim but prevailed on a medical claim. The Board awarded only statutory minimum fees under §.145(a). Following additional litigation and appeals, *Cortay* reviewed prior cases interpreting and applying §.145, including §.145(c), which applies only to attorney fees on appeal, and reiterated "a 'full fee' is not necessarily limited to an hourly fee if a fee calculated at an hourly rate would not reflect the amount of work expended." *Id*. In reversing the Superior Court's attorney fee award, and without discussing why §.145(b) applied in this "controverted" case rather than §.145(a), *Cortay* concluded:

> Awarding fees at half a lawyer's actual rate is inconsistent with the purpose of awarding full attorney's fees in the workers' compensation scheme. If lawyers could only expect 50% compensation on issues on which they prevail, they will be less likely to take injured workers' claims in the first place.

Adamson v. University of Alaska, 819 P.2d 886 (Alaska 1991), involved a Board hearing paused by an oral settlement. The injured worker later refused to sign the agreement. The employer petitioned the Board to enforce the settlement. The Board held a hearing on the employer's petition, declined to approve it, and determined the Board would reconvene the original hearing where it left off. The employee's attorney sought attorney fees for succeeding against the employer's petition to enforce the oral settlement. The Board declined, to "wait and see whether

the employee ultimately prevail[ed] in her claim and, if so, to what extent the recovery exceed[ed] the terms of the offered oral agreement." At the third hearing, the employer prevailed, and the Board denied the employee's claims. It also denied attorney fees and costs for the employee's success at the second hearing, because it did not result in success on her claim. The Court affirmed, finding the injured worker had to prevail on the claim itself.

In *Childs v. Copper Valley Electric Ass'n*, 860 P.2d 1184, 1190-91 (Alaska 1993), the employer controverted the employee's right to benefits. The employer later voluntarily paid some benefits after the worker filed a claim, but before hearing. The employee lost on most issues at hearing, but the Board failed to award any attorney fees on the amounts controverted but later paid voluntarily. The employee appealed. *Childs* cited §.145 and said it provides that "attorney's fees in workers' compensation cases should be *fully* compensatory and reasonable, in order that injured workers have competent counsel available to them" (emphasis in original). *Childs* held the employer's voluntary payment was the "equivalent of a Board award, because the efforts of Childs's counsel were instrumental to inducing it." Consequently, the Board should have awarded attorney fees on the voluntary payment "pursuant to AS 23.30.145(a)."

Underwater Construction, Inc. v. Shirley, 884 P.2d 156, 159-61 (Alaska 1994) held, "Nonetheless, section 145(a) limits the Board's authority to award attorney's fees to 'the amount of compensation controverted and awarded.'" *Shirley* reviewed "policies underlying the attorney's fees statute," which included "to ensure that injured workers are able to obtain effective representation" and the fact the "employer is required to pay the attorneys' fees relating to the unsuccessfully controverted portion of the claim because he created the employee's need for legal assistance." *Shirley* also held, "More importantly, an employer seeking to modify or terminate payments made under a Board order must first seek the approval of the Board."

In *Bouse v. Fireman's Fund Ins. Co.*, 932 P.2d 222, 242 (Alaska 1997), both parties appealed from the Board's award of 50 percent of the requested actual attorney fees in a controverted case. The employee contended he should have been awarded 100 percent and the employer said he should have been awarded none because it had controverted his claim merely as a "precaution." *Bouse* affirmed the Board's award noting the employee did not prevail on his main issue; it also

rejected the employer's argument noting the insurer had "filed a controversion and exposed itself to an attorney's fees award."

Williams v. Abood, 53 P.3d 134, 147 (Alaska 2002) affirmed the Board's award of 50 percent of the injured worker's actual attorney fees. It reasoned the Court's prior attorney fee holdings do "not mean that an attorney representing an injured employee in front of the board automatically gets full, actual fees." The Board had to weigh the nature, length, complexity of the lawyer's services and the issues upon which he prevailed. Finding the employee had prevailed on two important issues, but lost on five other significant issues, *Abood* affirmed.

Bustamante v. Alaska Workers' Compensation Board, 59 P.3d 270, 274 (Alaska 2002) recognized, referring to the injured worker, "Without counsel, a litigant's chance of success on a workers' compensation claim may be decreased."

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784 (December 2019) involved two parties' workers' compensation cases settled through mediation, with the same claimant attorney. The parties did not resolve attorney fees and that issue went to hearing. The employee had filed a claim, and the employer controverted. The Board made findings related to the hourly rate and "number of hours" it determined were reasonable for specific tasks. *Id*. at 790-92. It reduced billable hours based on billing methods, such as using quarter-hour increments, and "block billing," which consists of billing entries that do not specify time taken for each task, but only give a total. The Board reduced hours billed, finding the attorney had spent too much time on some tasks. It faulted the claimant's lawyer for failing to explain some entries, but disallowed his testimony about his fees. Similarly, the Board reduced some billings finding they were paralegal tasks. The claimant appealed to the Commission, which found the Board's attorney fee award was not manifestly unreasonable, and affirmed. *Id*. at 793.

On appeal, *Rusch* held that the Board's award of attorney fees should be upheld unless it was "manifestly unreasonable." *Id*. It further stated, "We have rejected attempts to tie the hourly fees paid claimants' counsel the hourly fees for defense counsel," because unlike defense counsel paid on an hourly basis, claimants' lawyers sometimes only receive partial fees. The parties in

Rusch disputed who was successful on what issue in the settlement. *Rusch* adopted a test from *Singh v. State Farm Mutual Automobile Insurance Co*., 860 P.2d 1193 (Alaska 1993) to evaluate a claimant's success on an issue in a workers' compensation "settlement." The *Singh* test that *Rusch* adopted, "places the burden on the party opposing attorney's fees to show lack of merit." Non-monetary issues have to be analyzed the same way. *Rusch*, 453 P.3d at 796.

The employer in *Rusch* contended Board litigation involved a dispute over minimal physician bills and the claimant's lawyer "did not result in any gain through settlement." *Rusch* stated that on remand, the employer had the burden to prove this allegation. *Id*. It also clarified *Bignell* and stated that on remand, in "determining a reasonable attorney's fee," the Board must consider each factor in Rule of Prof. Conduct 1.5(a), "and either make findings related to that factor or explain why that factor is not relevant." *Id*. at 799.

As for the Board reducing the claimant lawyer's time for some tasks, *Rusch* held that the attorney must be given an opportunity at hearing to testify and explain his time entries. The Board's failure to do so violated procedural due process. *Rusch* noted that the Board's regulations require an affidavit itemizing hours expended and the extent and character of work performed, but otherwise provides "no additional guidance about the form of an affidavit." *Id*. at 800. *Rusch* concluded that, "the Act is to be construed and applied in a manner that encourages, not discourages, attorney representation of injured workers." *Id*. Moreover, *Rusch* concluded that the Board's regulations do not prohibit block billing and prior Board decisions do not have a clear rule for reductions solely for block billing. *Id*. at 806. *Rusch* concluded that the reduced attorney fees awarded were manifestly unreasonable. *Id*. at 807.

> **AS 23.30.155. Payment of compensation**. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .
>
> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. . . .
> . . . .

> (d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. . . .
>
> (e) If any installment of compensation payable without an award is not paid within seven days after becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the time period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
> . . . .
>
> (j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.
> . . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate . . . in effect on the date the compensation is due. . . .

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Id.* Evidence the employer possessed "at the time of controversion" is the relevant evidence to review. *Id*.

> **AS 23.30.180. Permanent total disability**. (a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. . . . In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be
>
> (1) area of residence;
> (2) area of last employment;

(3) the state of residence; and
(4) the State of Alaska. . . .

J.B. Warrack Company v. Roan, 418 P.2d 986, 988 (Alaska 1966) stated:

> For workmen's compensation purposes total disability does not necessarily mean a state of abject helplessness. It means the inability because of injuries to perform services other than those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist. . . . As the Supreme Court of Nebraska has pointed out, the 'odd job' man is a nondescript in the labor market, with whom industry has little patience and rarely hires. . . .

Carlson v. Doyon Universal Ogden Services, 995 P.2d 224, 229 (Alaska 2000), explained:

> To avoid paying PTD benefits, an employer must show that 'there is regularly and continuously available work in the area suited to the [employee's] capabilities, *i.e*., that [she] is not an 'odd lot' worker.' The Board concluded that the three doctors' unanimous view that Carlson was not PTD and Jacobsen's testimony identifying continuous and suitable work sufficed to overcome the presumption. This evidence satisfies the 'comprehensive and reliable' requirement. . . . The Board considered Carlson's medical limitations and her competitiveness in the job market, specifically referring to the testimony of rehabilitation expert Jacobsen and her Anchorage area labor market survey. *Id*. at 229.

Carlson affirmed the Board's reliance on testimony from a vocational reemployment expert who reviewed Carlson's claim file and a labor market survey. The expert identified job classifications suitable for the employee given her physical and educational limitations. *Id. Carlson* stated if an employer delays an eligibility evaluation, retroactive stipend benefits may be awardable.

> **AS 23.30.185. Compensation for temporary total disability**. . . . Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.
>
> **AS 23.30.190. Compensation for permanent partial impairment; rating guides**. (a) . . . The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041. . . .
>
> **AS 23.30.395. Definitions**. In this chapter,
> . . . .

(28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;
(29) "palliative care" means medical care or treatment rendered to reduce or moderate temporarily the intensity of pain caused by an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, or permanently alleviate or eliminate a medical condition; . . .

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

(e) A pleading may be amended at any time before award upon such terms as the board or its designee directs. If the amendment arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading, the amendment relates back to the date of the original pleading. . . .
(f) **For stipulations under this subsection**,

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

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. . . .

8 AAC 45.507. Notice of employee rights to reemployment benefits. . . .

> (b) If the employee has been totally unable to return to the employee's employment at the time of injury for 90 consecutive days, as a result of the injury, the employer shall notify the administrator, in writing, on the 91st day. The notification must be completed on a form prescribed by the administrator.
>
> **8 AAC 45.522. Ordering an eligibility evaluation without a request.** (a) For injuries occurring on or after November 7, 2005, if an employee has been totally unable to return to the employee's employment at time of injury for 90 consecutive days as a result of the injury, the administrator shall refer the employee for an eligibility evaluation. . . .
>
> **8 AAC 45.900. Definitions**. (a) In this chapter
> . . . .
>
> (11) "Smallwood objection" means an objection to the introduction into evidence of written medical reports in place of direct testimony by a physician; see Commercial Union Insurance Companies v. Smallwood, 550 P.2d 1261 (Alaska 1976);
>
> **Alaska Rule of Professional Conduct, Rule 1.5. Fees**. (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent. . . .

"Teratogenic" generally refers to a substance that interferes with normal prenatal development in an embryo. Mosbey's, *Medical, Nursing & Allied Health Dictionary*, Sixth Edition (2002).

ANALYSIS

1) Are non-remanded issues in *Hernandez VI* "the law of the case" on remand?

At the May 8, 2025 hearing, the parties did not agree on the scope of *Hernandez VI*'s remand. Employer argued a narrow remand on specific, identified issues. Employee focused on his claims. Eppler contended the remand was nuanced and many issues were intertwined, allowing the panel to reach issues not directly remanded. Notably, *Hernandez VI* neither affirmed nor reversed any decision or order from *Hernandez IV*. It simply remanded several issues for further "discussion" and "reconsideration." This makes the issues on remand more difficult to discern. Nevertheless, the law is relatively clear when placed in proper context.

Hernandez IV addressed and resolved many issues: Striking an email, which it denied; the parties' August 11, 2021 agreement, which it denied as void and unenforceable; his TTD claim, which it denied from June 20, 2018, and continuing; Employee's TPD claim, which it denied; PPI benefits for his psychological conditions, which it denied; a PPI rating for Employee's hernias, which it granted; a compensation rate adjustment, which it denied; a referral to the RBA for an eligibility evaluation, which it granted; date the reemployment process began, which it found was December 23, 2019; "stipend" benefits, which it granted; past medical benefits for Employee's thoracic spine, which it granted through September 17, 2018; future medical benefits for his compensable work injuries subject to Employer's defenses, which it granted; past medical transportation costs, which it denied; future medical transportation costs for the work injury, subject to Employer's defenses, which it granted; an unfair or frivolous controversion finding, which it denied; a late-payment penalty, which it granted on (1) past medical benefits for Employee's thoracic spine from June 20, 2018, through September 17, 2018, (2) "stipend" benefits from December 23, 2019, through August 11, 2021, and (3) a two-percent PPI rating; interest on all unpaid benefits awarded, which it granted; and Eppler's attorney fees and costs, which it granted in part. *Hernandez IV* was subject to Commission review. AS 23.30.125(b). The Commission had authority to set *Hernandez IV* aside in "whole or part." AS 23.30.125(c).

However, *Hernandez VI* remanded only a few orders from *Hernandez IV*. Under Alaska law, the "doctrine of the law of the case" prohibits this panel from reconsidering issues that were already adjudicated in *Hernandez VI*, but not remanded. *Dieringer*. *Hernandez VI* cited factual findings from *Hernandez IV* on all the above issues. Although it did not discuss each issue in its analyses, the Commission's lack of a remand on most issues decided in *Hernandez IV* creates a reasonable

inference from its silence that the Commission did not disagree with *Hernandez IV*'s findings and orders on those non-remanded issues. *Fox*; *Moore's Federal Practice*.

