

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOSHUA MEISTER,	)	
	)	
Employee,	)	
Claimant,	)	
	)	FINAL DECISION AND ORDER
v.	)	
	)	AWCB Case No. 202202427
PEOPLE READY, INC.,	)	
	)	AWCB Decision No. 25-0047
Employer,	)	
and	)	Filed with AWCB Anchorage, Alaska
	)	on July 30, 2025
AIU INSURANCE CO,	)	
	)	
Insurer,	)	
Defendants.	)	
	)	

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Joshua Meister's (Employee) April 24, 2024 claim for attorney fees and costs was heard in Anchorage, Alaska on July 2, 2025, a date selected on May 15, 2025. A June 21, 2024 hearing request gave rise to this hearing. Attorney Lee Goodman appeared and represented Employee. Attorney Krista Schwarting appeared and represented People Ready, Inc. and its insurer, AIU Insurance Co. (Employer). The parties filed post-hearing briefs to clarify their positions regarding Employee's entitlement to attorney fees and costs. The record closed on July 11, 2025.

## ISSUE

Employee contends his attorney's fees and his paralegal's hourly rates and costs are reasonable and commensurate with previous fee awards. He contends the work his attorney performed was necessary to prepare the case for hearing or settlement. Employee contends his attorney's work led to reconsideration of the determination he was ineligible for and entitlement to reemployment

benefits. Employee's attorney addressed the eight ethical principles relevant to his efforts in this case and requests full, reasonable attorney fees and costs.

Employer contends Employee's paralegal's requested rate of \$220 per hour for paralegal costs are not reflective of local market rates nor of the work performed in the case. Employer contends attorney fees should be reduced for vague entries on the attorney fee affidavit.

**1) Is Employee entitled to full, reasonable attorney fees and costs?**

**FINDINGS OF FACT**

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

- 1) On January 31, 2022, Employee was moving sheetrock slabs weighing 450 pounds on a cart when the wheel of the cart gave way and three of the slabs folded over his lower left leg. He was rushed for emergency surgery for a hematoma/abscess with infection. A second surgery for infection debridement and wound vac placement in the same leg followed. (First Report of Injury, February 10, 2022; Operative Report, Elisha Powell, MD, February 15, 2022; Brief Op Report, Dr. Powell, January 12, 2023).
- 2) After his surgeries, Employee was ordered to do physical therapy and received orthopedic care from March 2022 to November 2022. His treatment plan anticipated 12 weeks of physical therapy. He was unable to fully bear weight on his left leg for several months following the injury and was unable to perform work duties which included getting up and down from the ground, standing, walking, and carrying heavy objects. (Employee Medical Summaries 3/28/2022-11/3/2022, May 7, 2024).
- 3) On November 3, 2022, Brian O' Loughlin, PA-C, said after Employee had several months of physical therapy, "at this time there are not really any other treatment options that we have left to offer, [and] we would deem him medically stable." PA-C O'Loughlin determined Employee was medically stable but not able to return to work full duty, referred him for a PPI evaluation, and released him from care. (Patient Visit, Brian O'Laughlin, November 3, 2022).
- 4) On November 4, 2022, Darren Thomas, MD, performed an employer's medical evaluation (EME) and diagnosed Employee with left lower leg abrasion with resultant hematoma requiring irrigation debridement and chronic ulceration of the lower leg related to the January 31, 2022

industrial injury and 1+ pitting edema to the bilateral lower extremities not related to the work injury. He opined that the work was the substantial cause of Employee's need for medical treatment and disability. Dr. Thomas said Employee was medically stable on November 4, 2022. He added that Employee had the physical capacity to perform usual job duties as a laborer with the use of an elastic compression sleeve. (EME report, Dr. Thomas, November 4, 2022).

5) On December 16, 2022, Employee was referred to Hutto Consulting for a rehabilitation evaluation. (Letter of Reemployment Referral Letter, December 16, 2022; Hutto Consulting Rehabilitation Evaluation Report, January 17, 2023).