The "law of the case" is a doctrine of both economy and obedience to the Commission's jurisdiction. *Dieringer* The Commission has jurisdiction to decide workers' compensation appeals. AS 23.30.007(a). Absent the Court reversing, a Commission decision is the "exclusive and final authority" on all questions of law and fact arising under the Act. AS 23.30.008(a). Hernandez VI was effective the 31st day after it was filed. AS 23.30.125(a). *Dieringer* discussed an exception to the "law of the case" doctrine, "exceptional circumstances presenting a clear error constituting a manifest injustice." Employee offered no evidence or argument suggesting "exceptional circumstances," "clear error" or "manifest injustice" would prohibit the "law of the case" doctrine from operating here. *Dieringer* held that a lower tribunal erred by ignoring the expressed scope of the higher court's remand. Moreover, the Court applied the "law of the case" doctrine to workers' compensation appeals in *Fox* and *Groom*. Most relevant to the instant matter, *Groom* found that a hearing panel did not give a party adequate notice that it would be revisiting issues in a subsequent hearing that were decided previously but not remanded. The Court in *Groom* reversed on those due process "notice" grounds.

Employee is correct in noting that some remanded issues may intertwine with previously decided issues. However, the Commission in *Hernandez VI* expressly enumerated those issues. Moreover, although the February 26, 2025 prehearing conference summary identified all issues Employee wanted to have heard on remand, merely listing the issues does not mean they are automatically heard. Employer understandably was prepared to address narrow remanded issues at the May 8, 2025 hearing as listed in *Hernandez VI*. There was no reason for it to expend funds on issues that should not be heard. AS 23.30.001(1). The panel would deny Employer's right to due process were it to revisit issues that had already been decided in *Hernandez IV* but not expressly remanded in *Hernandez VI*. Therefore, Employer's position on the scope of the *Hernandez VI* remand is consistent with the applicable statutes and with *Dieringer*, *Fox* and *Groom*.

Given the above analysis, this decision will not revisit Employee's claim for an unfair or frivolous controversion, unless he proves one occurred after *Hernandez IV* was issued on January 21, 2022. Similarly, *Hernandez IV* denied his compensation rate adjustment claim, and *Hernandez VI* did not remand that issue. There is no evidence or argument that a compensation rate adjustment claim could be intertwined with any remanded issue. He could have presented his evidence and argument at the merits hearing but did not. Thus, this decision will not address his compensation rate adjustment claim. *Hernandez IV* denied his TPD claim, and *Hernandez VI* did not remand that issue either. It is not apparent how a TPD claim would be intertwined with the remanded issues. This decision will not consider his TPD claim again. *Hernandez IV* likewise denied Employee's request for past transportation costs, and those too will not be revisited on remand. *Dieringer*.

2) Is the work injury the substantial cause of any disability or need to treat Employee's "chronic pain," "anxiety or panic attacks," "generalized anxiety," "depression," "somatoform disorder" or "Somatoform Symptoms Disorder"?

The main issue on remand is whether Employee's work injury is the substantial cause of his "chronic pain," "anxiety or panic attacks," "generalized anxiety," "depression" or his "somatoform disorder," which this decision considers a "Somatic Symptoms Disorder." At the instant hearing, Employee clarified that in his view "anxiety attacks" and "panic attacks" are the same thing. For simplicity, this decision will refer to them as "panic attacks." These injuries will be addressed separately, after this decision applies the statutory presumption of compensability analysis, which applies because there are factual disputes on all these issues. AS 23.30.120; *Meek*.

To preface its analysis, the panel notes that it reads Drs. Murphy's and Williams' reports and depositions differently than the Commission initially did in *Hernandez VI*. Moreover, the Commission made numerous statements about the "presumption of compensability" in *Hernandez VI*. However, the Commission in *Hernandez VII* clarified those statements and stated, "However, the Commission addressed the legal analysis the Board needed to apply, but did not. It is not for the Commission to reweigh the evidence presented nor to choose between doctors' reports and testimony." Later, in *Hernandez XI*, the Commission further clarified its

presumption statements and said, "The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make, and is, thus, conclusive." AS 23.30.122; *Smith*. These three Commission decisions read together in context suggest *Hernandez IV* had an inadequate record on the remanded issues, and *Hernandez VI* remanded to address that problem. *White*.

The Court in *Huit* and *Vue* addressed cases where the injured workers' injuries (a sheetrock-screw scratch on the worker's abdomen in *Huit*, and a BB fired into the worker's eye in *Vue*), disability and need to treat those injuries had no other posited cause other than the work injuries. Therefore, in *Huit* and *Vue*, the employers could not rebut the raised §.120(a) presumption. It was not enough for an EME physician to simply use "magic words" that the work injury was not the substantial cause of disability or the need for treatment. *Huit.* In single-cause cases, to rebut the presumption, an employer's medical experts have to offer an alternate cause so factfinder's can determine if, "in relation to other causes," the substantial cause of the disability or need for treatment was the work injury. Stated differently, in single-cause cases, to constitute "substantial evidence" to rebut a raised presumption, an employer in the analysis' second step must point to an alternative cause for an injured worker's disability or need for treatment. AS 23.30.010(a); *Huit*; *Vue*. By contrast, in this case both Employee's and Employer's physicians offered alternate causes for the need to treat Employee's physical and mental issues as will be discussed below. These alternate causes included his preexisting thoracic back symptoms and preexisting "chronic pain," "anxiety or panic attacks," "generalized anxiety" and "depression," and his "somatoform disorder." In multiple-cause cases like this one, Employer could always rebut the presumption by having a physician state that work was not the substantial cause of any disability and the need for treatment. The Court has applied this rule applied in multiple-cause cases even in cases where the cause of an injury was idiopathic, or in other words "unknown." *Childs*; *Miller*; *Norcon*; *Mackey*.

Employee claims his August 7, 2017 work injury with Employer was the substantial cause of his alleged "chronic pain," "panic attacks," "generalized anxiety," "depression" and "somatoform disorder." Without regard to credibility, Employee raised the §.120 presumption that his work injury was the substantial cause of his "chronic pain" through his own testimony, which cannot

be ignored, and opinions from Drs. Smith, Creighton, and Van Ravenswaay. Employee testified he had no prior "chronic pain" before his work injury with Employer. *Vue*. On December 19, 2017, Dr. Smith said Employee had a migrating stitch from his hernia surgery, which caused pain. On January 9, 2018, Dr. Creighton attributed Employee's "musculoskeletal complaints" to his August 7, 2017 work injury with Employer. On October 17, 2018, Dr. Van Ravenswaay opined Employee had "chronic back and shoulder pain," and on January 26, 2019, concluded that his alleged left-shoulder injury occurred on August 7, 2017, and was "still active." He reiterated that opinion on March 4, 2019, and on May 17, 2020, stated the work injury was the "most likely cause" of Employee's "pain, shoulder and spine complaints." Dr. Van Ravenswaay reiterated his opinions in his March 11, 2021 deposition. These medical opinions attach the presumption and shifted the burden to Employer to rebut it with substantial evidence to the contrary. *Tolbert*.

Without regard to credibility, Employer rebutted the raised presumption regarding "chronic pain" with Employee's own repots to several medical providers, and with opinions from PA-Cs Helmick, Gordon and Ulrich, and Drs. Koller, Bauer, Murphy, Williams, Lee and Schwartz. On April 30, 2018, Employee told Dr. Koller he "had the back pain issue prior" to his work injury, and had a "knife wound to his upper thoracic back area . . . which he indicates is where the pain is emanating from." On October 22, 2018, Employee told PA-C Helmick that around 12 years earlier he had suffered a wound to his back and said that "he had no issues until last summer when his back started to give him pain." On December 5, 2018, Employee told PA-C Ulrich that his left-sided thoracic-spine-pain was "localized to the area where he had a previous stab injury." Commenting further on Employee's "chronic pain," PA-C Ulrich stated Employee's work injury caused only a "muscle strain or sprain."

Moreover, on June 9, 2018, Dr. Koller opined Employee had a "thoracic back strain" that had "healed and resolved" and said any residual "pain or discomfort" is more likely than not "contributed by the previous stab injury." He added that Employee's hernias were repaired and "resolved," except for a protruding stitch that could be, and was, removed later. On June 9, 2018, Dr. Koller reiterated his opinions that Employee's back strain was "resolved," and any further pain was attributed to his "previous knife impalement" in the affected area.

Later on June 28, 2018, Dr. Bauer stated that Employee's continuing "physical complaints" were based on his preexisting psychological condition "rather than any physiologic condition." On July 27, 2021, Dr. Williams testified in accordance with his earlier report that Employee's work with Employer was not the substantial cause of his condition and he could "rule out work" as the substantial cause. On April 21, 2020, Employee told Dr. Murphy that he had symptoms in his "middle back" before from when "someone had thrown an object and struck him." Dr. Murphy opined that orthopedically, Employee had a work-related "thoracic spine strain," and any work-related disability was no longer present effective September 17, 2018.

On February 18, 2022, Dr. Lee opined Employee's "back pain" was "due in part or in whole to a preexisting condition." She added that Employee may have had a "muscle strain" in his back that resolved over "weeks to months." Dr. Lee found no plausible mechanism of injury to support his pain complaints with any objective evidence. Lastly, on September 4, 2024, Dr. Schwartz could find no physical condition that was substantially caused by Employee's work injury, "None." Evidence in the preceding paragraphs rebuts the presumption and shifts the burden back to Employee to prove his "chronic pain" claim by a preponderance of the evidence. *Huit*; *Saxton*.

As for his "panic attacks," Employee raised the §.120 presumption with Dr. Van Ravenswaay's May 17, 2020 opinion stating that the work injury caused the "panic attacks." *Tolbert.* Employer rebutted the presumption with Drs. Bauer's, Murphy's, Williams' and Mendoza's opinions. Dr. Bauer's June 22, 2018 opinion stated the "panic attacks" were unrelated to the work injury, and that Employee had an "admitted history" of preexisting panic attacks. Dr. Murphy's April 21, 2020 report, and his subsequent deposition, ruled out the work injury as the substantial cause of Employee's "panic attacks." On February 7, 2023, Dr. Mendoza charted that Employee's panic attacks were "due to pain," which other physicians cited above stated it is not work-related. On September 4, 2024, Dr. Williams in his reports and in his February 11, 2025 deposition stated the work injury was not the substantial cause of Employee's mental health condition, thus ruling it out. He stated that Employee's pain caused his depression, and not vice-versa. Thus, he concluded that without a medical opinion from a physician adequate for Dr.

Williams to find "congruency" between Employee's objective physical injuries and his perceived pain, if Employee had pain, and if the pain caused mental health issues, those issues did not result from any work-related injury. This evidence rebuts the raised presumption and shifts the burden back to Employee to prove his "panic attacks" claim by a preponderance of the evidence. *Huit*; *Saxton*.

As for his "generalized anxiety" and "depression," the analysis in the previous paragraph is incorporated here by reference. This same evidence rebuts the raised presumption and shifts the burden of proof back to Employee who must prove by a preponderance of the evidence that his "generalized anxiety" and "depression" are work-related. *Huit*; *Saxton*.

While Employee contends his injury was the substantial cause of a "somatoform disorder" and a "Somatic Symptoms Disorder," which this panel considers the same thing and a highly technical psychological issue, there is no expert psychological opinion supporting his assertion. *Wolfer*. Employee did not raise the presumption for "somatoform disorder" or "Somatic Symptoms Disorder," and he must prove that claim by a preponderance of the evidence. *Huit*; *Saxton*.

A. Chronic pain.

To be a compensable injury, Employee's August 7, 2017 work injury with Employer must be the substantial cause of his alleged "chronic pain," or at least the substantial cause of any related disability or need to treat it. AS 23.30.010(a). Without benefit of the presumption, to make his case Employee must show that his "chronic pain" "arose out of and in the course" of his employment with Employer. *Id*. While medical providers may weigh in with their opinions, this panel must ultimately decide if, in relation to other causes, the work injury is the substantial cause of Employee's alleged "chronic pain" or any related disability or need to treat it. *Id*.

Employee's extensive file reveals many possible causes of Employee's alleged "chronic pain," need to treat it and related disability. These include: (1) the August 7, 2017 injury; (2) the preexisting stab wound; (3) hernias and related migrating stitch; (4) physical deconditioning; (5) mild scoliosis in the thoracic spine; (6) unequal leg length; (7) intervening injuries from his known post-injury work as a landscaper, cook, car repair person, and automotive sander and

painter; (8) cultural factors; (9) "teratogenic" factors; (10) maladaptive beliefs about pain; (11) unwillingness to work; (12) CRPS; and (13) a "somatoform disorder." These will be analyzed in order:

(1) *The August 7, 2017 injury*: Employee contends this was the substantial cause of his alleged "chronic pain." Medical evidence supporting his position includes Dr. Creighton's January 9, 2018 opinions. She first saw Employee after he had been off work doing in his words "nothing," while vacationing in El Salvador for two months to recover from hernia surgery. Dr. Creighton found that after a 10-12 hour flight from El Salvador to Alaska, Employee's "back pain" had worsened and had moved into his neck and lower back. With little else to go on, and with no analysis, she attributed Employee's "musculoskeletal complaints" to his work injury. She expected Employee make a full recovery with "two or three visits." Unfortunately, Employee saw Dr. Creighton for months with no improvement. In short, Dr. Creighton simply accepted what Employee told her. Even then, she diagnosed only a "lumbar strain" with "segmental dysfunction" at all three spinal regions. At hearing on May 8, 2025, Employee testified that his chronic pain emanated from his thoracic spine, or in other words, his mid-back area. There is no evidence that Dr. Creighton believed his diagnosed "lumbar strain," which is in a different spinal region, or his "segmental dysfunction" were permanent conditions or caused "chronic pain." It is far more likely that Employee's 10-plus hour plane ride from El Salvador to Alaska caused his spinal discomfort. Thus, her opinion will be given little weight. *Moore*.

Dr. Van Ravenswaay is Employee's strongest medical advocate. Even he initially questioned Employee's claim that he had "chronic pain." Dr. Van Ravenswaay took x-rays that revealed "nothing remarkable about his left shoulder." Employee had PT for three months in Kodiak for his left-shoulder and low-back but made little progress. Dr. Van Ravenswaay noted Employee was convinced his body was "broken." He initially told Employee "to go back to work."

Nevertheless, Dr. Van Ravenswaay eventually flip-flopped and opined that Employee's alleged "left shoulder injury" occurred on August 7, 2017. He had changed his opinion from his initial belief but provided no analysis other than "getting to know" Employee better. In other words, Dr. Van Ravenswaay believed everything Employee told him. Dr. Van Ravenswaay said

Employee's pain resulted from the work injury, not from the "prior stabbing injury of the left upper back."

Eventually, on May 17, 2020, Dr. Van Ravenswaay wrote that the work injury was the most likely cause of Employee's pain including shoulder and spine complaints and his inability to work. He suggested Employee have counseling and possible psychiatric evaluation and treatment. In his March 11, 2021 deposition, Dr. Van Ravenswaay doubled-down on his opinions and stated Employee's alleged "chronic pain" arose from his work injury. But Dr. Van Ravenswaay's opinions were conclusory with no analysis explaining how he arrived at his "chronic pain" opinion or how he ruled out other possible causes. Again, Dr. Van Ravenswaay simply accepted what Employee told him. Thus, his opinions will also be given little weight. *Moore*.

Lastly, PA-C Dyches' July 20, 2022 opinions may (or may not) have supported Employee's position, but Employer "Smallwooded" this provider's report and to date that opportunity has not been provided. Thus, because that document was hearsay and prepared solely for litigation, this decision cannot consider PA-C Dyches' July 20, 2022 opinions. 8 AAC 45.900(11). The above are all the medical providers supporting Employee's position on his alleged "chronic pain." While many providers gave Employee care for his "chronic pain," as set forth in the factual findings above, only Drs. Crighton and Van Ravenswaay gave causation opinions.

The overriding problem with Drs. Crighton's and Van Ravenswaay's opinions, as unconvincing as they are, is their reliance on Employee's non-credible history. His records and testimony include omissions, contradictions and inaccuracies. For example: In its August 9, 2017 injury report, Employer stated Employee hurt his "stomach & groin" area by pushing "500 # Bussy carts." There was initially no indication Employee had any back pain. Employee's photographic evidence shows what presumably are the carts he was pushing, which were on wheels, on what appears to be a smooth concrete floor. As time went on and Employee's symptoms did not improve and spread to his bilateral shoulders and entire spine, he steadily upped the ante on the carts' weight. By September 14, 2017, when he saw Dr. Larson Employee reported he was pushing and pulling "900 pound carts." That report nearly doubled the weight Employer

ascribed to the carts. When he filed his March 15, 2018 claim, Employee doubled the weight to "1,000" pounds. On June 2, 2022, PA-C Dyches saw Employee who told him that on the injury date he had been pushing and pulling containers weighing up to "1,400 pounds." At that visit he denied "any one particular incident but more due to repetitive pushing and pulling of heavy containers." Thus, by June 2, 2022, Employee had inflated the weight he was moving by nearly three-fold. He also changed his singular "injury," to a "repetitive injury." Inflating the weight he was pushing from 500 to 1,400 pounds, and revising the injury mechanics to make it more impressive, makes Employee's accounts to his physicians not credible. Since his physicians relied on Employee's inflated injury, that makes their supportive opinions not credible. AS 23.30.122; *Smith*; *Moore*.

Employee has many other credibility problems as well: On January 24, 2018, he told Dr. Mortenson he was afraid Employer was sending someone to "get him." There is no evidence to support this. He also said he had significant financial and social stressors as he was "trying to petition for his wife to come to the United States from Mexico." Employee told Dr. Mortenson this "anxiety" was a "relatively new complaint," which had "pretty much been around the issues discussed above." On February 23, 2018, Employee likewise told PA-C Gordon he was "worried about his wife's visa." But at the May 8, 2025 hearing, Employee testified that the only stressful thing going on in his life in 2018 that could have caused his panic attacks was "back pain." He testified that things had been "going well" in 2018 regarding bringing his wife to the United States and that process was not stressful at all. Employee also testified he had anxiety and depression beginning August 7, 2017. His May 8, 2025 hearing testimony was diametrically opposed to his contemporaneous reports to Dr. Mortenson and PA-C Gordon, and was not credible. *Id*.

On April 18, 2018, Employee reported to PT that he had no previous "diagnostic testing on his back." But in reality, on December 22, 2017, Employee told PA-C Gordon that while in El Salvador in late 2017, he had x-rays done on his back. PA-C Gordon took additional x-rays on April 18, 2018. On February 13, 2018, Employee had a CT scan of his cervical and thoracic spine. His report to PT about previous diagnostic testing was not accurate or credible. *Id*.

On April 30, 2018, Employee told Dr. Koller that he was supposed to have returned to work that day but, in the panel's view, conveniently had an "anxiety attack." He told Dr. Koller he had "two conditions in which he would go back to work," his back had to be pain-free, and his anxiety and insomnia had to be under control. Dr. Koller told Employee there was "no medical indication . . . that would preclude his returning to work at light duty status." In response, Employee "broke down" and dropped to his knees crying. Dr. Koller noted "some secondary gain at hand here." Placing conditions on his return to work, notwithstanding his attending physician's reassurance that there was nothing physically wrong with him, and dramatizing his situation in an attempt to persuade his doctor's opinion, further damaged Employee's credibility. *Id*.

Perhaps most damaging to Employee's credibility and to his case in general was his repeated testimony stating he never had similar physical and mental issues before his work injury with Employer. That testimony is belied by Dr. Koller's April 30, 2018 report where Employee told him that he "has had the back pain issue prior" to his work injury and "also anxiety and insomnia issues." At the January 24, 2024 hearing, when Employee made a similar assertion of no prior symptoms, the Designated Chair brought Drs. Koller's and Bauer's opinions to his attention. He tersely responded that both physicians were "crazy." At the May 8, 2025 hearing, when the chair again pressed Employee on Dr. Koller's opinion, he doubled-down on his prior testimony by reasserting, "Sure, he was crazy."

On June 28, 2018, when Dr. Bauer saw Employee for an EME, he found among other things an "admitted history of anxiety and panic attacks." A "medical history" could refer to a pre-injury history as well as a post-injury history. However, by using the word "admitted" history, the panel reads Dr. Bauer's statement to refer to a pre-injury history. Since Employee was, from his initial March 15, 2018 claim, seeking benefits for post-injury anxiety and panic attacks, it was already known that Employee claimed those conditions post-injury. Since anxiety and panic attacks were part of his first claim, which included, "Psychological therapy because of the situation [he] was living," there was nothing for Employee to "admit," as if it were a surprise. His "admitted history" therefore referred to his pre-injury history. *Moore*.

Similarly, on August 22, 2018 Employee told PA-C Helmick that his past medical history included "anxiety," "depression" and "drug abuse." When asked at the May 8, 2025 hearing about his drug abuse "history," Employee admitted he had a drug abuse problem but stated it was post-injury. When pressed, Employee could not recall when his drug-abuse problem began. There is no evidence that anyone ever suggested Employee had a post-injury drug abuse problem, although Dr. Van Ravenswaay was understandably concerned that Employee continued to take narcotics. The panel did not ask Employee about PA-C Helmick's report of preexisting "anxiety" and "depression" because that pre-injury history was already found in Drs. Koller's and Bauer's reports. Similarly, on April 21, 2020, Dr. Murphy charted that Employee had a history of anxiety, depression and panic attacks. At the May 8, 2025 hearing, when asked if he gave that history to Dr. Murphy, Employee said he could not recall but "it is possible."

It is unlikely that three physicians and a PA-C, trained and experienced in obtaining medical histories from patients, would obtain the same history incorrectly. It is more probable that Employee gave correct histories to Drs. Koller, Bauer, Murphy and PA-C Helmick, but later distanced himself from those histories because they provided alternate causes for his symptoms. *Huit*; *Vue*. When faced with these opinions, on December 26, 2018, Employee wrote that these providers all "negligently opined" about his medical condition.

On December 4, 2023, Employee filed photographs appearing to depict carts loaded with salmon cans, and ovens in which they were prepared, as well as two pictures of his back. The photographs appear contemporaneous with his injury because they are labeled, "Starting on August 07/2017." Employee printed between the pictures, "After my injury I took these photos in case I needed them due to the injustices that were coming." If these pictures were taken on August 7, 2017, it is unclear why Employee would anticipate "injustices that were coming," since Employer never controverted Employee's right to any benefits until January 2, 2018, when it denied benefits related solely to Employee's cervical spine. Other photographs Employee filed on December 4, 2023, depict Employee's post-hernia-surgeries and results after a stitch was removed from one hernia incision. Employee appears to have premeditated his eventual claims early-on and documented things that he believed would support a future case.

On December 19, 2017, Employee told Dr. Smith he "had problems" with Employer and said that Employer did not "accept the injury." But by that date, Employer had denied nothing and did not even file its first controversion until January 2, 2018. Even then, Employer controverted benefits related to Employee's cervical spine only. As far as the panel can determine, Employee has never actually claimed his neck as part of his work injury with Employer. Employee's statement to Dr. Smith was misleading and inaccurate. AS 23.30.122; *Smith*.

Employee's records make it clear that he disagreed strongly with PA-C Gordon's recommendation that he return to work. Thereafter, Employee switched from PA-C Gordon to Dr. Koller. He told Dr. Koller he had a "disagreement" with PA-C Gordon and that she no longer wanted to treat his back "because that was not the referral she got." His account was misleading. *Id*. Employee changed from PA-C Gordon to Dr. Koller because PA-C-Gordon had nothing further to offer him and their "disagreement" was about whether or not he could return to work. PA-C-Gordon said he could and should, and Employee said he could not and would not.

Employee had selective memory when he could not recall that Dr. Van Ravenswaay told him to go back to work in October 2018. Likewise, he did not recall telling Dr. Van Ravenswaay that he was applying for a local fish processing plant job at that time. It is difficult to believe that Employee would not have recalled those important events. By contrast, at the May 8, 2025 hearing, Employee recalled telling PT on December 12, 2018 that he worked one and one-half days at Blue Moose applying labels to products and could perform that work, but he could not remember why it stopped. However, Employee knew all his other admitted and revealed post-injury work ended because his pain allegedly flared. *Id*.

On July 15, 2019, Employee told Dr. Carricaburu, nearly two years after his August 7, 2017 injury, that he had "Recently lost his job." He told Dr. Carricaburu that "a significant effort" two weeks earlier had greatly increased his "leg pain." Employee said he "works as a cook." Dr. Carricaburu found, "Diffuse pain with firm palpation pretty much any area of the body. Pain out of proportion to exam findings." This is the first and only indication that Employee ever worked as a "cook," post-injury. According to reemployment specialist Doerner's March 29, 2022 eligibility evaluation report, he did not tell her about this employment. Employee likewise did

not reveal this "cook" employment at the May 8, 2025 hearing, even when the chair repeatedly asked about all his post-injury work. Moreover, Employee did not tell Doerner about his employment at Blue Moose, which if his account is to be believed, was the only work he could do post-injury before pain allegedly caused him to stop working. Not only does this suggest Employee withheld evidence of one or more post-injury jobs and possible intervening injuries, but Dr. Carricaburu's finding of "diffuse pain" anywhere on Employee's body, and his out-of-proportion pain relative to Dr. Carricaburu's clinical findings casts further doubt on his credibility. *Id*.

Employee's other behavior does not help his case either. On February 12, 2019, Alaska Behavioral Health discharged Employee from mental health treatment, which had been paid by Medicaid, stating, "Client is being discharged due to nonparticipation." Nevertheless, on March 29, 2022, Employee told Doerner that he had "no intention of working" until he received the medical treatment his doctor recommended. Employee had extensive mental health and physical treatment paid by Medicaid, but still did not return to work. His self-reporting has always been suspect. As found in *Hernandez XII*, Employee missed a prehearing conference, called the Division and told a staff member that he had "overslept." Nevertheless, not realizing that the Division kept track of this communication in his agency file, Employee petitioned to reconsider the prehearing conference summary and contended that he did not have a "fair opportunity to participate in the prehearing conference." *Hernandez XII* found his contention "not credible."