6) On January 16, 2023, rehabilitation specialist Tommie Hutto said Employee's physician reported he could not make return to work predictions because Employee recently had surgery. Consequently, Hutto reported Employee "presents as Unknown for reemployment benefits under AS 23.30.041(f)(1) criteria." PA-C O'Loughlin confirmed Employee needed additional surgery and wound vac placement. He said it would be another two to three months before his physical capabilities or a timeline for his return to work could be predicted. (Eligibility Determination, January 17, 2025).

7) On February 21, 2023, Employee filed a claim for penalty for late paid compensation stating in a handwritten addendum that his Employer had switched claims adjusting companies and the new adjuster on his case delayed payment. (Claim, February 21, 2023).

8) On April 11, 2023, Hutto filed a claim asserting "Employer/Adjuster failed to pay or controvert the Claimant's January 2023 Invoice N 2019 (dated January 17, 2023, amount \$2,660.00), which is overdue by 50 days. Employer / Adjuster did not provide any explanation regarding absence/significant delay of payment." (Claim, April 11, 2023).

9) On July 31, 2023, PA-C O'Loughlin predicted Employee will have a permanent partial impairment greater than zero as well as the physical capacities to perform all jobs in his ten-year work history. (O'Loughlin responses to Hutto's inquiries, July 31, 2023).

10) On August 1, 2023, Hutto found Employee not eligible for reemployment benefits. (Eligibility Evaluation Report, August 1, 2023).

11) On September 15, 2023, reemployment benefits administrator designee (RBAD) Morfield determined Employee was not eligible for reemployment benefits based on PA-C O'Loughlin's report. (Letter of Eligibility Evaluation Determined Not Eligible, September 15, 2023).

- 12) On September 19, 2023, Employee filed a petition for review of reemployment benefit administrator's decision. (Petition, September 19, 2023).
- 13) On January 29, 2024, Employer's attorney, Krista M. Schwarting, entered her appearance. (Entry of Appearance).
- 14) On March 20, 2024 PA-C Loughlin advised that Employee was "recovering from two left tibial irrigation and debridement. Initially, I predicted that the patient would return to his regular work duties. Unfortunately, he has continued to struggle with pain and swelling. He has required special wraps and therapies to help with these continued issues. At this time, I do not believe he will be able to return to any work that requires medium to heavy lifting or prolonged standing and walking. He should be considered for retraining." He recommended Employee "be off work until next appointment 6/12/2024 for reevaluation." (Letter, PA-C O'Loughlin, March 20, 2024).
- 15) On April 15, 2024, Employee's attorney, Lee Goodman, entered his appearance. (Entry of Appearance, April 15, 2024).
- 16) On April 24, 2024, Employee filed a claim for a compensation rate adjustment, attorney fees and costs. (Amended Claim for Worker's Compensation Benefits, April 24, 2024).
- 17) On May 14, 2024, Employer answered Employee's claim. It contended Employee had not stated a specific basis for his request to adjust his compensation rate and did not provide any supporting documents. It also contended Employee's request for attorney fees was premature as no benefits of value to Employee had yet been gained. (Answer, May 14, 2024).
- 18) On June 21, 2024, Employee requested a hearing. (Employee Affidavit of Readiness for Hearing, June 21, 2025).
- 19) On June 25, 2024, Employee requested modification of the determination he was not eligible for reemployment benefits. (Petition, June 25, 2025)
- 20) On July 1, 2024, Employer opposed Employee's affidavit of readiness for hearing. (Affidavit of Opposition, July 1, 2024).
- 21) On July 12, 2024, Employer answered Employee's petition for modification. Employer contended Employee's claim was not ripe for hearing until he honored Employer's request to cross examine his physician "on one of the records that employee is relying upon as the basis for modification." Employer said it intended to schedule an "updated" EME prior to any hearing. (Answer, July 12, 2024).