At hearing on May 8, 2025, Employee testified that his work with Employer was not exclusively seasonal, when in reality, it was according to Doerner's report. He testified that Employer never paid him his wages for the injury date, but according to Employer's August 9, 2017 Claim Report Confirmation form, it did. Moreover, at the May 8, 2025 hearing, in contrast to the above-referenced medical records, Employee testified he never told any medical provider he had any pain from his stab wound. Regarding his brother stabbing him in the back, Employee variously stated this event happened anywhere between 2002 and 2006. It is unlikely Employee could not precisely remember the date on which his brother stabbed him in the back. He casually testified at hearing that being stabbed in the back was "just a fight between brothers," in an effort to minimize that event; his own photographs pain a different picture. Given the above analyses,

it is difficult to believe what Employee says because he is not credible. AS 23.30.122; *Smith*. Furthermore, these analyses make it extremely unlikely that the work injury was the substantial cause of Employee's "chronic pain," any related disability or the need to treat it. AS 23.30.010(a).

(2) *The stab wound*: Born in 1984, Employee was relatively young when injured on August 7, 2017. Based on his credible medical records, he is in good health. Post-injury cervical, thoracic and lumbar x-rays were normal, except for "mild" scoliosis in the mid-back, addressed below. His February 13, 2018 cervical and thoracic CT scans were essentially normal. His September 12, 2018 spine MRIs were normal, with one critical exception discussed below. An October 17, 2018 left-shoulder ultrasound and an April 2, 2019 left-shoulder MRI showed nothing more than bursitis. His October 31, 2018 electrodiagnostic nerve studies were normal. His July 17, 2019 lower extremity x-rays showed, "No limb length discrepancy." A July 25, 2019 ultrasound ruled out a recurrent right inguinal hernia. Likewise, April 21, 2020 bilateral provocative shoulder testing was negative. A December 2, 2020 FCE showed he could at minimum work light-duty eight hours a day, 40-hours a week, even though objective evidence showed that he "self-limited" the test, which also damages his credibility.

A thorough review of Employee's medical records show only two objectively demonstrable physical abnormalities: Mild scoliosis in his thoracic spine, and muscle damage caused by a stab wound to his back right next to the spine in the thoracic region. The first record Employee had of "back pain" came when he saw PA-C Gordon on August 9, 2017, where in addition to hernia-related symptoms, Employee said he felt "mid back pain." The "mid back" area is where Employee's brother stabbed him just to the left of his spine. The significant, resultant scar is easily visible on numerous photographs Employee filed in this case. PA-C Gordon initially diagnosed "back pain: muscular," which also points to the stab wound.

On September 14, 2017, Employee told Dr. Larson he had been wearing a "lumbar brace" to assist with his "back pain." As between his hernias and his back pain, the "back" hurt the least. Employee appears to have abandoned any contention that his lumbar spine is work-related. Rather, at the May 8, 2025 hearing Employee clarified repeatedly that his "chronic pain" was in

the mid-back or thoracic spine region, the same area where his stab wound is located. On December 19, 2017, Employee told Dr. Smith that he denied any specific work injury or trauma to his back. On December 20, 2017, Dr. Smith diagnosed chronic " thoracic" back pain. On February 25, 2018, Dr. Smith again diagnosed chronic bilateral "thoracic" back pain. Employee's stab wound is in the thoracic back region. Most notably, on April 30, 2018, the day Employee was set to return to work but instead had an anxiety attack, Dr. Koller recorded:

> Again noted that he had a knife wound to his upper thoracic back area that was fairly considerable and evident by a large scar and this is the area in which he indicates is where the pain is emanating from. . . .

At hearing on May 8, 2025, Employee verified the stab wound in question was the one visible on his photographs and had nothing to do with his work for Employer. He denied that Dr. Koller told him this stab wound caused his thoracic back pain and added that even if Dr. Koller did tell him that, his pain was "not in that place." Employee's testimony was not credible as he is the one who told Dr. Koller and others that his pain emanated from the stab-wound area. By contrast, Dr. Koller's report is considered more credible. AS 23.30.122; *Smith*; *Moore*.

On the other hand, on June 28, 2018, Dr. Bauer opined the thoracic back stab injury contributed "nothing" to Employee's complaints because he found no evidence of any "harm or change" to his body. But Dr. Bauer on June 28, 2018, could not have seen PA-C Ulrich's September 17, 2018 report where, after reviewing Employee's thoracic MRI and having it overread by a radiologist, he found the following objective evidence:

> It is noted on the soft tissues at about the T1 to T4 levels there does appear to be some disruption of the latissimus dorsi muscle just left of midline and also on the actual imaging there appears to be some atrophy of the left latissimus dorsi, as well as evidence of a wound/scar tissue in that area. This does correlate with the area where he was stabbed. . . .

Thus, Dr. Bauer's opinion on the stab wound is given less weight, because there is MRI evidence of "harm or change" to Employee's body resulting from that stab wound. *Moore*. PA-C Ulrich opined Employee's thoracic pain was "likely coming from some of the atrophy of his latissimus dorsi muscle from his previous injury near that area." His opinion is given weight. *Id*.

On October 22, 2018, PA-C Helmick saw Employee for his left shoulder. When referring to the stab wound, Employee stated he "had no issues until last summer when his back started to give him pain." PA-C Helmick stated Employee was "very upset" with his opinions and recommendations. On December 5, 2018, Employee told PA-C Ulrich that his left-sided thoracic spine pain was "localized to the area where he had previous stab injury." Employee's contemporaneous reports to providers about pain emanating from the area where his brother stabbed him in the back are more credible than his hearing testimony to the contrary. The medical observations and opinions from PA-Cs Ulrich and Helmick are credible and given significant weight. AS 23.30.122; *Smith*; *Moore*.

On the other hand, on April 21, 2020, Dr. Murphy also said he did not think Employee's stabbing injury contributed to his symptoms, but he did not elaborate. Dr. Murphy mentioned PA-C Ulrich's September 17, 2018 report, but did not discuss the "soft tissue disruption at thoracic wall" on MRI. Without explanation on why he did not think the stab wound contributed to Employee's symptoms, Dr. Murphy's opinion on this issue will be given less weight. *Moore*.

The most credible evidence supports Employee's stab wound as the substantial cause of his "chronic pain," which emanates from his thoracic spine region. AS 23.30.010(a).

(3) *The hernias and related migrating stitch*: Employee's records show he still occasionally complains of right groin pain. On November 1, 2017, Dr. Abadir determined that Employee's hernias were surgically repaired and released him to work without restrictions. Employee subsequently had pain from a migrating stitch, but on September 28, 2018, Dr. Van Ravenswaay removed that suture. Moreover, July 25, 2019 post-hernia-surgery medical evaluations including an ultrasound showed no recurrent hernia. He does not appear to claim that his hernias are part of his "chronic pain" complaints. Thus, there is no medical evidence that Employee's hernias cause him "chronic pain." Employee's hernias and removed migrated stitch are unlikely the substantial cause of his alleged "chronic pain." AS 23.30.010(a).

(4) *Deconditioning*: Given Employee's post-injury work and social history, to the extent he has accurately revealed it, he has not been doing much since 2017. He stated that he rarely leaves his home and has difficulty even vacuuming a floor. Consequently, it is likely Employee

is seriously deconditioned from lack of activity. Nevertheless, there is no convincing evidence that deconditioning is causing Employee's alleged "chronic pain." Deconditioning is therefore also unlikely to be the substantial cause. AS 23.30.010(a).

(5) *Mild scoliosis*: Mild scoliosis, along with damage visible on MRI caused by Employee's stab wound, are the only other objective evidence that anything is wrong with him physically. While the scoliosis is clearly visible on x-rays, and although it is in the same general thoracic spine area from which Employee repeatedly stated his symptoms emanate, there is no medical opinion suggesting that scoliosis is causing him any pain. On December 22, 2017, PA-C-Gordon said it was "undetermined" if the "slight scoliosis," which "could be congenital," was work-related. There is no opinion in Employee's records linking the mild scoliosis to his work injury. In his December 26, 2023 petition, Employee appeared to contend that his work injury caused the slight scoliosis. It is unclear if he maintains that position now. In any event, the panel is unfamiliar with scoliosis as a work injury, and absent any medical evidence to suggest that it is, or that it is causing any symptoms at all, it appears unlikely that mild scoliosis is work-related or the substantial cause of Employee's claimed, "chronic pain." AS 23.30.010(a).

(6) *Unequal leg length*: On January 20, 2019, Employee told Dr. Van Ravenswaay that his legs were unequal length. On July 17, 2019, Employee had x-rays for "unequal limb length." The radiologist found there was no "limb length discrepancy." Thus, to the extent Employee may be arguing that unequal leg length caused by his work injury with Employer is responsible for causing his "chronic pain," the x-ray evidence disapproves that theory. Unequal leg length is not the substantial cause of Employee's claimed, "chronic pain." AS 23.30.010(a).

(7) *Intervening injuries*: Employee testified to at least several jobs he attempted post-injury. With one exception, Blue Moose, he stated he was unable to perform those jobs because his chronic pain flared. Clearly, Employee has not candidly disclosed all his post-injury work. Most notably, he told Doerner that he had no work after April 2018 and in all of 2019. Yet he told Dr. Carricaburu on July 15, 2019, that he "recently lost his job," and had a "significant effort" two weeks earlier that had resulted in "significant increase" in his "leg pain." Employee said he worked as a "cook." While Employee's lack of candor and credibility is troubling, there is inadequate evidence to suggest that he had a superseding intervening injury while working for

a different employer post-injury, and a "mere possibility" is not enough. *Huit*; *Vue.* Dr. Schwartz found no evidence of any intervening post-work-injury injurious event because Employee had an "unequivocally" normal examination. Therefore, an intervening injury is unlikely to be the substantial cause of Employee's alleged "chronic pain" condition. AS 23.30.010(a).

(8) *Cultural factors*: This is a cause Dr. Williams suggested. However, he did not develop that theory and did not suggest it was the substantial cause of Employee's alleged "chronic pain." Likewise, no one else suggested it was, either. Thus, there is no evidence to support cultural factors as the substantial cause for Employee's "chronic pain." AS 23.30.010(a).

(9) *Teratogenic factors*: Dr. Williams also suggested this as a possible cause. "Teratogenic" generally refers to a substance that interferes with normal prenatal development in an embryo. Mosbey's, *Medical, Nursing & Allied Health Dictionary,* 6th Edition (2002). The panel is unfamiliar with this medical concept and Dr. Williams did not fully develop his theory to make it the substantial cause of any "chronic pain." AS 23.30.010(a).

(10) *Maladaptive beliefs about pain*: This is another possible cause that Dr. Williams suggested. Based on Dr. Williams' reports and depositions, and the totality of the medical evidence when viewed as a whole, there can be little doubt that Employee has maladaptive beliefs about pain. However, this possible cause assumes he actually has "chronic pain." It does not provide a substantial cause for his pain. Since Dr. Williams did not develop or explain this possible cause either, in this panel's view it is unlikely that Employee's maladaptive beliefs about pain are the substantial cause of it, to the extent he even has "chronic pain." AS 23.30.010(a).

(11) *Unwillingness to work*: This possible cause is derived from Dr. Swartz's September 4, 2024 EME report and his subsequent deposition. He diagnosed a "normal exam," and "pain promptly brought on by work," referring to Employee's post-injury work. Dr. Schwartz noted that Employee's pain perception was inconsistent with his "unequivocally" normal exam. The panel infers from Dr. Schwartz's report and testimony that in his view Employee's August 7,

2017 work injury was never the substantial cause of his "orthopedic condition," because he has no orthopedic condition, "none," and therefore it cannot be "still" the substantial cause of something that never existed. But Employee's unwillingness to work could be. AS 23.30.010(a).

Dr. Schwartz opined Employee's preexisting "condition was normal," and his "present condition is normal." He found no aggravation, acceleration or combination with any preexisting condition, and the work injury. Dr. Schwartz concluded that Employee's complaint of "intolerable, unbearable pain" is "symptom magnification." He further concluded, "Regarding secondary gain, clearly, he has convinced his treating practitioner that he is unable to work." Dr. Schwartz opined, "Being compensated for an injury that does not appear to have any physical ramifications I believe would be considered secondary gain." Employee's subjective complaints, "quite significantly," outweigh objective evidence of any injury. His presentation makes no "physiologic sense." Dr. Schwartz concluded an "alternate explanation" for Employee's medical complaints that would exclude his August 7, 2017 work injury as the substantial cause, would be "simply that [Employee] does not want to work." Based on Employee's credibility issues, and his medical records taken as a whole, "unwillingness to work" may be the substantial cause of his alleged "chronic pain." If so, this would be more akin to "malingering." AS 23.30.010(a).

(12) *CRPS*: Employee suggested his work injury caused CRPS. There is little medical evidence to support this diagnosis, much less an opinion ascribing causation to the work injury with Employer. PA-C Kennah with Neuroversion diagnosed CRPS I in Employee's right upper extremity, but provided no causation opinion. Ultimately, by October 6, 2022, PA-C Kennah no longer included that diagnosis in his reports. Moreover, Dr. Schwartz stated CRPS is a "pain syndrome" and Employee has no pain. Furthermore, Dr. Schwartz credibly stated CRPS does not "disappear" when a person stops working, which is what Employee implied happens when he goes to work and then stops because of alleged pain. *Moore*. Although Employee stated he had signs and symptoms of CRPS, there is no credible medical record objectively identifying the Budapest criteria present in any examination, which means he does not have it and thus CRPS could not be the substantial cause of his chronic pain. AS 23.30.010(a).

(13) *Somatoform disorder*: On June 17, 2021, Dr. Williams diagnosed a "Somatic Symptoms Disorder," which involves excessive thoughts, feelings, or behaviors related to

somatic symptoms. He found Employee met the DSM-5 criteria for "Somatic Symptoms Disorder." However, Employee "has no diagnoses related to the injury from a psychological perspective," because a "Somatic Symptoms Disorder" diagnosis requires reliance on medical doctors' opinions about any medical condition Employee has to see if his reported pain is "congruent" with what is expected with that medical condition. As discussed above, and according to Dr. Williams, Employee has no credible evidence to which this decision has assigned weight, suggesting he has any remaining work-related medical condition that causes him "chronic pain," which in turn could cause a "somatoform disorder." *Moore*. If Employee truly experiences pain, and that pain is chronic, it emanates from his previous stab wound near his thoracic spine. Since that stab wound was caused by his brother years ago, before he worked for Employer, it is not work-related. To the extent the work-related strain or sprain may have aggravated that stab wound, by all credible medical opinions, it has long since resolved. *Moore*.

Further, Employee's work-related hernias have been repaired. A migrating stitch related to one hernia has been removed. There is no credible medical evidence suggesting Employee's bilateral shoulders have any work-related condition or symptoms, or cause him chronic pain. Credible medical evidence shows no issues with any spinal segment; specifically, there is no medical evidence supporting a theory that his work injury caused his mild scoliosis in the thoracic spine area, or that the scoliosis is even causing Employee any pain. Dr. Williams ruled out the work injury as a cause for Employee's "somatoform disorder." Consequently, in an interesting medical-legal tautology, if Employee actually has any "chronic pain," and if that pain is causing a "somatoform disorder," the "somatoform disorder" is caused by the stab wound, and not Employee's work injury with Employer. A "somatoform disorder" or "Somatic Symptoms Disorder" are not the substantial cause of Employee's "chronic pain." AS 23.30.010(a).

In summary, the panel carefully evaluated the relative contribution of all possible causes of Employee's alleged "chronic pain" it could find in the record. AS 23.30.010(a). Given Employee's credibility problems, premeditated preparation for future litigation, and evidence that he has "secondary gain" motivation, one could conclude that Employee is simply malingering and does not want to go back to work. Nevertheless, giving him the benefit of the doubt, the above analyses show consistent and credible medical evidence demonstrating that

Employee repeatedly told his medical providers that his thoracic back pain, which he clarified was the basis for his "chronic pain" claim, originates from the area near his stab wound. The undisputed MRI evidence shows muscle and tissue damage at the location of Employee's stab wound. There is no opinion suggesting his mild scoliosis is causing any pain, much less "chronic pain." There is no other objective medical evidence of anything physically wrong with him. The overwhelming weight of expert medical opinion, and even Employee's own reports to his medical providers, show that his stab wound is the substantial cause of any "chronic pain" he may be experiencing. It is undisputed that Employee's stab wound did not arise out of or in the course of his employment with Employer. Thus, since the stab wound, and not Employee's August 7, 2017 muscle strain work injury with Employer, or any other possible cause, is "the substantial cause" of his "chronic pain" complaints, his "chronic pain" is not covered under the Act. AS 23.30.010(a). His claim for benefits related to "chronic pain," will be denied.

B. Panic attacks.

Employee attributed his alleged "panic attacks" to his work injury with Employer. His significant credibility issues concerning his "panic attacks" and "anxiety and depression," analyzed above, are incorporated here by reference. In short, he had anxiety and depression issues before he worked for Employer, and these continue. He had preexisting panic, anxiety and depression, which Drs. Koller, Bauer and Murphy and PA-Cs all identified and charted from Employee's own history. This preexisting condition the alternate explanation for Employee's mental health conditions and any related disability and need to treat his "panic attacks." AS 23.30.010(a). According to the credible medical evidence, any possible aggravation or combination these preexisting mental health conditions had with the work injury has long since resolved. *Moore*.

Employee made it clear at the May 8, 2025 hearing, as well as to Dr. Williams in both his examinations, that his "panic attacks" resulted from his pain, and not the other way around. In other words, Employee has always claimed a "physical-mental" relationship between his work injury with Employer and his "panic attacks." Physical pain precedes his anxiety and depression. He has never claimed a "mental-mental" relationship where his employment with Employer itself caused mental stress that resulted in "panic attacks."

Given the above analyses, this decision found that Employee's stab wound is the substantial cause of his "chronic pain." Since the stab wound is undisputably not work-related, his "chronic pain" is not work-related either. AS 23.30.010(a). Since the non-work-related chronic pain is the substantial cause of Employee's alleged "panic attacks," those are also not work-related. Therefore, Employee's claim for benefits related to alleged "panic attacks" will be denied.

C. Generalized anxiety and depression.

It is unclear if Employee still contends that his "generalized anxiety" and "depression" are work-related. If so, the entire analysis from a subsection "B," above, is incorporated here by reference. Based on that analysis, which also applies to his "general anxiety and depression," Employee's claim for benefits related to "generalized anxiety" and "depression" will be denied.

D. Somatoform disorder.

The entire analysis from a subsection "B," above, is also incorporated here by reference. Based on that analysis, Employee's claim for benefits related to a diagnosed "somatoform disorder" including a "Somatoform Symptoms Disorder" will be denied.

3) Should the August 11, 2021 oral agreement be revised to reflect the correct TTD benefits for the period May 17, 2020, through June 17, 2021, and is Employee entitled to any additional TTD benefits?

At the May 8, 2025 hearing, it appeared from the Division's EDI reporting system that Employer had already paid Employee not only the agreed upon $21,261 in TTD benefits, and $3,540 in PPI benefits, but had paid him "$21,660.60" in TTD benefits and $3,540 in PPI benefits, on "08/11/2021." The panel cannot determine how Employer calculated the $21,660 part of that reported payment, but that is what Employer reported to the Division, along with its representation, "WE HAVE FULFILLED AGREEMENT TO PAY RETROACTIVE BENEFIT AS AGREED TO ON 8/11/21." The panel left the hearing record open to receive clarification.

On May 14, 2025, Employer filed additional information as requested. This included a photocopy of Employer's August 11, 2021 check for "$19,023" payable to Employee, which he

signed and deposited on January 26, 2022, after the check was apparently held in Eppler's office pending resolution of the dispute over the amount. Also included in Employer's May 14, 2025 filing was an indemnity payment spreadsheet purporting to show what Employer paid to Employee. This spreadsheet states that on August 11, 2021, Employer paid Employee $15,483 in TTD benefits and $3,540 in PPI benefits, totaling "$19,023" ($15,483 + $3,540 = $19,023). So far as the panel can tell from the indemnity payment spreadsheet, Employer paid Employee only $19,023 on August 11, 2021, and it cannot be determined from the spreadsheet that Employer ever paid him the additional, claimed (and agreed) $5,778 in TTD benefits.

At the August 11, 2021 hearing, the parties stipulated that in exchange for a hearing continuance, Employer would pay Employee $24,801 ($21,261 + $3,540 = $24,801). Thus, there is an inconsistency between Employer's EDI report to the Division stating that it had fulfilled its agreement to pay retroactive benefits "as agreed" at the August 11, 2021 hearing, and the post-hearing evidence it provided showing it did not pay Employee $5,778 in TTD benefits to which it had agreed ($24,801 - $19,023 = $5,778). The panel cannot determine from the record the reason for this inconsistency. It can only reasonably infer that Employer recognized its mathematical error and unilaterally decided to fix it, and decided that by paying the "correct" amount, it had fulfilled its obligation to make the retroactive payment, and simply self-corrected the inaccurate amount presented at the August 11, 2021 hearing. *Rogers & Babler*. In any event, the actual agreed-upon TTD payment covered the period from May 7, 2020, through June 17, 2021. Presumably, since it is clear that Employer never paid the agreed-upon amount, it retains its request that it be relieved from its August 11, 2021 stipulation, to prevent Employee from obtaining a windfall simply because someone on Employer's side made a calculation error.

Regardless of whether Employee claims TTD benefits on remand, or by a new claim for a different period, his disability is only payable "during the continuance of the disability." AS 23.30.185. Moreover, TTD benefits "may not be paid for any period of disability occurring after the date of medical stability." *Id*. Thus, to be entitled to any TTD benefits, Employee must be both temporarily and totally disabled from work because of his work injury, and must not be medically stable for any period of time for which he seeks TTD benefits. *Id*.

The parties disagree as to Employee's medical stability date. Thus, the §.120 presumption analysis applies. *Meek*. Without regard to credibility, Employee raised the presumption that he was not medically stable with Dr. Van Ravenswaay's May 17, 2020 opinion that Employee's anxiety, panic attacks, depression, pain, shoulder and spine complaints and inability to work, which he said were all caused by the August 7, 2017 injury, were not medically stable. *Tolbert*.

Without regard to credibility, Employer rebutted the raised presumption with opinions from PA-C Gordon and Drs. Koller, Bauer, Murphy, Williams and Schwartz. *Huit*. PA-C-Gordon said Employee was medically stable on January 30, 2018. Dr. Koller said he was medically stable effective May 9, 2018. Dr. Bauer opined Employee was medically stable on January 22, 2018, when it became clear Employee was suffering from "anxieties and unrelated conditions." Dr. Murphy stated Employee became medically stable on September 17, 2018, when his thoracic spine "diagnostic workup" was completed. Dr. Williams opined Employee had been medically stable since January 30, 2018, when PA-C-Gordon released him to full duty. In his October 31, 2024 deposition, Dr. Schwartz testified that he agreed with PA-C-Gordon that Employee was probably medically stable by January 30, 2018, because even then his physical examinations were normal. He also had no reason to question Dr. Murphy's medical stability opinion either.

This decision previously determined that Employee's August 7, 2017 injury was the substantial cause of only his hernias and related migrating stitch, and a thoracic back strain or sprain. It also determined that the work injury was not the substantial factor for any mental health symptoms or condition. Only Dr. Van Ravenswaay opined that Employee did not become medically stable in 2018. All other treating, EME and SIME physicians and other providers who offered an opinion stated he became medically stable from any and all work-related symptoms or conditions sometime between January 22, 2018 (Dr. Bauer) and September 17, 2018 (Dr. Murphy). Most providers who opined on the topic said Employee became medically stable on January 30, 2018.

By the time Dr. Murphy saw Employee on April 21, 2020, Employee had undergone extensive diagnostics and treatment to address his thoracic spine sprain or strain, which Employee said was the source of his pain and the reason he could not successfully return to work. He had

substantial chiropractic and PT treatments to his spine and shoulders. Employee's spinal x-rays and MRIs were normal, except for mild scoliosis and tissue damage from the stab wound.

The panel considers SIME Dr. Murphy an impartial evaluator beholden to no party. *Rogers & Babler*. Dr. Murphy's examination showed no bilateral discrepancies in Employee's upper extremity motion. All provocative shoulder testing bilaterally was negative. The only spine abnormality Dr. Murphy found was "slight scoliosis," which neither he nor any other provider nor this panel found related to Employee's work injury. He diagnosed a "thoracic spine strain," which is a muscle strain, and hernias, both substantially caused by the work injury. Dr. Murphy found no structural issues in Employee's spine and opined Employee became medically stable on September 17, 2018, when his "thoracic spine diagnostic workup was completed." His opinion is logical. While the panel is not required to rely on Dr. Murphy simply because he is the SIME physician, it will in this case on this issue because his opinion makes sense given all the medical evidence presented. Dr. Murphy's opinion also comports with the panel's analyses above eliminating the work injury as the substantial cause of Employee's mental health issues. Therefore, Employee became medically stable on September 17, 2018. AS 23.30.185.

Unless he became medically unstable for some reason after September 17, 2018, Employee is entitled to no TTD benefits after that date. *Id*. The only minor work-related event that occurred after September 17, 2018, happened on September 28, 2018, when Dr. Van Ravenswaay removed the migrating suture from Employee's hernia scar. This was an in-office procedure done under local anesthesia. There is no medical opinion suggesting Employee became medically "unstable," or disabled by virtue of having a stitch removed.

Moreover, while attending PT from September 28, 2018, through December 17, 2018, Employee told Wise PT that Dr. Van Ravenswaay had done x-rays that revealed "nothing remarkable about his left shoulder." Employee said he had PT for three months in Kodiak for his left shoulder and low back but "did not make much progress." He later told Wise PT at his 18th visit that he had been taking an antidepressant "twice a day" that he recently decided to take "once a day due to feeling better." At his 19th visit with Wise PT in December 2018, Employee became tearful because he had gone to OPA a day prior and saw an orthopedist "who stated that he is able to

return to work without restrictions." Employee's own statements suggest he was medically stable from his work-related back muscle strain or sprain during this time. AS 23.30.395(28).