- 22) On July 12, 2024, Employer denied Employee's claim for benefits based on Dr. Thomas's November 4, 2022 report, which advised "the work activities of January 31, 2022 are the substantial cause of the need for medical treatment and disability." He added that the "substantial cause of the need for treatment and disability with regard to left lower extremity light abrasion with resultant hematoma and chronic leg ulcer is the work injury when weighed against all other causes." However, he deemed Employee medically stable and gave a two (2) percent permanent partial impairment (PPI) rating. Dr. Thomas said Employee has the necessary physical capacities to return to his job of injury. Employer specifically denied Employee's request for time loss benefits after November 4, 2022, PPI, reemployment and medical benefits after November 4, 2022. (Controversion, July 12, 2024)
- 23) On July 15, 2024, Employee claimed temporary total disability (TTD) and temporary partial disability (TPD) benefits, attorney fees and costs, transportation costs, interest, PPI and medical costs. (Claim, July 15, 2024).
- 24) On July 25, 2024, Employee requested a hearing on his petition for modification of the RBAD's determination he was not eligible for reemployment benefits. (Affidavit of Readiness for Hearing, July 25, 2024).
- 25) On August 2, 2024, Employer opposed Employee's hearing request. Employer had scheduled another EME and intended to depose its EME physician, "if warranted." (Affidavit of Opposition, August 2, 2024).
- 26) On August 5, 2024, Employer again denied Employee's claim for benefits based on Dr. Thomas's November 4, 2022 report. (Controversion, August 5, 2024).
- 27) On September 5, 2024, Employer deposed Employee. (Deposition, September 5, 2024)
- 28) On October 17, 2024, Employer scheduled a second EME evaluation, but Employee was a no-show. His benefits were suspended pursuant to AS 23.30.095(e). (Controversion Notice, November 19, 2024).
- 29) On December 12, 2024, the parties agreed to reschedule the EME. (Prehearing Conference Summary, December 12, 2024).
- 30) On January 13, 2025, Dr. Thomas evaluated Employee a second time. He reviewed 2,334 pages of Employee's medical records. He said the January 31, 2022 injury was the substantial cause of Employee's need for treatment and disability for his "left leg contusion with hematoma and wound." Dr. Thomas said Employee's left lower leg pain and peripheral vascular disease were

not substantially caused by the work event but by reactions to a preexisting leg tattoo. He found Employee was medically stable and that the “soft tissue envelope around the surgical wound has healed.” Employee’s leg pain was instead due to tattoo hypersensitivity from red pigment and “the work injury did not cause, aggravate, accelerate or combine with” the tattoo hypersensitivity. Dr. Thomas recommended work restrictions of “standing and walking on an occasional basis only and no lifting greater than 50 pounds from floor to waist.” He opined Employee could only perform the job of maintenance carpenter and sous chef with restrictions and could not perform any of the other jobs in Employee’s ten-year work history. (Dr. Thomas, EME report, January 31, 2025).

31) On January 23, 2025, Employer withdrew its controversion after Employee attended the evaluation with Dr. Thomas. (Controversion Withdrawal Notice, January 23, 2025).

32) On March 2, 2025, Employee’s benefits were suspended based on Dr. Thomas’ report. (Letter of Benefits Suspension, March 2, 2025).

33) On March 11, 2025, Willy Gama, MD, responded to questions posed by Employee and opined that the work injury of January 31, 2022 was the substantial cause of Employee’s impairment in his left lower extremity and his need for treatment, the workplace injury aggravated, combined with or accelerated the need for treatment of a previously existing condition and that Employee had not reached medical stability. (Dr. Gama responses, March 11, 2025).

34) On April 17, 2025, the parties stipulated Employee is eligible for reemployment benefits. (Stipulation, April 17, 2025).

35) On May 23, 2025, rehabilitation specialist Hutto was advised Employee was eligible for reemployment benefits. (Rehabilitation Initial Plan Assignment, May 23, 2025).