On May 16, 2019, Dr. Glaves saw Employee for persistent "pain and left shoulder bursitis." He recommended various treatments "perhaps several times over the course of his life" for his August 7, 2017 injury. Dr. Glaves did not specify what "pain" Employee was referring to, but referenced treatment for his left-shoulder bursitis. He also suggested Employee was having hernia pain and suggested a support belt and possible surgery if his "symptoms are uncontrolled." But Employee had no further hernia surgery after Dr. Van Ravenswaay removed the migrated stitch. So far as the panel can determine, Dr. Glaves saw Employee only once and gave no opinion regarding medical stability or disability. His recommendations did not render Employee medically "unstable" or temporarily totally disabled. *Id*.

Beginning in September 2020, Dr. Liu began treating Employee with trigger-point injections. However, he never offered a causation or disability opinion, and the instant decision found the stab wound is the substantial cause of Employee's thoracic back pain. Therefore, Dr. Liu's records and opinions do not affect the medical stability or disability date. By contrast, on February 18, 2022, Dr. Lee saw Employee and said he had nothing more than a "muscle strain" in his back that resolved over "weeks to months." Dr. Lee's opinions also support the finding that Employee was medically stable from his work-related muscle strain injury by September 17, 2018. *Id*.

Because there is no credible evidence suggesting Employee became medically unstable and disabled from his work-related hernias or thoracic muscle strain after September 17, 2018, Employee is entitled to no TTD benefits after that date. AS 23.30.185. Obviously, September 17, 2018, was years before the parties' August 10, 2021 stipulation that they put on the record at hearing on August 11, 2021, which was to pay Employee $24,801 ($21,261 in TTD benefits + $3,540 in PPI benefits = $24,801). 8 AAC 45.050(f)(2). That stipulated amount covered TTD from May 17, 2020, through June 17, 2021. Employee actually only paid him $19,023 ($15,483 in TTD benefits = $3,540 in PPI benefits = $19,023). Employee contends that on remand, this decision must award him the additional $5,778 in TTD benefits pursuant to the stipulation.

Employer retained its request to be relieved from the terms of the stipulation. 8 AAC 45.050(f)(3). This decision will now address that request.

While stipulations are authorized and may be useful in narrowing issues, they are binding upon the parties to the stipulation unless a party is relieved "from the terms of the stipulation." *Id*. Moreover, "notwithstanding any stipulation to the contrary," the instant decision may base its findings "upon the facts as they appear from the evidence." 8 AAC 45.050(f)(4). The evidence in this case as discussed above shows Employee became medically stable from any and all work-related physical conditions by September 17, 2018. This decision also found the August 7, 2017 work injury was not the substantial cause of any mental health conditions or symptoms Employee experienced. Based on the analyses in this decision so far, it appears that Employer paid Employee $15,483 in TTD benefits that it ultimately did not owe him -- at least for May 17, 2020, through June 17, 2021. Therefore, because Employer did not owe Employee any additional TTD benefits after September 17, 2018, "good cause" exists to relieve Employer from the terms of the August 11, 2021 stipulation. To hold otherwise would make Employer pay Employee money it did not owe and could never recover as an overpayment from any future benefits under AS 23.30.155(j), because it owes him no further benefits for the foreseeable future. Thus, for "good cause," Employer will not be required to pay Employee $5,778 in TTD benefits, and his claim for those benefits will be denied. 8 AAC 45.050(f)(3). This result resolves that remanded issue. It also resolves any claim for additional TTD benefits because it adequately rebuts any presumption of continuing disability. *Adams*.

4) Should the August 11, 2021 oral agreement be modified to reflect or increase benefit payments to Employee under AS 23.30.041(k)?

This remanded issue is far more nuanced. So-called "stipend" benefits serve a different purpose than disability benefits. "Stipend" benefits under §.041(k) are only payable if Employee's "permanent impairment benefits" were exhausted before "termination of the reemployment process." AS 23.30.041(k). If PPI benefits were paid in a lump-sum under §.190 before Employee "requested or was found eligible for reemployment benefits," "stipend" benefits are "suspended until [PPI] benefits would have ceased, had those benefits been paid" at Employee's TTD rate under §.041(k). Resolving this issue requires additional analysis.

As found in *Hernandez IV*, Employee was off work for more than 90 consecutive days because of his work injury and Employer did not refer him to the RBA for a vocational reemployment eligibility evaluation. AS 23.30.041(c). Employer had a legal duty to notify the RBA. 8 AAC 45.507(b). As *Hernandez VI* stated, "These requirements are mandatory for the employer." The RBA could not and would not have known Employee had been off work for 90 consecutive days unless Employer notified her. Had Employer properly notified the RBA she would have promptly referred Employee "for an eligibility evaluation" under 8 AAC 45.522(a). According to the Division's EDI records, Employee was disabled from October 4, 2017, through June 20, 2018, which is more than 90 consecutive days. *Rogers & Babler*. There is no evidence in the agency file that Employer ever notified the RBA for a 90-day eligibility evaluation, to which he was entitled under these facts and under §.041(c). Rather, *Hernandez IV* determined Employee was entitled to the eligibility evaluation and ordered one.

Employee also contended he was entitled to the §.041(k) "stipend." *Hernandez IV* determined that Employer paid Employee TTD benefits from October 4, 2017, through June 20, 2018. However, citing *Carter*, *Hernandez IV* also found Employee's reemployment "process" began when he began actively pursuing reemployment benefits by requesting an eligibility evaluation on December 23, 2019, in one of his numerous claims. *Hernandez VI* remanded that finding. *Hernandez IV* correctly found that on August 12, 2021, Employer paid Employee $3,540 lump-sum PPI, as well as TTD benefits from May 17, 2020, through June 17, 2021. An employer's delay tactics may result in a retroactive award of §.041(k) "stipend" benefits. *Carlson*.

The first question is, when Employer failed to inform the RBA, when in general terms did Employee's entitlement to stipend benefits commence? *Hernandez VI* answered:

> When the employer either deliberately or negligently failed to provide the required notice to the RBA and the injured worker, the employer should be obligated to pay for stipend benefits if no other benefits are due to the employee. *Hernandez VI*.

Hernandez VI added that Employer "cannot ignore its statutory obligation and then claim benefits are not due" because Employee was "not actively pursuing reemployment benefits."

The next more specific questions are precisely when the 90-day period began, when it ended and whether Employee was receiving "other benefits" during the period in question. According to Employee's EDI reports, his work-related total disability began October 4, 2017. In calculating time under the Act, the day of the triggering event is not counted. 8 AAC 45.063(a). Therefore, 90 days from October 5, 2017, was January 3, 2018. *Rogers & Babler*. Thus, Employee would be entitled to reemployment stipend benefits beginning January 3, 2018, if he was receiving no other benefits. On May 13, 2022, the RBA found Employee "not eligible." Employee never appealed that decision; he filed a May 23, 2022 petition requesting more time to appeal, but has never requested action on that petition. Therefore, the period in question for which Employee seeks §.041(c) "stipend" benefits is from January 3, 2018, through May 13, 2022. This is a period totaling 227 weeks and three days. *Rogers & Babler*.

But EDI reports state that Employer paid him TTD benefits from October 4, 2017, through June 20, 2018. It also paid him $3,540 in PPI benefits in a lump-sum on August 12, 2021, which would "suspend" payment of additional stipend benefits until the PPI payment was exhausted through proration under §.041(c). According to EDI reports, Employee's TTD compensation rate was $273 per week, and *Hernandez IV* denied his request to adjust that rate. His prorated PPI rate equaled $39 per day ($273 weekly rate / seven days = $39 per day). His total PPI lump-sum payment was $3,540, which when converted to a daily basis is 91 days ($3,540 / $39 = 90.8 days), which when changed to weeks equals 13 weeks (91 days / seven days per week = 13 weeks). Moreover, as determined previously in this decision Employer overpaid Employee $15,483 in TTD benefits purportedly covering May 17, 2020, through June 17, 2021. Furthermore, EDI reports also show that the Employer paid Employee §.041(c) "stipend" benefits from June 21, 2018, through May 12, 2022. The effects that these payments had on the §.041(c) "stipend" issue is best shown in the following table -- "W" represents a week, and "D" represents a day:

Benefit Type	**From**	**To**	**Total**	**Result**
"Stipend" owed:	1/3/18	5/13/22 =	227 W + 3 D	227 W + 3 D
TTD paid:	1/3/18	6/20/18 =	24 W +1 D	- 24 W +1 D
Balance:				= 203 W +2 D
Prorated PPI:			13 W	- 13 W

Balance:				= 190 W +2 D
Paid "stipend":	6/21/18	5/12/22	203 W +1 D	- 203 W +1 D
"Stipend" overpaid:				= (13 W + 1 D)

Based on EDI reporting and the above table, Employer has not only paid Employee all TTD and §.041(c) "stipend" benefits it owed him, but it has also overpaid him §.041(c) for approximately 13 weeks and one day. According to the EDI reporting, his §.041(c) "stipend" weekly rate was $232.05, which is a daily rate of $33.15 ($232.05 weekly rate / seven days = $33.15 per day). This means Employer overpaid Employee $3,049.80 in §.041(c) "stipend" benefits (13 weeks x $232.05 per week = $3,016.65 + one day at $33.15 per day = $3,049.80). Therefore, based on the above calculations the August 11, 2021 oral agreement will be modified to reflect an overpayment of benefits to Employee under §.041(c). This result resolves that remanded issue.

5) Is Employee entitled to PTD benefits?

While this decision's finding that Employee became medically stable and no longer temporarily disabled since 2018 extinguishes his TTD benefit claim under §.185, he also claims PTD benefits under §.180(a). Employee's PTD benefit claim came post-*Hernandez IV*. Thus, it is not affected by *Hernandez VI*'s remand. He apparently contends he is unable to work for more than a few hours occasionally at any job. In short, he purports to be an "odd-job" worker. *Roan*. Employer contends there is no evidence suggesting Employee's work injury with Employer rendered him permanently and totally disabled from all work. This creates a factual dispute to which the presumption of compensability analysis applies. AS 23.30.120; *Meek*.

Employee must present some, "minimal" evidence making a "preliminary link" between his work injury with Employer and his PTD claim to raise the statutory presumption and cause it to attach in his favor. *Meek*. In claims based on highly technical medical considerations, medical evidence may be necessary to make that connection. *Wolfer*. Employee's most recent statements about his ability to work came at the May 8, 2025 hearing. He testified that he could not work because of his physical pain, but as for his mental health issues, he was "not sure." As can be seen in the above analyses regarding his claimed work injuries, Employee's physical and mental health issues are complex, atypical and closely related. His alleged injuries as they relate to his PTD claim will be addressed separately:

A) Physical issues*:* Without regard to credibility, Employee raised the §.120 presumption with his own testimony that he could not work at all because of physical issues, in conjunction with Dr. Van Ravenswaay's May 17, 2020 letter where he stated Employee could not return to work until he was treated for his "chronic pain," and his March 11, 2021 testimony where he said Employee's work injury was the likely cause of his inability to work. *Tolbert*.

Again without regard to credibility, Employer rebutted the raised presumption as to Employee's physical inability to work with: Dr. Abadir's December 21, 2017 release to full-duty work; Dr. Koller's April 10, 2018 release to light-duty work; PA-C Ulrich's August 15, 2018 release to light-duty work; PA-C Ulrich's December 5, 2018 release to medium-duty work; Dr. Murphy's April 21, 2020 opinions that Employee could return to work; Employee's December 2, 2020 FCE, which concluded he could at minimum perform full-time light-duty work; Dr. Lee's March 9 and 29, 2022 predictions that Employee would have permanent physical capacities to work as a Stores Laborer, Informal Waiter, Fish Cleaner, Fish Roe Processor and Cannery Worker; and Dr. Schwartz's September 4, 2024 opinion that Employee could return to work "without restrictions." This evidence shifts the burden to Employee who must prove by a preponderance of the evidence that his work-related physical injury makes him PTD status. *Huit*; *Saxton*.

Notably, while English is Employee's second language, he is bilingual, which is an employment advantage, and many physicians, as did some panel members in previous hearings, noted that Employee understands and speaks English very well. He graduated from high school and told Doerner he had completed one year of computer-programming training as well as additional training in computer, radio and television repair. Employee told Alaska Behavioral Health in 2018 that he completed one year of college. He predominately worked in construction before he came to the United States, and in light- and medium-duty work since moving here.

Additionally, the instant decision found that Employee's August 7, 2017 work injury physically caused only a muscle strain or sprain in his thoracic area. It also found that injury had long-ago resolved. Thus as a legal matter, this decision precludes a finding that Employee could now be permanently and totally disabled by that work injury. Moreover, at hearing on May 8, 2025,

Employee testified that he had no medical opinion stating that he was so limited physically that he could not do any work at all on a full-time basis. While doctors may weigh in on their opinion regarding Employee's physical capability to work, this panel is taxed with the duty to determine employment status, based on medical and vocational evidence. *Carlson*.

Clearly, as illustrated by the overwhelming medical evidence rebutting the presumption cited above, Employee's treating physicians have repeatedly released him to return to full-time work at jobs ranging from light- to medium-duty employment. This began with Dr. Abadir in 2017 and continued through 2025 with Dr. Schwartz's deposition testimony. The only contrary opinion came from Dr. Van Ravenswaay, who suggested Employee could not return to work unless he had more treatment for his mental-health issues. But for reasons stated above, which are incorporated here by reference, his opinion will be given little weight. *Moore*.

Moreover, since at least December 2, 2020, when he had an FCE, Employee has been able to perform, at minimum, full-time, light-duty work. Even then, the FCE provider who administered the testing identified Employee's "self-limiting behavior" on 50 percent of the 20 tasks he performed. This means Employee's light-duty work ability identified in the FCE was his "minimum ability rather than a maximum ability." The tester could not determine Employee's maximum ability because Employee self-limited his effort. While there could be many reasons for Employee's self-limiting behavior, the tester's research showed that "motivated clients" self-limit on no more than 20 percent of tasks. Here, Employee self-limited on 50 percent. Employee's lack of motivation to perform well on that test, in an effort to support his claim, resulted in an FCE that did not reflect his actual ability to work. AS 23.30.122; *Moore*. Most notably, at the May 8, 2025 hearing, Employee unequivocally testified that his symptoms had not gotten worse over the years since his work injury, but were "the same." Therefore, since Employee could perform more than light-duty work in 2020, and his symptoms have remained the same, he is still able to perform more than light-duty work full-time today.

Apart from medical opinions, vocational reemployment specialist Doerner recommended Employee be found not eligible for reemployment benefits. She based this on Dr. Lee's predictions that Employee would have permanent physical capacities to perform his time-of-injury job in the cannery as well as other jobs he held in the 10-years prior to his injury. The

RBA found he was not eligible. Moreover, because she recommended Employee be found not eligible, Doerner did not perform a formal labor market survey. However she added that if she had conducted labor-market research, Doerner would have documented not only that all the work that Dr. Lee predicted Employee would be able to do existed not only in Anchorage, "but elsewhere in significant numbers." AS 23.30.180(a)(4). This aligns with Employee's testimony at the May 8, 2025 hearing that but-for his work injury he would have continued to work for Employer. It also comports with the panel's knowledge of regular, consistent, and readily available employment in the seafood processing industry, and the relatively tight labor-market in Alaska for all the jobs that Employee has held, and which Dr. Lee predicted Employee could do in the future. Employee is not an "odd-job" worker. *Roan*. This evidence also satisfies Employer's duty to show "there is regularly and continuously available work in the area suited to [Employee's] capabilities." *Carlson*.

Lastly, the previous findings regarding Employee's lack of credibility are incorporated here by reference. They support a finding that his testimony regarding his unsuccessful efforts to return to work were either motivational, or caused by symptoms arising from his thoracic stab wound, or both, but not his work injury. AS 23.30.122; *Smith*. For these reasons, Employee's claim for PTD benefits, to the extent it is based upon his physical symptoms, will be denied.

B) Mental issues*:* Without regard to credibility, Employee raised the §.120 presumption with his own testimony that he could not work because of mental health issues, in conjunction with Dr. Van Ravenswaay's May 17, 2020 letter where he stated Employee could not return to work as a fish processor until he was treated for his "anxiety" and "depression," and his March 11, 2021 testimony where he said Employee's work injury was the likely cause of "panic attacks, depression and anxiety," and his inability to work. *Tolbert*. Again without regard to credibility, Employer rebutted the raised presumption with Dr. Williams' September 3, 2024 testimony, where he stated Employee had no work restrictions "from a psychological perspective." *Huit*.

As already analyzed in detail, above, this decision determined that Employee's "chronic pain," "panic attacks," "generalized anxiety," "depression," "somatic disorder," "Somatic Symptoms Disorder" were not work-related. To the extent he actually has these symptoms and this

condition, the substantial cause of them is pain related to his thoracic stab wound. All of that analysis, plus the analysis about Employee's lack of credibility, is incorporated here by reference. Based on those analyses, and the vocational reemployment analysis from subsection 5(a) above, which is also incorporated here by reference, Employee has not met his burden of proof to show he is permanently totally disabled because of his work injury with Employer. Since he can prove that neither a work-related physical condition or symptom, nor a work-related mental health condition or symptom is the substantial cause of any ongoing disability, and because medical and vocational evidence shows he is capable of full-time work on a consistent, readily available basis, his claim for PTD benefits will be denied. *Carlson*.

6) Is Employee entitled to medical treatment and travel expenses?

This decision on remand determined that Employee's work injury with Employer was not the substantial cause of any physical or mental health symptom or condition, other than hernias, a related stitch removal and a thoracic strain or sprain, which resolved fully at least by 2018. At hearing on May 8, 2025, Employee testified that Employer did not owe him anything for past medical care. Consequently, he presented no evidence or argument suggesting what medical treatment or travel expenses from the past, *post-Hernandez IV*, to the present he claims. Therefore, such claims Under AS 23.30.095(a) will be denied.

As for ongoing medical treatment, Employee contends he is entitled to ongoing care. Employer contends he is not. This raises a factual question to which the presumption analysis applies. *Meek*. Without regard to credibility, Employee raised the presumption of a medical treatment for his left-shoulder and hernias with Dr. Glaves' May 16, 2019 opinion that he may need "multiple treatments, perhaps several times over the course of his life" for his August 7, 2017 injury. *Tolbert*. It is unclear whether Dr. Glaves was referring only to Employee's left-shoulder pain. In any event, he recommended PT, steroid injections, anti-inflammatories and osteopathic manipulation therapy. For Employee's hernia, he recommended a support belt and possible additional surgery if "symptoms are uncontrolled." Dr. Creighton on April 18, 2018 wrote a "To Whom It May Concern" letter and recommended additional treatment. On May 1, 2018, Employer asserted its right to cross-examine her, and to date Employee has not made her available for cross-examination. Since her letter was hearsay, written solely for litigation

purposes and she has not been cross-examined, this decision cannot rely on her April 18, 2018 opinion. AS 23.30.395(28).

Again without regard to credibility, Employer rebutted the presumption regarding additional medical treatment with: PA-C Gordon's February 5, 2018 report stating there was nothing more she could do for him, as nothing had worked; Dr. Koller's April 30, 2018 opinions that Employee's thoracic back strain had "healed and resolved," and his hernias were repaired and "resolved"; Dr. Koller's June 9, 2018 statement that Employee needed no further treatment; Dr. Bauer's June 28, 2018 opinion that Employee needed no additional medical care; Employee's August 22, 2018 report to PA-C Helmick that PT had been "unhelpful"; Employee's various x-rays, CT and MRI scans, which were all essentially "normal"; Dr. Van Ravenswaay's removal of a retained hernia suture on September 28, 2018; Employee's October 29, 2018 statement to Wise PT that "his spine is the problem and not so much his shoulder"; normal October 31, 2018 electrodiagnostic studies; his November 18, 2018 statement to Wise PT reporting "zero" left-shoulder pain; a July 25, 2019 ultrasound that ruled out a recurrent right inguinal hernia; Dr. Murphy's April 21, 2020 written opinion and his September 16, 2020 deposition testimony that Employee needed no further medical treatment; Employee's May 8, 2025 hearing testimony that injections were the only treatment that helped relieve his thoracic back pain and even those did not make his pain go away once he started working; Dr. Williams' June 17, 2021 written opinion that Employee needed no psychological treatment for his work injury; Employee's May 8, 2025 hearing testimony that the only treatment his physicians recommended currently were injections; Dr. Williams September 3, 2024 opinion that Employee needed no additional treatment related to his August 7, 2017 work injury with Employer; and Dr. Schwartz's September 4, 2024 opinion recommending "no further medical treatment" for any condition, since Employee had nothing to treat. *Huit*. This evidence shifts the burden back to Employee who must prove his claim for additional medical care by a preponderance of the evidence. *Saxton*.

To date Employee has had an exhaustive medical treatment for his work-related thoracic strain or sprain. His extensive chiropractic treatment according to his own testimony did not work. Months of PT with several different providers did not work. Anti-inflammatory medications did not work. Painkillers did not work. Removing a retained suture from Employee's hernia surgery

apparently did not work. Extensive psychological counseling and therapy did not work. The only thing that worked somewhat were injections, and Employee testified that even those did not work well enough for him to return to work.

The same medical evidence used to rebut the raised presumption also preponderates in Employer's favor. That medical evidence, cited above, is incorporated here by reference and is given greater weight than Dr. Van Ravenswaay's sole, contrary opinion. *Moore*.

Employer is required to provide medical care for Employee's thoracic strain or sprain as the process of recovery requires. After two years post-injury, if continued treatment or care is required, a panel may authorize it. AS 23.30.095(a). Nevertheless, Employer is not liable for "palliative care" after the date of medical stability unless it is reasonable and necessary (1) to enable Employee to continue in his employment at the time of treatment; (2) to enable him to continue to participate in a reemployment plan; or (3) to relieve Employee's "chronic debilitating pain." AS 23.30.095(o). "Palliative care" is medical care or treatment that reduces, or moderates temporarily pain intensity caused by an otherwise stable medical condition. AS 23.30.395(29).

As already determined in this decision, the only "chronic pain" Employee has is in his thoracic back area, and that is caused by his stab wound. Therefore, since that wound is not work-related, Employer is not responsible to pay medical benefits to provide palliative care for it. Moreover, the only treatment Employee's doctors recommended currently are injections, which at the May 8, 2025 hearing he conceded do not allow him to work. And he is not in an approved vocational reemployment plan, because the RBA found him not eligible because he was released to return to his time-of-injury job. Furthermore, there is no physician's certification under §.095(o) stating Employee's need for this palliative care. This decision found Employee's mental health conditions and symptoms did not arise out of his employment and accordingly his work injury is not the substantial cause of any need to treat them. AS 23.30.010(a). Therefore, there is no factual or legal basis to award Employee any post-*Hernandez IV* or ongoing care or treatment at this time, and his request for medical benefits and related transportation expenses will be denied.

7) Is Employee entitled to a penalty?

Employee raised several claims for a penalty. Discerning the bases for his penalty claims is somewhat difficult. However, in his December 4, 2023 document, Employee specified the bases for two penalties. First, he said, "I deserve to have 20 percent" because Employer failed to submit a report of occupational injury within 10 days. This refers to AS 23.30.070(f). However, at the *Hernandez IV* hearing on December 22, 2021, Employee did not raise a penalty under §.070(f). Even if his allegation were true, it occurred within 10 days of his August 7, 2017 injury. In other words, the issue has existed for years and existed years prior to the December 22, 2021 hearing. He could have and should have raised the §.070(f) issue at that hearing, but he only claimed a penalty based on Employer's controversions not being supported by substantial evidence. *Hernandez VI* did not remand the penalty issue. Moreover, Employee waived a specific penalty under §.070(f) by not raising it, and therefore this decision will not address it. *Dieringer*.

Second, Employee's December 4, 2023 document stated he wanted a 25 percent penalty because he contended Employer did not make benefit payments within seven days after payments became due. That penalty claim refers to AS 23.30.155(e). Subsection §.155(e) applies when an employer fails to controvert benefits timely under §.155(b) and (d) or pay benefits timely "without an award." Employee's current contention is the same as he raised at the December 22, 2021 hearing, which *Hernandez IV* denied, and which *Hernandez VI* did not remand. This decision will not address any claim for a penalty based on an unfair or frivolous controversion that occurred prior to January 21, 2022, the date *Hernandez IV* issued. *Dieringer*.

On November 6, 2023, Employee filed a new claim dated November 7, 2023, for TTD; TPD; PTD; PPI and medical benefits; a compensation rate adjustment; an unfair or frivolous controversion finding; and "other," the latter pertaining to a discrimination claim and a request that Employer be "investigated." There is no specific controversion in the agency file for this claim, but it reiterates claims he had made previously. Employee's November 7, 2023 claim "relates back" to his previous claims, which Employer did timely controvert, because it was an amendment to his prior claims and "arose out of the conduct, transaction, or occurrence set out or attempted to be set out" in the original pleadings. 8 AAC 45.050(e). The only new "claim" or

request in the November 7, 2023 claim was that Employer be investigated for "discrimination." The Division's adjudications section does not have jurisdiction over discrimination cases, and Employee would have to file that with in the appropriate forum. *AKPIRG*.

On June 28, 2024, and July 1, 2024, Employer denied Employee's benefits as a matter of law for failure to attend a properly noticed EME on June 25-26, 2024. It is not clear from these documents why Employer filed essentially the same controversion twice. In any event, if the representations made in these controversions and the attached documents were the only evidence a factfinder could rely on, on these dates, and Employee offered no evidence to the contrary, he would not have been entitled to any benefits under the Act as a matter of law, and his benefits would be suspended, because he failed to attend a properly noticed EME. *Harp*; AS 23.30.095(d).

The Division treated other various documents Employee filed thereafter as "claims" for lack of a better place to put them in the electronic filing system. However, they were not on "claim" forms such that Employer would have recognized them as "claims" it needed to controvert. Employee had filed claim forms previously and knew how to use them. If he wanted to amend his claims, he could have filed a claim form, giving Employer an adequate notice of its duty to controvert or pay benefits to the extent any benefits he requested could be discerned from these documents. Thus, in fairness, these documents would not support a penalty simply because Employer neither controverted them, nor paid the benefits he implicitly requested in them. AS 23.30.001(1), (4). Therefore, to the extent Employee requested a penalty based on an unfair or frivolous controversion subsequent to *Hernandez IV*, his requests will be denied. *Harp*. Further, EDI records show that Employer already paid Employee penalty as required in *Hernandez IV*.