36) On June 6, 2025, Goodman and his paralegal Crystal Reeves filed their affidavits of fees and costs. He credibly addressed the eight factors established in *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019) as follows: (1) Goodman spent adequate time and labor working on this case to advance it; (2) Time spent working on this case precluded Goodman from taking other workers’ compensation cases, which is his sole practice area; (3) His attorney fee is \$460.00 per hour and, based on inflation, this rate is commensurate with awards he has previously been awarded. Goodman asserted he had completed 16.5 hours of work in the case ( $\$460 \times 16.5 = \$7,590$ ) and his paralegal had executed 16.2 hours of work in the case ( $\$220 \times 16.2 = \$3,564$ ); (4) Goodman was successful in obtaining reemployment benefits for Employee; (5) Goodman stated the time spent on this case precluded use of time on other cases; (6) Goodman

represented Employee for over a year through multiple controversies; (7) Goodman has been a member of the Alaska Bar Association since 1990 and has worked exclusively in workers' compensation litigation since 2016. He holds a Juris Doctorate from University of New Hampshire, a Masters in Fine Arts from Bennington College, and is a former Alaska Disability Law Center board member; (8) Attorney fees are contingent on successfully litigating Employee's case and Goodman's work led to Employee receiving valuable benefits. Goodman included an itemized list of his fees and costs for over a year's work in the case. Total fees and costs included filing and reviewing medical records, preparing for depositions, preparing for prehearing conferences, and filing claims and affidavits of readiness for hearing on Employee's behalf. (Goodman Attorney Fee Affidavit, June 6, 2025; Reeves paralegal affidavit, June 6, 2025).

37) On June 25, 2025, Employer asserted Goodman's "affidavits total all work done on the claim, not just the reemployment modification issue." Employer contended that Goodman's affidavits "contain a number of vague entries" and inappropriately billed for things in the case that had not yet occurred such as SIME preparation. Employer added that "the paralegal fees amount to less hours but also contain vague entries.... [and] from these vague entries, it is impossible to tell exactly what work was done and whether it was related to the reemployment benefits issue." Employer requested that the panel "only award fees related to [the reemployment benefits issues] to the extent that it can determine from the vague entries what is related . . . and decline to award fees for other issues." Employer contended the "reemployment issue was resolved not by Goodman's litigation but a "change in medical evidence" that did not require "complicated or lengthy pleadings." Employer argued that Goodman's fees "to resolve the issue exceed the amount that would be typically expected for a lone issue resolved prior to hearing." Lastly, Employer requested that the panel reduce Goodman's fee award and consider under Alaska Rules of Professional Conduct 1.5 and reflect that "the amount of time billed exceeds what would be typically expected for this limited work." Employer provided no evidence demonstrating "what would be typically expected" for litigation regarding reemployment benefits eligibility and attorney fees and costs. (Employer Hearing Brief, June 25, 2025; Observation).

38) On June 30, 2025, Goodman filed a supplemental attorney fee affidavit requesting payment of \$5,060 for 11 hours spent preparing for the hearing. (Affidavit of Attorney Fees, June 30, 2025).

39) At the July 2, 2025 hearing, Goodman testified he had satisfied all eight *Rusch* factors. He attested he had attempted to prevent additional fees by preparing a stipulation on April 18, 2025 for the parties to discuss. (Goodman, July 2, 2025).

40) Schwarting objected to Goodman's requests for fees, testifying that they were "too high", contained "vague entries" and unconvincing "administrative tasks." Schwarting testified she had received Goodman's April 18, 2025 proposal to settle fees, but "did not feel comfortable" recommending the proposal to her clients because there were "lots of inaccuracies" that she felt did not reflect hours that would be "typically expected" in a workers' compensation case. When asked by the panel to clarify "typically expected," no opinion or advice was provided for the panel to consider. Schwarting offered the hourly rates of legal staff within her office as an example of reasonable fees. (Schwarting, July 2, 2025; Observation).

41) The parties stipulated that Goodman is entitled to \$460 per hour. They also stipulated to withdraw 2.5 hours because Goodman's fee affidavit was missing dates and some events listed on the affidavit had not occurred. Parties did not agree on the hours performed in the case. Employer disputed the hours worked by Goodman and his paralegal, as well as the paralegal's \$220 hourly rate. At the hearing's conclusion, Employee did not request to further supplement his attorney fees. (Observation; Record).

42) On July 3, 2025, the record was reopened, and the parties were asked to file supplemental briefs to address the paralegal hourly rate and provide a historical accounting of fees awarded Goodman and paralegals to support \$220 per hour. (Letter, July 3, 2025).

43) On July 9, 2025, Employer stated the paralegal hourly rate requested far exceeded the \$145 per hour paid to the paralegal and legal staff working for Employer's attorney's office. Employer asserted a \$220 per hour award for a paralegal was unthinkable because it "exceeds the customary rate for the Alaska workers' compensation community and should be reduced." Employer did not present evidence of the "customary paralegal" rate for paralegals working for injured workers' attorneys in the Alaska workers' compensation community. (Employer Brief, July 9, 2025; Observation).

44) On July 11, 2025, Goodman responded that his fees and costs were not excessive, reflected the work his office put into the case, and he already provided substantial evidence of hours worked and costs incurred. He noted paralegal Reeves has been working as his paralegal for seven years. Prior to working for him, she ran her own business as an administrative assistant. In mid-2024,



Goodman received \$185 per hour for her work. He added that his fees were reasonable, they met the eight *Rusch* factors and fees in the case would not have accumulated further had Employer responded to his proposed stipulation for fees and costs and engaged in settlement negotiations. He requested the panel consider previous decisions regarding paralegal costs and attorney fees, relying on *Dickson v. State of Alaska*, AWCB Dec. No 23-0066 (November 16, 2003) and *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (2019). (Employee Brief, July 11, 2025).

45) The number of competent attorneys representing injured workers in Alaska is small. The Alaska Bar Association Workers' Compensation Section Directory lists less than five attorneys licensed in the last five years working in the area of workers' compensation and even fewer newly licensed attorneys are representing injured workers. Lawyers currently representing injured workers have no shortage of possible clients on referral, any case an attorney decides to accept limits their ability to take another case. (Observations, judgment).

#### PRINCIPLES OF LAW

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

#### **AS 23.30.041. Rehabilitation and reemployment of injured workers.**

. . . .

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. . . . .

. . . .

(h) Within 90 days after the rehabilitation specialist is selected or assigned under (g) of this section, the rehabilitation specialist shall prepare and provide to the employee and employer a complete reemployment plan. The reemployment plan must require continuous participation by the employee and must maximize the usage of the employees' transferable skills. The reemployment plan must include at least the following:

- (1) a determination of the occupational goal in the labor market;
- (2) an inventory of the employee's technical skills, transferable skills, physical

and intellectual capacities, academic achievement, emotional condition, and family support;

(3) a plan to acquire the occupational skills to be employable; the plan must consider use of training and employment services offered by the Department of Labor and Workforce Development under AS 23.15;

(4) the cost estimate of the reemployment plan, including

- (A) provider fees;
- (B) tuition;
- (C) books;
- (D) tools and supplies;
- (E) transportation;
- (F) temporary lodging;
- (G) job modification devices; and
- (H) job search and job placement activities;

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. 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, except that any compensation paid under this subsection is reduced by wages earned by the employee while participating in the process to the extent that the wages earned, when combined with the compensation paid under this subsection, exceed the employee's temporary total disability rate. 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). A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. An employee may not be considered permanently totally disabled so long as the employee is involved in the rehabilitation process under this chapter. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

(l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed \$13,300.

**AS 23.30.145. Attorney fees.** (a) . . . 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.

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

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

*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 ensure 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.

*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.

*Cortay v. Silver Bay Logging*, 787 P.2d 103, 109 (Alaska 1990) stated, “Awarding fees at half a lawyer’s actual rate is inconsistent with the purpose of awarding full attorney’s fees in the worker’s compensation scheme.” *Bignell* reiterated, “As we have noted, the objective of awarding attorney’s fees in compensation cases is to ensure that competent counsel are available to represent injured workers.” *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784, 798-99, 803 (Alaska 2019), clarified the Court’s directives on awarding attorney fees to successful claimant lawyers:

To clarify our holding in *Bignell*, we hold that the Board must consider all of the

factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney's fee. Some factors mirror those set out in the Act, such as the amount involved and the results obtained. On remand, the Board must consider each factor and either make findings related to that factor or explain why that factor is not relevant.

....

We have consistently construed 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" (citation omitted). Given our recognition that reasonable fees can be awarded in addition to statutory minimum fees under subsection (a), we see no reason to distinguish between the subsections in setting out the factors the Board needs to consider in awarding reasonable attorney's fees. . . .

....

. . . The parties did not dispute the claimants' entitlement to attorney's fees; they disputed the fees' reasonableness. A determination of reasonableness requires consideration and application of various factors that may involve factual determinations, (citation omitted) but the reasonableness of the final award is not in itself a factual finding. The difference is illustrated by what we consider in reviewing these questions. We use the substantial evidence test for review of factual determinations, considering whether the record has adequate evidence to support the factual finding (citation omitted). In contrast when we review the Board's exercise of discretion in an award of attorney's fees, we consider whether the award is manifestly unreasonable.

#### **8 AAC 45.180. Costs and attorney's fees. . . .**

....

(b) A fee under AS 23.30.145(a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee. . . . (d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state. (1) A request for a fee under AS 23.30.145(b) must be verified by an affidavit itemizing the hours expended as

well as the extent and character of the work performed, and, if a hearing is scheduled, must be filed at least three working days before the hearing on the claim for which the services were rendered; at hearing the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the filing of the affidavit. Failure by the attorney to file the request and affidavit in accordance with this paragraph is considered a waiver of the attorney's right to recover a reasonable fee in excess of the statutory minimum fee under AS 23.30.145(a), if AS 23.30.145(a) is applicable to the claim, unless the board determines that good cause exists to excuse the failure to comply with this section. (2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the compensation beneficiaries from the services, and the amount of benefits involved.  
. . . .

(f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim. The following costs will, in the board's discretion, be awarded to an applicant:  
. . . .

(14) fees for the services of a paralegal . . . but only if the paralegal. . . .

- (A) is employed by an attorney licensed in this or another state;
- (B) performed the work under the supervision of a licensed attorney;
- (C) performed work that is not clerical in nature;
- (D) files an affidavit itemizing the services performed and the time spent in performing each service; and
- (E) does not duplicate work for which an attorney's fee was awarded.

*Bryant v. Ravn Air Group*, AWCB Dec. No. 22-0076 (December 22, 2022), awarded paralegal costs at \$170 and \$200 per hour. *Vaillancourt v. State of Alaska*, AWCB Dec. No. 23-0042 (August 3, 2023), noted the former paralegal, now attorney, Bryan Haugstad, billed and was previously awarded \$275 per hour for paralegal costs with 10 years' experience as a paralegal. *Hunter Tate v. American Dream Construction, Inc.*, AWCB Dec. No. 25-0017 (March 10, 2025) awarded paralegal costs of \$200 per hour. *Dickson v. State of Alaska*, AWCB Dec. No. 23-0066 (November 16, 2023) awarded paralegal costs of \$260 per hour.

Rules of Professional Conduct, Rule 1.5(a) referenced in *Rusch* states:

(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 service 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.

*Hernandez v. Ocean Beauty Seafoods, LLC and Liberty Insurance Corporation*, AWCAC Memorandum Decision 300 (February 21, 2023), ruled the Board abused its discretion in reducing an attorney’s hourly fee based on his limited experience before the Board. It stated the Board may not base its determination solely on the attorney’s workers’ compensation experience, citing the Alaska Supreme Court, the Commission added that “an attorney’s experience in related legal fields ... should be relevant as well.”

### ANALYSIS

#### **Is Employee entitled to full, reasonable attorney fees and costs?**

Employee requests actual attorney fees for services Goodman provided to successfully resolve his claim. AS 23.30.145(a), (b). Employer contends the paralegal fee rate Employee requests is too high for the local market. Employer also contends the fee award should be reduced considering the quality of attorney’s materials and the results obtained. Employer contends Employee’s attorney fees are out of proportion to the services he provided. Employer does not dispute the entirety of Employee’s attorney fee affidavit but rather objects to what it perceives as duplicate entries, vague and ambiguous entries, and time prior to hearing in which Goodman spent eleven hours working on what Employer deemed a simple hearing on attorney fees. Employer does not contend Goodman is entitled to no fees, but rather the parties dispute a reasonable fee amount.

Since Employer resisted paying benefits by continuing to litigate its liability for them and necessitating this hearing on the merits of Employee's claim, an award of reasonable attorney fees is appropriate. *Moore*. Pursuant to the Alaska Supreme Court's prescription in *Rusch*, the factors set forth under Rule 1.5(a) of the Alaska Rules of Professional Conduct are consulted to arrive at a reasonable, fully compensatory attorney fee award. *Bignell*. Employee's fee affidavit addressed each *Rusch* factor.

Goodman's attorney fee affidavits are detailed and do not contain "block billing" commonly seen in other attorney fee affidavits. His affidavits include the date, total time spent, and a narrative that further breaks down the time spent on legal or administrative tasks into tenths of an hour. *Rogers & Babler*; ARPC 1.5(a)(1).

Employee's attorney billed his time at \$460 per hour. Employer initially objected to this hourly rate but ultimately stipulated \$460 per hour is reasonable. The complexity of litigation, including the time and skills required for prosecution of Employee's claim was moderate. Employee's attorney was required to expend additional time because Employer objected to hearing requests on Employee's petition for modification and declined to negotiate resolution of fees and costs. Rule 1.5(a)(1).

Goodman manages a caseload of only workers' compensation cases. Accepting Employee's case prevented him from taking on others' cases so he could focus on Employee's case. Goodman testified he had several requests for representation through online referral services that he turned down while representing Employee. In the legal profession, an attorney's one resource is his time, any time spent by an attorney on one case is time he cannot allocate to another case. Rule 1.5(a)(2).

Goodman has been admitted to the Alaska Bar for 35 years and has represented injured workers for nine years. Employee's attorney's hourly billing rate is within the range of billing rates customarily awarded to experienced attorneys in workers' compensation cases. Rule 1.5(a)(3); *Hernandez*.



Goodman was successful in obtaining reconsideration of the determination Employee was not eligible for reemployment benefits. Goodman's efforts were instrumental in gathering evidence to resolve the case. Goodman provided substantial evidence to support Employee's request for modification and led to Employer stipulating he is eligible for reemployment benefits, despite Employer's EME physician's opinion otherwise. Reemployment benefits are valuable. Once Employee's PPI benefits are exhausted, he can receive stipend benefits during plan development and up to two years of stipend benefits while enrolled in a plan. He will also receive a training course to enable him to return to work in a job he is physically capable of performing. AS 23.30.041; Rule 1.5(a)(4).

Time limitations refer to a client's emergent needs. Emergent needs could be shorter deadlines due to things outside of the client or attorney's control, or a need for the attorney to dedicate more time initially to a case than other cases. *Rogers & Babler*. Goodman's fee affidavit analyzed this factor under a lens of preclusion; that this case prevented work on others. Employee's inability to work, his need for surgery, then subsequent reopening of the wound on his left leg, additional surgery, and infection could all have required Goodman to address Employee's case before working on others. Rule 1.5(a)(5).

Goodman has represented Employee since April 2024. Employee's physician was initially unable to provide a prediction of when Employee would be able to return to work because Employee was not medically stable. On March 20, 2024, PA-C O'Loughlin determined Employee did not have the physical capacity to return to work in any job in his 10-year work history. Employee petitioned and requested a hearing on his petition for modification of the determination he was not eligible for reemployment benefits. Employer's objection to the hearing delayed the hearing and ultimate resolution. In addition, Goodman prepared a proposed fee stipulation, which went unaddressed. Employer's counsel confirmed she received the proposal but would not present it to her client because she felt it was unsatisfactory. A hearing on Employee's disputed attorney fees and costs is each parties' right; however, because the parties were unable to resolve their disputes the length of the professional relationship between Goodman and Employee was extended. *Rogers & Babler; Rusch*. The multiple delays in the case and unaddressed fee stipulation led to an extended

professional relationship between Employee and counsel and an increase in fees and costs. Rule 1.5(a)(6).

Employee's attorney is well known among both the workers' compensation bar and workers' compensation hearing officers. He is an experienced attorney who has successfully represented injured workers for many years. Rule 1.5(a)(7).

All fees in workers' compensation cases are contingent. Employee's attorney's hourly billing rates are appropriate given the contingent nature of representation. Rule 1.5(a)(8).

Goodman's itemized attorney fees are reasonable with the stipulated reduction of 2.5 hours, were necessarily incurred to successfully obtain reemployment benefits for Employee and will fully compensate him for his successful efforts on Employee's behalf. *Rose*. While Employee's medical condition was not novel and the procedural process of this case was neither complex nor novel, Goodman appears to have had no other choice but to request additional attorney fees as his attempts to resolve the case in a more efficient manner were rejected by the Employer multiple times or otherwise unnecessarily delayed. Nothing in this case was outside the ordinary for a typical litigated workers' compensation case. Fees are to be awarded that will ensure competent counsel exist to represent injured workers. *Bignall; Cortay; Arant*. To that end, Employee will be awarded \$460.00 per hour for 25 hours work ( $16.5 - 2.5$  (stipulated reduction)  $+ 11 = 25$ ) for a total of \$11,500. *Bignall; Haile; Rusch*.

Employer opposed the hourly paralegal rate. It contended Employee's paralegal rate should not be more than the amount Employer's counsel is paid for their paralegals' work on workers' compensation cases. Costs are awarded only when an Employee prevails. Therefore, Employer's contention Employee's paralegal's hourly rate should be no more than Employer's counsel's paralegal's hourly rate is rejected. Employer contended the hourly paralegal rate was excessive. However, *Bryant* awarded \$170 and \$200 for the hourly paralegal rate, *Hunter Tate* awarded \$200 per hour, *Dickson* awarded \$260 per hour, and *Vaillancourt* noted former paralegal, now attorney, Bryan Haugstad billed and was previously awarded \$275 per hour for paralegal costs with 10 years' experience as a paralegal. Ms. Reeves has six years' paralegal experience. The \$220 hourly rate is

reasonable. *Rogers & Babler*. Employee will be awarded total costs of \$3,564. 8 AAC 45.180(f)(14).

### CONCLUSION OF LAW

Employee is entitled to full, reasonable attorney fees and costs.

### ORDER

- 1) Employee's April 4, 2024 claim for attorney fees and costs is granted.
- 2) Employer shall pay \$11,500 in attorney fees.
- 3) Employer shall pay \$3,564 in legal costs.
- 4) The total attorney fee and cost award is \$15,064.

Dated in Anchorage, Alaska on July 30, 2025.

### ALASKA WORKERS' COMPENSATION BOARD

/s/  
Shaunita Felder, Designated Chair

/s/  
Sara Faulkner, Member

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

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

### APPEAL PROCEDURES

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

reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

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

### RECONSIDERATION

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

### MODIFICATION

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

### CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of JOSHUA MEISTER, employee / claimant v. PEOPLE READY, INC., employer; AIU INSURANCE CO, insurer / defendants; Case No. 202202427; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on July 30, 2025.

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/s/  
Rochelle Comer, Workers Compensation Technician