8) Is Employee entitled to interest on any benefits?

This decision awarded Employee no additional benefits. Therefore his claim for interest will be denied. AS 23.30.155(o). Moreover, EDI records show Employer already paid him interest pursuant to *Hernandez IV*.

9) Is Eppler entitled to additional attorney fees and costs?

The remaining issue is the Employer-Eppler fee and cost stipulation, and Eppler's related December 20, 2024 claim for attorney fees and costs, which now includes a request for attorney fees for obtaining his attorney fees and costs. AS 23.30.145(a). This issue was complicated by Employer's and Eppler's failure to give Employee notice that they had come to a stipulated agreement to pay Eppler's compromised attorney fees and costs, which would also result in Eppler withdrawing from the case. Those parties did not serve Employee with the eventual stipulation. Once the Division notified Employee of the Employer-Eppler stipulation and provided him with a copy, Employee adamantly objected to it. After giving Employee opportunities at two hearings to articulate any objections with specificity, he failed to meet his burden to demonstrate Eppler's rate was too high or that Eppler improperly inflated his bills. The best Employee could muster was that he was unhappy with Eppler because he did not receive all the benefits to which he believed he was entitled, and that Eppler's efforts were "Too much time for nothing."

An often overlooked section of Rule 1.5 states, "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." This suggests that neither Schwarting nor Eppler could or should stipulate to "an unreasonable fee" or unreasonable costs. It further implies that Rule 1.5(a) applies to stipulations. This decision will review the Employer-Eppler stipulation in light of this rule. The factors to be considered in determining the reasonableness of a fee include but are not limited to the following:

(1) *The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly*: This is perhaps the most difficult factor for any hearing panel to determine. The *Hernandez IV* hearing panel had difficulties with the amount of time Eppler and his paralegal billed for their fees and costs, respectively. These questions went to the "time and labor required." The Court in *Bignell* and *Rusch* required hearing panels reviewing attorney fee disputes to apply the Rule 1.5(a) factors to these issues, but the Court has not expressly shown how that rule assists a factfinder in determining "the time and labor required" for an attorney to perform a particular task. In other words, factfinders have difficulty deciding if an attorney's time spent on any given issue is "reasonable and necessary."

When asked about this quandary at hearing, no party had any opinion or advice on how to apply Rule 1.5(a). Eppler did not offer any testimony addressing his billable hours. 8 AAC 45.120(a). He argued that the time he put on his itemized fee statements was the time "required" to do the task. His position implicitly creates an irrebuttable presumption that his attorney time was reasonable and necessary. How would an objecting party ever rebut that presumption? Employer ultimately did not object to the stipulated fee. Employee as the objecting party had the burden to show that Eppler's time was not reasonable and not necessary. *Rusch*. Regardless of how an objecting party or this panel would apply Rule 1.5(a) to determine a "reasonable time" for Eppler to perform his legal services, one thing is clear -- Employee did not offer any evidence or convincing argument refuting the time Eppler stated he spent on each legal service in this case. Thus, without further evidence or instruction from the Commissioner or the Court on how this rule applies in determining the "time and labor required" for an attorney to perform a given task, this panel has no way to make that determination. *Rusch*. Therefore, the panel concludes that Eppler's attorney time though relatively long was reasonable and necessary in this case.

As for the "novelty and difficulty of the questions involved, these were somewhat more novel and complex than the average case. This physical-mental case involved voluminous medical records and opinions from attending physicians, EME doctors and an SIME physician. It also involved interplay between non-work-related conditions like a stab wound in Employee's back and slight scoliosis, and his allegations supported by at least one medical opinion that back pain from his minor work-related sprain or strain disabled him for eight years and caused unrelenting mental health conditions.

In the panel's view and experience, "the skill requisite to perform the legal services properly" were about average. This last part of this first factor does not affect Eppler's attorney fees or costs. Overall, factor (1) favors Eppler's receipt of additional attorney fees and costs.

(2) *The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer*: Eppler's attorney fee affidavits support the notion that by accepting Employee's case, he was precluded from accepting other employment. He specifically itemized

numerous cases he turned down because he had a commitment to representing Employee in this case. Factor (2) favors Eppler's receipt of additional attorney fees and costs.

(3) *The fee customarily charged in the locality for similar legal services*: Eppler relied on previous decisions regarding the hourly rate awarded to other attorneys in workers' compensation cases. Neither Employer nor Employee objected to Eppler's hourly rate. In the panel's experience, $425 per hour is a reasonable rate for a local attorney with legal experience like Eppler's. There is no evidence suggesting the $425 per hour rate should be reduced.

However, rate is only part of the attorney fee or paralegal cost equation. The other part is how much time a local attorney or paralegal would bill to perform similar legal services. This issue reverts back to factor (1), the analysis for which is incorporated here by reference. Given that analysis, and given that $425 per hour is a reasonable rate for Eppler's services in this case, factor (3) favors Eppler's receipt of additional attorney fees and costs.

(4) *The amount involved and the results obtained*: Eppler correctly noted that Employee claimed PTD benefits, not Eppler. Employee's failure to prevail on his PTD claim will not be held against Eppler. The amount otherwise involved included medical and related transportation costs; TTD, TPD, PPI, and reemployment benefits including §.041(k) "stipend"; a rehabilitation eligibility evaluation; possible rehabilitation; a compensation rate adjustment; a penalty related to an unfair or frivolous controversion; other penalties for late-notice, late-payment or inadequate controversions; interest and attorney fees and costs. The "amount involved" is also associated with the claimed injuries, which included alleged injuries to Employee's cervical, thoracic and lumbar spine, including scoliosis; unequal-length legs; both shoulders; a thoracic-back strain or sprain; "chronic pain"; "anxiety or panic attacks"; "generalized anxiety"; "depression"; somatoform symptoms; "Somatoform Symptoms Disorder" and two requested SIMEs.

Eppler did obtain $3,540 in PPI benefits for Employee, although he sought significantly more than that amount but did not prevail. He obtained a stipulation worth $24,801 for Employee. Eppler successfully obtained a reemployment benefits eligibility evaluation, which ultimately inured no retraining benefit to Employee because he was found not eligible, but did cost Employer rehabilitation specialist fees. However, Eppler successfully obtain §.041(k) "stipend"

benefits for employee worth $25,361.70 by pointing out Employer's failure to timely notify the RBA that Employee had been disabled for 90 consecutive days by his work injury. He also obtained related penalties and interest for those benefits. It appears from the EDI records and the above analyses in this case that Eppler may not have been aware that Employer had already paid Employee some of these benefits, but the reason for that is not entirely clear. In fact, as discussed above, Eppler's efforts apparently resulted in TTD benefit and §.041(k) "stipend" overpayments to Employee, that Employer is not likely to recover. AS 23.30.155(j).

On the other hand, Employee did not succeed in obtaining additional benefits for any spinal injury, bilateral shoulder injuries, leg issues, "chronic pain, anxiety or panic attacks, generalized anxiety, depression, somatoform symptoms, or Somatoform Symptoms Disorder." Likewise, Employee obtained his requested SIME in *Hernandez I*; by contrast, *Hernandez II* denied Eppler's request on Employee's behalf for a second SIME. In short, the "results obtained" is a mixed bag. Nevertheless, Eppler did succeed in obtaining over $50,000 in benefits for Employee, where two other experienced workers' compensation lawyers had failed. Factor (4) also supports Eppler's request for additional attorney fees and costs.

(5) *The time limitations imposed by the client or by the circumstances*: This factor could refer to exigent circumstances related to Employee's case, or it could just refer to the effect Eppler's representation of Employee limited his ability to take on other cases. Regardless, Eppler's fee affidavits do not directly address this point. Moreover, significant delays in this case occurred because neither party initially obtained, filed and served Employee's mental health records in a case where he was claiming a physical-mental injury. In fact, to date, no party has filed all his mental health records. At least one physician, "Dr. Wood," is mentioned as a doctor who was treating Employee for his mental health issues, but his records are not found in the agency file. A reasonable inference from this is that Employee hand-selected the mental health records that he himself obtained and limited them to those he wanted this panel to see. Factor (5) therefore does not particularly effect Eppler's entitlement to additional attorney fees or costs.

(6) *The nature and length of the professional relationship with the client*: Eppler entered his appearance as Employee's lawyer on December 23, 2019. He withdrew nearly four years later on November 3, 2023. In the panel's experience, that is a relatively long time to represent

an injured worker in one of these cases, which helps explain Eppler's lengthy hours incurred. Factor (6) supports his request for more attorney fees.

(7) *The experience, reputation, and ability of the lawyer or lawyers performing the services*: Eppler's affidavits illustrate he has considerable experience as an attorney, which equates to useful skills in representing injured workers in these cases. *Rusch*. There is no evidence regarding his reputation. Eppler illustrated adequate ability to perform the services in this case for Employee. On balance, factor (7) weighs in favor of Eppler's request for additional fees.

(8) *Whether the fee is fixed or contingent*: By statute, Eppler's attorney fees for work done before this agency are contingent. The Court has repeatedly stated that lawyers representing injured workers in these cases should be "reasonably compensated." *Rose*. But "full, actual fees" are not automatic. *Abood*. While Alaska's attorney fee statute is uniquely generous to claimant lawyers, the fee award should not be "out of proportion" to the lawyer's services performed. *Whaley*; *Haile*. High attorney fees in some cases may be needed to compensate lawyers for lost claims. *Arant*. The Court has also affirmed cases in which a panel reduced a lawyer's fees to account for issues on which the claimant did not prevail. *Bailey*; *Adamson*. On the other hand, reducing a claimant's attorney's fees by 50 percent would dissuade attorneys from representing injured workers, rather than persuading them. *Cortay*. By contrast, a 50 percent reduction was approved when the worker did not prevail on the main issue in the case. *Bouse*. Eppler succeeded in getting Employer to voluntarily stipulate to paying Employee benefits. *Childs*. And Employer modified stipulated payments without first seeking approval. *Shirley*. Without a doubt, injured workers without competent counsel have a decreased likelihood to succeed on their claims. *Bustamonte*. Lastly, Attorney fee awards in workers compensation cases should be fully compensable so as to encourage lawyers to represent injured workers. *Rusch*.

Given the above analyses, this decision will approve Eppler's request for $63,250. Because Employer offered no legal support for its contention that Eppler should not receive attorney fees for obtaining his attorney fees, and the panel is aware of none, this decision will also award him an additional $13,982.50 in attorney fees for pursuing his own claim. This decision will award

Eppler a total of $77,232.50 in attorney fees and costs. Eppler cannot be required to absorb the cost of obtaining his attorney fees and costs. Even though Employer did not object to the stipulated $63,250, Employer's and Eppler's failure to share the fee stipulation with Employee necessitated additional litigation required by the panel. There is certainly no statutory basis to require Employee to pay Eppler's additional attorney fees either.

CONCLUSIONS OF LAW

1) Non-remanded issues in *Hernandez VI* are "the law of the case" on remand.

2) The work injury is not the substantial cause of any disability or need to treat Employee's "chronic pain," "anxiety or panic attacks," "generalized anxiety," "depression," "somatoform disorder" or "Somatoform Symptoms Disorder."

3) The August 11, 2021 oral agreement will be revised to reflect a TTD benefit overpayment for the period May 17, 2020, through June 17, 2021, and Employee is not entitled to additional TTD benefits.

4) The August 11, 2021 oral agreement will be modified to reflect a benefit overpayment to Employee under AS 23.30.041(k).

5) Employee is not entitled to PTD benefits.

6) Employee is not entitled to medical treatment and travel expenses.

7) Employee is not entitled to a penalty.

8) Employee is not entitled to interest on any benefits.

9) Eppler is entitled to additional attorney fees and costs.

ORDER

1) All benefits related to the remand involving Employee's March 16 and December 26, 2018, January 8, May 20 and December 23, 2019, March 18 and August 17, 2021 claims, and any new issues in his November 7 and December 4, 2023, December 4, 2024, January 13, February 3, February 5, February 19 and February 24, 2025 "claims" are denied pursuant to this decision.

2) Employee's claims for disability or medical care to treat "chronic pain," "anxiety or panic attacks," "generalized anxiety," "depression," "somatoform disorder" and "Somatoform Symptoms Disorder" are denied.

3) The August 11, 2021 oral agreement is revised and modified to reflect both TTD benefit and §.041(k) "stipend" overpayments, in accordance with this decision.

4) Employee's request for PTD benefits is denied.

5) Employee's claim for past and ongoing medical treatment and travel expenses is denied.

6) Employee's requests for penalties are denied.

7) Employee's claim for interest is denied.

8) Eppler's December 20, 2024 claim for attorney fees is granted

9) Employer is ordered to pay Eppler $77,232.50 in attorney fees and costs in accordance with this decision.

Dated in Anchorage, Alaska on June 13, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Anthony Ladd, Member

/s/
Debbie White, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory 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 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 Interlocutory Decision and Order in the matter of Manuel Hernandez, employee / claimant v. Ocean Beauty Seafoods LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201711427; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on June 13, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician