ALASKA WORKERS' COMPENSATION BOARD

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

NESTOR VALADEZ, Employee, Claimant, v. SIGNATURE SEAFOODS, INC., Employer, and ALASKA NATIONAL INSURANCE, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202207005 AWCB Decision No. Filed with AWCB Anchorage, Alaska on September 10, 2025

Signature Seafoods, Inc.'s and Alaska National Insurance's (Employer) May 13, 2025 petition to dismiss was heard on August 13, 2025, in Anchorage, Alaska, a date selected on July 10, 2025. A June 24, 2025 hearing request gave rise to this hearing. Nestor Valadez (Employee) did not appear. Attorney Martha Tansik appeared by Zoom and represented Employer. The record closed at the hearing's conclusion on August 13, 2025. The record reopened and then closed on August 15, 2025, when Employee's hearing notice was returned.

ISSUES

Employer contended Employee was given proper notice of the hearing but did not appear. It opposed dismissing its petition and continuing the hearing. Employer requested the hearing proceed without Employee's participation.

As Employee did not appear at the hearing, his position on proceeding is unknown but he is presumed to oppose. An oral order to proceed with the hearing in his absence was issued.

1) **Was the oral order to proceed with the hearing in Employee's absence correct?**

Employer contends Employee failed to file a claim within two years after he had knowledge of the nature of his disability and its relationship to his employment. It requested an order denying Employee's claim for disability and PPI benefits for failing to comply with AS 23.30.105.

Employee did not answer Employer's petition. His position is unknown; it is presumed Employee opposes dismissal of his claim.

2) **Should Employee's claim be barred for failing to claim benefits timely?**

Employer contends Employee failed to request a hearing or additional time to prepare.

Employee did not answer Employer's petition. His position is unknown; it is presumed Employee opposes denial of his claim.

3) **Should Employee's claim be denied for failing to timely request a hearing?**

FINDINGS OF FACT

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

1) On July 20, 2018, Employee injured his left rib and lower back and described the nature of the injury as "fracture rib, swollen bruise cut, lower back pain, traumatized pain and suffering." He described how the injury happened:

> We were backed up cuz the freezer tunnel the racks got stuck so I was a lead for packaging and once the freezer got unstuck I told my freezer guy for me and him to put everything that we had done meaning the fresh fish in trays on racks in the freezer it was like 8 to 10 carts all around the expose fish grinder whole that was suppose to be cover with a screen metal plate so managers supervisors and qc lady were all witnesses and employees I fell in left leg down and what stop me from going any further was a rusted old pipe that cut troug[sic] my rain gear sweater 2 thermos and tainktop[sic] and in the bottom the fish grinder top piece otherwise my leg would've got cut off and maybe drag in their so the rusted pipe save my life

> thank God I have proof of everything that he made me work while injur[sic] and I ask for medical attention and he told me that if I wanted to see a doctor to take my ass home so I waited for about a couple of weeks when we had our only stop to fuel up I quit on them I took the first flight available and came home and went to see a doctor by then the doctor said it was bruise rib which it was still bruise and the cut was healing but I guarantee it was fracture because of the pain I was going trough I couldn't sleep because the movement from the boat and I couldn't lay on my back. (Employee Report of Occupational Injury or Illness to Employer, April 22, 2022).

2) On March 27, 2019, Employee first sought medical care for the July 20, 2018 work injury at the emergency room. He complained of constant left rib pain and rated his pain as an eight out of ten at maximum severity but currently six. Employee also reported back pain. He had a well-healed scar over his left flank. X-ray showed no visible rib abnormality. Employee was diagnosed with a left flank contusion, prescribed Motrin, and directed to follow up with his primary care physician. (William Carpenter, FNP, record, March 27, 2019). He was restricted to modified work with limited bending and minimal use of his lower back. (Work Status, Dameron Hospital Association, March 27, 2019).

3) On April 9, 20219, Employee complained of dull, minimal pain in his left flank for the last 264 days; he rated the pain level as six out of ten. Employee said he was going to put the fish rack in the freezer when he walked into where the rack was and fell with his left leg into a fish grinder, hitting his left rib into a metal bar; it cut his skin through his rain gear and clothes. He reported his length of employment as 90 days to six months and denied any lost work as a result of the work injury and confirmed other sources of employment. The main characteristics of his job included prolonged standing or walking, repetitive use of hands including to keyboard and mouse, and bending, lifting, pushing, or pulling up to 100 pounds. Employee did not seek medical attention until the previous month. The date of maximum medical improvement was September 20, 2018, and he was discharged to full duty with no limitations or restrictions, ratable disability, or need for future medical care. (Gue Engelmann, MD, record, April 9, 2019).

4) On April 18, 2023, Employee sought permanent total disability (PTD) benefits, transportation costs, penalty for late paid interest, a finding of an unfair or frivolous controversion and interest. He provided a mailing address of **** N. Wilson Way, #**, Stockton, CA 95205, a telephone number of (209) ***-1217, and an email address of 19valadex**@gmail.com. Employee described the nature of the injury as:

> I was a lead for the fish processing team so that day they were getting the frozen tunnel son I was told to don't stop the line to keep working so while they finished working on the tunnel we got the green might[sic] to put all the fresh fish in the tunnel on all the rackes[sic] we had finish so I told my freezer guy let's go while I was reaching the first racki[sic] fell in left leg in and rusted pipe sticking out save me from going in any further. That hole was supposed to be covered it was expose I hit with my right rib on that pipe that cut trough[sic] all the clothes I was wearing when the owner comes I tell him I needed to see a doctor he says if I wanted to see a doctor to take my ass home. The following day I could hardly move he goes to my room and tells me I had to work to at least go give my crew directions so I got up and went down their[sic] so the day we stop on Petersburg to fuel up I told him I quit. So I stayed the night in a hotel till then next day I caught a flight back home sto[sic] I can get medical treatment but two weeks had pass so it.

Under "Reason for filing claim," Employee wrote:

> The fact that I requested medical attention and he denied me tells me he wasn't insure insured and the fact that I was seriously hurt and he didn't care all he was worry was that I wouldn't seek medical attention and what if I would've fell into the fish grinder whole I wouldn't of survived I would've left my kinds and family with the pain and suffering that I went through so it's more than just my pain and suffering it's more about safety precautions because what about in the near future if it hasn't happen!! That someone else gets hurt and this owner neglects medical attention to them is not fair so I want justice. My rib till this day when it's cold hurts I feel like it haven't completely heal. (Claim for Workers' Compensation Benefits, April 18, 2023).

5) On May 8, 2023, Employer denied Employee's claim contending it was barred under AS 23.30.100 and AS 23.30.105; it was barred by laches and by law or equity; the work was not the substantial cause of Employee's injury, disability or need for medical treatment after April 2019; Employee's physician opined he was medically stable by September 20, 2018; he had no ratable impairment and no need for future medical treatment; Employee returned to work and denied having any lost time from work; and all known benefits were paid under a maritime claim that Employee failed to prosecute. It served Employee with the answer by first-class mail to his mailing address of record. (Answer to Employee's Workers' Compensation Claim, May 8, 2023). Employer denied PTD benefits; time loss after medical stability on September 20, 2018; PPI benefits, and medical treatment after April 9, 2019, contending no transportation log was ever provided; all benefits due or owed were paid under a maritime claim; there was no evidence Employee was permanently disabled "from what was at most a rib contusion"; Employee's physician opined Employee was medically stable by September 20, 2018, had no ratable

impairment and no need for future medical treatment; Employee returned to work and denied having lost any time from work; and Employee must have a PPI rating to claim PPI benefits. Employer served Employee with the Controversion Notice by certified mail, return receipt requested to his mailing address of record. (Controversion Notice, May 8, 2023).

6) On May 11, 2023, Employee updated his telephone number to (209) ***-5801. (Email, May 11, 2023).

7) On May 17, 2023, Employer served on Employee by certified mail, return receipt requested a letter requesting he sign and return enclosed releases. (Letter, May 17, 2023).

8) On May 23, 2023, Employee and Employer attended a prehearing conference. The Board designee confirmed Employee's contact information and informed the parties that a party is responsible for notifying the Alaska Workers' Compensation Division (Division) and parties of any changes in address or other contact information. The prehearing conference summary stated, "To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the deadline is on/or before **05/08/2025."** It also stated under "3. STATUTE OF LIMITATIONS":

> Employee's claim will be denied unless Employee requests a hearing on (his or her or its) claim, by filing an Affidavit of Readiness for Hearing (ARH) Form 07-6107, within two years of the date the board received the first post-claim controversion. If Employee needs more time for additional discovery prior to filing an ARH, the Employee must file a petition to extend this deadline on or before the date the two years expire. The board received a post-claim controversion on 05/08/2023; therefore, to prevent claim denial, the Employee must either file an ARH or a petition to extend this deadline no later than **05/08/2023**.

The designee confirmed the issues on the claim and explained that medical evidence is necessary to support what he was claiming and noted Employee may file an amended claim and state that he did not intend to file a claim for PTD benefits. The designee wrote, "The EE confirmed receipt of the controversion and stated he understood." The designee also informed Employee:

> The Board designee provided Employee with a list of attorneys who frequently represent injured workers in front of the Board. Should an attorney agree to take this case and the Employee prevails, Alaska workers' compensation statutes and regulations provide for the payment of the Employee's attorney's fees and costs. If Employee's attorney does not prevail at the hearing, the attorney is precluded by regulation from charging more than $300 (plus necessary costs, such as postage, copies, and deposition expenses) total in attorney's fees for representation without

> board approval. (Prehearing Conference Summary, May 23, 2023; emphasis in original).

9) On May 24, 2023, the Division served Employee with the May 23, 2023 prehearing conference summary to his mailing address of record by first-class mail. (Prehearing Conference Summary Served and Envelope, May 24, 2023).

10) On May 25, 2023, Employer emailed a letter to the Division stating:

> Thank you for facilitating our recent pre-hearing. It appears that there is a typographical error in the pre-hearing summary that needs to be corrected. The Statute of Limitations deadline on page two is accidentally listed as 5/8/2023, rather than 5/8/2025.
>
> As Employee is unrepresented, if you would be so kind as to issue a corrected summary, the Employer and Insurer would be most grateful. (Letter, May 25, 2023).

11) On June 1, 2023, the Division issued an amended May 23, 2023 prehearing conference stating:

> This is being issued to amend the 05/23/2023 prehearing summary to reflect the correct statute on[sic] limitation that was added to the summary under discussion on page 2. The deadline should be: **05/08/2025.**
>
> Please see below:
>
> **3. STATUTE OF LIMITATIONS**:
>
> Employee's claim will be denied unless Employee requests a hearing on (his or her or its) claim, by filing an Affidavit of Readiness for Hearing (ARH) Form 07-6107, within two years of the date the board received the first post-claim controversion. If Employee needs more time for additional discovery prior to filing an ARH, the Employee must file a petition to extend this deadline on or before the date the two years expire. The board received a post-claim controversion on 05/08/2023; therefore, to prevent claim denial, the Employee must either file an ARH or a petition to extend this deadline no later than ~~**05/08/2023**~~ **05/08/2025**.
>
> **Everything else in the summary remains the same.** (Amended Prehearing Conference Summary, June 1, 2023; emphasis in the original).

12) On June 2, 2023, the Division mailed Employee the amended May 23, 2023 prehearing conference summary to his mailing address of record by first-class mail. (Prehearing Conference Summary Issued and Envelope, June 2, 2023).

13) On July 6, 2023, Employer denied all benefits, due to Employee's failure to sign and return releases or file a petition for a protective order within 14 days after receiving the written request for releases. It served Employee by certified mail, return receipt requested to his mailing address of record. (Controversion Notice, July 6, 2023).

14) On July 19, 2023, Employer requested an order compelling Employee to sign and return releases. It served Employee by email to his email address of record and by first-class mail to his mailing address of record. (Petition, July 19, 2023).

15) On July 24, 2023, the Division served notice of an August 30, 2023, prehearing conference; Employee was served at his mailing address of record. (Prehearing Conference Notice Served and Envelope, July 24, 2023).

16) On August 30, 2023, Employer attended a prehearing conference. Employee did not attend. The Board designee called Employee's telephone number of record (209) ***-5801 and the number was no longer in service and (209) ***-1217, "which was not a good number either." The Board designee informed the parties that a party is responsible for informing parties of any changes to their contact information. The designee reviewed the releases and found all to be "standard, relevant, and likely to lead to discoverable information," granted Employer's petition to compel, and ordered Employee to sign and return the releases by September 11, 2023. The prehearing conference summary also stated, "To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an . . . [ARH] for hearing or a Petition to extend the deadline is on/or before **05/08/2025."** (Prehearing Conference Summary, August 30, 2023).

17) On August 30, 2023, the Division served Employee with the August 30, 2023 prehearing conference summary to his mailing address of record by first-class mail. (Prehearing Conference Summary Served and Envelope, August 30, 2023).

18) On August 30, 2023, Employee emailed the Division from his email address of record:

> Hello good evening I can't believe till this day I can't find any legal representation it's like all the lawyers from Anchorage been brain wash for my case I can't believe that such state would let this insurance and company get away with such thing I almost lost my life and it's seriously injured that instead of them asking about how I'm doing it's constantly sending me messages about a speedy trial when I was told that I have 2 years to look for any discoveries so why am I still getting attack by ms. Martha I really take this very seriously and very disrespectful because not once has she ask about my well being about my health as an insurance place would do so I guess since I can't get any of the 24 48 lawyers from the list u guys gave me

> I'm guessing that they was sabotaged into not helping me out and they are getting their way I will make this public how the state of Alaska national board treated a Mexican American and it's no place for any American as a worker because they don't care for anyone god bless u win Martha congratulations goodbye I hope u never b get to need help. (Email, August 30, 2023).

19) On September 18, 2023, Employer requested an order dismissing Employee's claim for failure to comply with a discovery order, preventing it from investigating his claim. It served Employee with a copy of the petition to his mailing address of record by first-class mail. (Petition, September 18, 2023).

20) On September 22, 2023, the Division served notice of an October 25, 2023 prehearing conference; Employee was served by first-class mail to his address of record. (Prehearing Conference Notice Served and Envelope, September 22, 2023).

21) On October 19, 2023, Employer requested a hearing be scheduled on its September 18, 2023 petition. It served Employee with a copy of the ARH by first-class mail to his mailing address of record. (Affidavit of Readiness for Hearing, October 19, 2023).

22) On October 25, 2023, Employee and Employer attended the prehearing conference. Employee stated he has the releases and planned on returning them. He provided a new telephone number, (209) ***-8893. Employee was interested in hiring an attorney but had no luck getting one. The designee noted, "while he is looking, he can proceed with his case and comply by attending prehearing, having open communication with the ER and Workers' Compensation, and by reviewing all mail regarding his case." Employee planned on gathering medical records and wanted another medical appointment to follow up. The designee provided Employee with a copy of 8 AAC 45.082(b)-(k). Another prehearing conference was scheduled for November 28, 2023, to ensure Employee signed and returned the releases to Employer. The prehearing conference summary stated, "To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the deadline is on/or before **05/08/2025."** (Prehearing Conference Summary, October 25, 2023).

23) On October 26, 2023, the Division served the October 25, 2023 prehearing conference summary and the notice of the November 28, 2023 prehearing conference; Employee was served by first-class mail to his mailing address of record. (Prehearing Conference Summary Served, Prehearing Conference Notice Served, and Envelope, October 26, 2023).

24) On November 28, 2023, Employer and Employee attended the prehearing conference. Employee provided a new telephone number (209) ***-1990. He had signed and returned the releases to Employer. Employee amended his claim to withdraw his request for PTD benefits and add temporary total disability (TTD) and temporary partial disability (TPD) benefits and medical costs. The designee reminded Employee he needed to provide medical evidence to support any benefits he sought. Employee stated he did not have a note from the doctor that he is unable to work. He said he had medical insurance and "the designee encouraged him to use his medical to get treatment if he needed it" since his benefits were denied. The prehearing conference summary also stated, "To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the deadline is on/or before **05/08/2025."** (Prehearing Conference Summary, November 28, 2023). The Division served the November 28, 2023 prehearing conference summary; Employee was served by first-class mail to his mailing address of record. (Prehearing Conference Summary Served and Envelope, November 28, 2023).

25) On December 1, 2023, Employer denied TTD and TPD benefits, time loss after medical stability on September 20, 2018, PPI benefits, and medical treatment after April 9, 2019. It served Employee by certified mail, return receipt requested to his mailing address of record. (Controversion Notice, December 1, 2023). Employer answered Employee's amended claim from the November 28, 2023 prehearing conference denying the disability and PPI benefits, transportation costs, medical treatment, penalties, interest, and an unfair or frivolous controversion, contending the claim was barred under AS 23.30.100 and AS 23.30.105; it was barred by laches and by law or equity; the work was not the substantial cause of Employee's injury or disability or need for medical treatment after April 2019; Employee's physician opined he was medically stable by September 20, 2018; had no ratable impairment and no need for future medical treatment; Employee returned to work and denied having any lost time from work; and all known benefits were paid under a maritime claim that Employee failed to prosecute. It served Employee with a copy of its answer by first-class mail to his mailing address of record. (Answer to Employee's Workers' Compensation Claim, December 1, 2023).

26) On December 5, 2024, Employer mailed Employee a letter to his mailing address of record by certified mail, return receipt requested stating:

> As you know, we have been retained by Signature Seafoods, Inc., and Alaska National Insurance Company in connection with your workers' compensation claim. Thank you for signing and returning the releases we previously mailed to you. Unfortunately, the two Authorizations to Release Medical Information were not returned. Enclosed are the two Authorizations to Release Medical Information, again. Please sign and return them to me within 14 days of the date of this letter. (Letter, December 5, 2024).

27) On July 31, 2024, Employer noticed Employee with an August 12, 2024 deposition. It served Employee by email to his email address of record and by email to his email address of record. (Notice of Taking Videotaped Deposition, July 31, 2024).

28) On August 12, 2024, Employee testified his current telephone number was (209) ***-4699 and his current address was **** N. Wilson Way, #**, Stockton, CA 95205. (Deposition of Nestor Daniel Valadez at 8 and 25, August 12, 2024). He obtained a high school diploma from Treasure Island Job Corps in San Francisco, California in 2005 and he was presently taking college classes at the University of Phoenix online in computer science technology. (*Id*. at 12). He quit his job with Employer because he needed medical attention and his employer did not want to provide it. (*Id*. at 46). When Employee fell, he hit the rusty pipe and it ripped through two tank tops, two sweaters and his raincoat and gave him a big cut and bruise. (*Id*. at 48-49). His low-back also hurt, he had a big scrape on his leg, and a bruise on his stomach. (*Id*. at 49-50). Employee could not sleep that night from the motion of the boat and " a lot of pain." (*Id*. at 50). The owner told him he had to work or he had to go home so Employee got up and told his coworkers what to do. (*Id*. at 50-51). When the owner stopped to fill up the boat, Employee told him he quit because he needed to see a doctor, he got off the boat and he went home. (*Id*. at 51-52). He got a hotel and then flew out the next day from Ketchikan to Washington, then to Oakland. (*Id*. at 52). A doctor has never told him he has a permanent impairment from the work injury. (*Id*.). Employee got an attorney and he was supposed to file a claim for "that fisherman thing" but he sent Employee a paper telling me he was no longer responsible for anything. (*Id*. at 53-54). When asked, "Is there any point in time since 2018 when you were significantly less restricted, that you were better than you are now?" Employee responded, "No." (*Id*. at 67). Employee worked for YRC Freight from November 2020 through April 2021. (*Id*. at 70). He stopped working for them when they filed for bankruptcy. (*Id*. at 70-71). Employee worked loading and unloading pallets using a forklift, for four hours a shift, then he had light duties, sweeping, cleaning, and wiping things down. (*Id*. at 71-72). He worked for XPO Logistics on call in 2020; it was a warehouse for Amazon, and he

was loading and unloading with a forklift. (*Id*. 73-74). Employee left XPO to work for YRC. (*Id*. at 76). He was on unemployment benefits from 2019 to 2020. (*Id*.). Employee worked light-duty first as a forklift operator, than as an Order Selector for Thyssenkrupp in Livermore, CA for a few months in 2019, "from January until March," but the "commute was just killing me," so he put in two weeks' notice. (*Id*. at 77-78). He applied for Social Security Disability on November 10, 2022, and was denied; he appealed on March 21, 2024. (*Id*. at 93-94). Employee worked for Super Store Industries for three or four months right after Thyssenkrupp as an order selector and used an electric pallet jack. (*Id*. at 101-102).

29) On May 13, 2025, Employer requested an order dismissing Employee's claims to time loss benefits for failure to comply with AS 23.30.105(a) and AS 23.30.110(c). It contended Employee failed to timely request a hearing by May 8, 2025, despite having notice by the Board of that deadline. Employer served Employee with the petition by first-class mail to his mailing address of record. (Petition, May 13, 2025).

30) On May 16, 2025, the Division served notice of a June 24, 2025 prehearing conference; Employee was served by first-class mail to his mailing address of record. (Prehearing Conference Notice Served and Envelope, May 16, 2025).

31) On June 24, 2025, Employer attended the prehearing conference. Employee did not attend. The Board designee called Employee's telephone number of record (209) ***-1990 and left a message to contact the Board to attend the prehearing conference and the number provided on his claim which stated it was an incorrect number. Another pre-hearing conference was scheduled for July 10, 2025. The prehearing conference summary stated, "To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the deadline is on/or before **05/08/2025."** (Prehearing Conference Summary, June 24, 2025).

32) On June 24, 2025, Employer requested a hearing on an undated petition. It served Employee with the hearing request by email to his email address of record and by first-class mail to his mailing address of record. (ARH, June 24, 2025).

33) On June 25, 2025, the Division served the June 24, 2025 prehearing conference summary and the July 10, 2025 prehearing conference notice; Employee was served by first-class mail to his address of record. (Prehearing Conference Summary Served, Prehearing Conference Notice Served, and Envelope, June 25, 2025).

34) On July 10, 2025, Employer attended the prehearing conference. Employee did not attend. The Board designee called Employee at his telephone number of record, (209) ***-1990 and left a message him to contact the Board to attend the prehearing conference. The voicemail message "mentioned a company," so the designee was "unsure" if that was still Employee's number. The designee also called Employee at (209) ***-8893 and left a message. The designee scheduled a hearing on Employer's May 13, 2025 petition to dismiss under AS 23.30.105 and AS 23.30.110(c) on August 13, 2025, and ordered the parties "to serve and file witness lists and hearing briefs by close of business on **08/06/2025** and to serve and file evidence by close of business on **07/25/2025** in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120." (Prehearing Conference Summary, July 10, 2025; emphasis in original).

35) On July 11, 2025, the Division served the July 10, 2025 prehearing conference summary and hearing notice for the August 13, 2025 hearing; Employee was served by certified mail, return receipt requested to his mailing address of record. The hearing notice provides the Division's physical address and telephone number to attend the hearing. USPS tracking showed notice of the certified mail was left at Employee's address of record on July 15, 2025, it was available for pick up the next day, a reminder was issued to schedule redelivery of the certified mail, and it was returned to sender as "unclaimed" on August 7, 2025. (Prehearing Conference Summary Served, Hearing Notice Served, Hearing Notice, and Envelope with Green Card, July 11, 2025; United States Postal Service (USPS) Tracking Website 9589071052702375328113).

36) On July 28, 2025, Employer filed hearing evidence including a Washington Labor & Industries file; Employee's deposition transcript; Employee's Social Security Earnings Records; and a Withdrawal of Counsel for a maritime case. (Employer's Hearing Evidence, July 28, 2025).

37) On August 6, 2025, Employer filed a hearing brief, contending Employee failed to comply with AS 23.30.105 or AS 23.30.110(c). It contended Employee "has at all time articulated that he clearly knew of his injury and its impact on his ability to work at the time it occurred." He testified at deposition it was immediately evident he suffered an injury and that he was in a great deal of pain after the accident and could not work due to the pain. Because Employee had actual knowledge of his reported disability on the date of injury, Employer contended the two-year period to file a claim began to run on July 20, 2018. Employer contended Employee was required to have filed a claim by July 20, 2020, under AS 23.30.105. It contended Employee filed claims years after the two-year deadline. Employer contended the purpose of AS 23.30.105's limitation on

filing a claim is to protect the employer against claims too old to be successfully investigated and defended. It contended Employee's failure to file a claim by the statutory deadline cannot be excused by an argument that the employer was not harmed by the lateness of the filing. Employer contended AS 23.30.105 "carries a conclusive presumption that the defendant is prejudiced by reason of the enhanced difficulty of preparing a case." It requested an order denying Employee's claim for disability and PPI benefits for failing to comply with AS 23.30.105. Employer contended Employee failed to actually or substantially comply with the requirements of AS 23.30.110(c) and his claim must be dismissed as a matter of law. It contended that the Board informed Employee of the actual specific date by which he must file an ARH in four prehearing conference summaries. Employer contended it also notified Employee of the deadline by Controversion Notice three times. It contended Employee failed to file anything, either an ARH or a request for additional time, and "simply has taken no action to prosecute his claim." Employer contended Employee failed to establish substantial evidence of a legal excuse, such as mental incapacity, incompetence, or equitable estoppel against a governmental agency by a self-represented claimant. It requested an order dismissing Employee's claim for failure to comply with AS 23.30.110(c). (Employer's Hearing Brief in Support of Petition to Dismiss, August 6, 2023).

38) On August 12, 2025, Division staff emailed Employee, to his email address of record, and Employer, Zoom link instructions to provide both the opportunity to attend the hearing by video. (Email, August 12, 2025).

39) On August 13, 2025, when Employee did not appear, the hearing chair called Employee's telephone number of record and the number provided at his deposition and left a message requesting a call back to participate in the hearing. (Record).

40) An oral order to proceed with the hearing in Employee's absence was issued. (Record).

41) At hearing, Employer renewed its arguments from its brief. It contended Employee initially pursued a Washington State L&I and maritime claim which was rejected due to a missing physician report. Employer contended his counsel withdrew after the April 9, 2019 medical record. It contended Employee reported the injury to the Division three years later and then another year later, Employee filed a claim, which it controverted. Employer contended medical costs were pain under a 2019 maritime claim. It contended Employee's claim should be dismissed in its entirety under both AS 23.30.105 and AS 23.30.110(c). (Record).

42) On August 15, 2025, the Division received the certified mail sent to Employee that included the July 10, 2025 prehearing conference summary and the hearing notice for the August 13, 2025 hearing. It was returned as "Unclaimed, Unable to Forward." (Envelope, August 15, 2025).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
>
> (1) this chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute; . . .

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

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the employer at a prehearing conference provided a §110(c) deadline that was about two weeks earlier than the accurate date. Division staff failed to correct this error. The Court found the uncorrected error may have dissuaded the injured worker to file a hearing request timely, thinking the deadline had already passed when it had not. *Bohlmann* stated based on the record, had the Division corrected this wrong date, the injured worker likely would have filed a hearing request timely as he had done with his other pleadings. The Court said:

> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

The former §105(a) version applicable to Employee's alleged August 15, 2018 injury stated:

> **AS 23.30.105. Time for filing of claims.** (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years

> after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that, if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.
>
> (b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.
>
> (c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or, in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age.

Morrison-Knudsen Co. v. Vereen, 414 P.2d 536 (Alaska 1966) said AS 23.30.105's purpose is to ensure employers have a reasonable, timely opportunity to investigate and defend against claims. *W.R. Grasle Co. v. Alaska Workmen's Compensation Board*, 517 P.2d 999, 1002 (Alaska 1974) held:

> A disability which becomes apparent immediately upon the occurrence of some mishap will be more quickly barred by the two-year limitation; . . .

Hammer v. City of Fairbanks, 953 P.2d 500, 505 (Alaska 1998) held the word "knowledge" was not a "term of art." In context, it meant no more than "awareness, information, or notice of the injury. . . ." *Egemo v. Egemo Constr. Co.*, 998 P.2d 434, 441 (Alaska 2000) concluded, "In order for the statute of limitations under former AS 23.30.105(a) to begin running, the claimant must know of the disability and its relationship to employment and must actually be disabled by that disability." A claim is not "ripe," requiring filing under AS 23.30.105(a) until the work injury causes wage loss. *Id.* at 438-439. *Collins v. Arctic Builders, Inc.*, 31 P.3d 1286, 1289 (Alaska 2001) noted AS 23.30.105 required a claimant to file his claim within two years of his actual or

chargeable knowledge of his disability and its relationship to his employment. *Collins* held the injured worker had actual knowledge of his work-related asbestos injury when a physician told him his work-related asbestos exposure with his employer was probably the cause of his disease. When an employee knew of his disability is a factual question reviewed under the substantial evidence standard. *Id.* Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Alaska Housing Authority v. Sullivan*, 518 P.2d 759, 760-761 (Alaska 1964).

Murphy v. Fairbanks North Star Borough, 494 P.3d 556, 563 (Alaska 2021) held, "Considering the statutory text in its entirety, the legislative history, and the policies underlying the Act, we conclude that the legislature intended the limitations period in AS 23.30.105(a) to apply to impairment claims, just as it applies to claims for other 'indemnity benefits' -- cash benefits that compensate employees for losses and expenses other than the cost of medical treatment." The Court reasoned that AS 23.30.105(a) applies to indemnity benefits, PPI benefits are in the indemnity category, and the legislature thus intended PPI benefits to be subject to the same statute of limitations for filing a claim as other indemnity benefits. Moreover, *Murphy* continued:

> Claims for medical treatment are governed by a different limitations framework. AS 23.30.095(a); *see also Egemo v. Egemo Constr. Co.*, 998 P.2d 434, 440 (Alaska 2000) ("[N]ew medical treatment entitles a worker to restart the statute of limitations for medical benefits."). New medical treatment that results in wage loss allows a new disability claim that restarts the statute of limitations in AS 23.30.105(a). *Id.* at 439.

In *Larson's Workers' Compensation Law*, Prof. Larson discussed issues to consider in determining whether a limitations statute for filing a workers' compensation claim has begun to run:

> The time period for notice of claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of his injury or disease. (7 Arthur Larson & Lex Larson, *Larson's Worker's Compensation Law* §126.05[1], at 126-18 (2001)).

> **AS 23.30.110. Procedure on claims**. . . .
> . . . .
>
> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary

> discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied. . . .

Certain "legal" grounds may excuse noncompliance with AS 23.30.110(c), such as mental incapacity or incompetence, and equitable estoppel against a governmental agency by a self-represented claimant. *Tonoian v. Pinkerton Security,* AWCAC Dec. No. 029 (January 30, 2007).

AS 23.30.110(c) requires an injured worker to timely prosecute a claim once the employer controverts. *Jonathan v. Doyon Drilling, Inc*., 890 P.2d 1121, 1124 (Alaska 1995). *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-13 (Alaska 1996) noted a statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it."

Citing *Jonathon, Tipton* held dismissal under AS 23.30.110(c) does not prevent the employee from applying for different benefits, or raising other claims, based upon a given injury. *Wagner v. Stuckagain Heights*, 926 P.2d 456, 459 n. 7 (Alaska 1996) said *Tipton* distinguished between dismissal of a specific claim from dismissal of the entire case, stating AS 23.30.110(c) is not a comprehensive "no progress rule." Over the lifetime of a workers' compensation case, many claims may be filed as new disablements or medical treatments occur. *Egemo* held, "new medical treatment entitles a worker to restart the statute of limitations for medical benefits."

In *Bailey v. Texas Instruments*, 111 P.3d 321 (Alaska 2005), the parties reached a settlement, but left the employee's right to claim, and the employer's right to contest, future medical claims unsettled. Following the settlement, the employer continued paying for the employee's medical care and medication for years. Eventually, several pharmacies submitted bills to the employer for the employee's prescriptions. The employer controverted those prescriptions relying on an EME physician who opined the employee no longer needed certain medications.

The employee in *Bailey* contested the medication denials and filed his first relevant claim in 1997 for these medications; his employer controverted it. Not quite two years after the controversion, the employee filed another claim for the same 1997 pharmacy bills; the employer controverted the

second claim in October 1999. In May 2001, the employee filed his third claim, this time for medical expenses incurred since 1997; the employer controverted this claim as well. Fourteen months later in July 2002, the employee requested a hearing. After a hearing, the Board dismissed all three claims, finding the 1999 and 2001 claims "merged" with his 1997 claim and held all three time barred under AS 23.30.110(c), because the employee failed to request a hearing within two years of the date the employer controverted the 1997 claim.

Bailey affirmed the Board's denial of the 1997 and 1999 claims because they requested payment for the same pharmacy bills from 1997 and the employee failed to request a hearing timely even after given additional time. However, as to the third claim, *Bailey* stated:

> Bailey's 2001 claim, in contrast, should not have been dismissed. The 2001 claim sought compensation for medical expenses -- physician services and prescription medications -- that were incurred after Bailey filed his 1997 claim. Bailey did not simply re-file the 1997 claim in 2001; rather, he sought compensation for different expenses. Because the 2001 claim was independent of the 1997 and 1999 claim, and because Bailey requested a hearing less than two years after Geophysical controverted his 2001 claim, the claim is not time-barred. *Id*. at 324-25.

Bailey noted the employee sought the same type of medication in each claim. It also noted the EME physician on which the employer had relied to controvert the medications never stated the employee's medications were "categorically inappropriate" or that the employee would "never again need to use them in the future." *Bailey* held dismissal under AS 23.30.110(c) "might have a preclusive effect in some situations." Nonetheless, it held the employer's success in controverting the 1997 pharmacy bills did not preclude the employee from filing a later claim for medical costs incurred after that dismissal. He had reserved his right to seek future medical care through his previous settlement agreement, and the employer had reserved its right to contest those claims as they were filed. *Id*. at 325.

In *Providence Health System v. Hessel*, AWCAC Dec. No. 131 (March 24, 2010), the Commission held AS 23.30.110(c)'s objective is not for a claimant to "generally pursue" a claim; it is to bring it to a hearing so speed and efficiency goals in Board proceedings are met. But the claimant bears the burden to establish with substantial evidence a legal excuse from the AS 23.30.110(c) statutory

deadline. A claimant bearing the burden of proof must "induce a belief" in the factfinders' minds that the facts being asserted are probably true *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The Court in *Kim v. Alyeska Seafoods, Inc*., 197 P.3d 193, 196-99 (Alaska 2008) said:

> The first and last sentences of AS 23.30.110(c) govern the manner by which hearings are requested before the Board and the consequences of failure to prosecute a claim:
>
> > Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied (citation omitted).
>
> The first sentence of the subsection sets out prerequisites for scheduling a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing (citation omitted). The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if "the employee does not request a hearing within two years" of controversion, "the claim is denied" (citation omitted). The Commission recognized that "[t]he lack of reference to the affidavit in the last sentence of section 110(c), coupled with the use of the verb 'request,' hints that filing a hearing request without an affidavit will toll the time-bar." The Commission nonetheless held that a Board regulation requiring an affidavit to request a hearing was a reasonable interpretation of subsection .110(c) and that the Board could reasonably require an affidavit to toll the time-bar of subsection .110(c) (footnote omitted). But because a statutory dismissal results from failing to *request* a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar (italics in original). We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory.
>
> Subsection .110(c) is a procedural statute that "sets up the legal machinery through which a right is processed" and "directs the claimant to take certain action following controversion" (citation omitted). A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then "substantial compliance is acceptable absent significant prejudice to the other party" (citation omitted). . . .
>
> . . . The first sentence of the statute directs a party to file a request for a hearing with an affidavit of readiness to schedule a hearing, but it does not say what a party or the Board should not do. The last sentence of the subsection also gives an affirmative directive, rather than a prohibition, simply stating that a claim is denied

> if the employee does not request a hearing within two years following a notice of controversion.
> . . . .
>
> Finally, this case aptly demonstrates the serious consequences of a conclusion that the affidavit requirement is a mandatory component of a request for a future hearing -- a party who wants to request a future hearing but is for legitimate reasons unable to truthfully state readiness for an immediate hearing, faces denial of workers' compensation benefits.
> . . . .
>
> In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything (footnote omitted). A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance (footnote omitted). We construe subsection .110(c) to require filing a request for hearing within two years of the date of the employer's controversion of a claim. If within that two-year period the claimant is unable to file a truthful affidavit stating that he or she actually is ready for an immediate hearing, as was the case here, the claimant must inform the Board of the reasons for the inability to do so and request additional time to prepare for the hearing. Filing the hearing request and the request for additional time to prepare for the hearing constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim (footnote omitted). . . .

Pruitt v. Providence Extended Care, 297 P.3d 891, 985 (Alaska 2013), cited *Kim*'s holding, but also said "we did 'not suggest that a claimant can simply ignore the statutory deadline and fail to file anything.'" *Pruitt* said the claimant in that case "did not file anything indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired." *Roberge v. ASRC Construction Holding Co.*, AWCAC Dec. No. 19-001 (September 24, 2019) said, "the idea of a hearing not being held on the merits of a claim is strongly disfavored by the Court and the Board has an obligation to determine if there is a way around the running of the .110(c) defense." *Narcisse v. Trident Seafoods Corp.*, AWCAC Dec. No. 242 (January 11, 2018) stated the two-year period is tolled when "some action" by the employee shows a need for additional time before requesting a hearing, and a request for an Board medical exam is such action.

> **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 . . . is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

> **8 AAC 45.050. Pleadings.** (a) A person may start a proceeding before the board by filing a written claim or petition.
> . . . .
>
> (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. . . .
>
> **8 AAC 45.060. Service**. . . .
> . . . .
>
> (b) . . . Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. Service by mail is complete when deposited in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.
> . . . .
>
> (f) Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address.
>
> **8 AAC 45.063. 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. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. . . .
>
> **8 AAC 45.070. Hearings.** (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.
> . . . .

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

(1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the claim or petition;
(2) dismiss the claim or petition without prejudice; or

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

8 AAC 45.120. Evidence. (a) . . . Except as provided in this subsection and 8 AAC 45.112, a party who wants to present a witness's testimony by deposition must file a transcript of the deposition with the board at least two working days before the hearing. . . .

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

(i) If a hearing is scheduled on less than 20 days' notice or if a document is received by the board less than 20 days before hearing, the board will rely upon that document only if the parties expressly waive the right to cross-examination or if the board determines the document is admissible under a hearsay exception of the Alaska Rules of Evidence.

8 AAC 45.074. Continuances and cancellations. . . . (b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;
(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;
(C) a party, a representative of a party, or a material witness becomes ill or dies;

> (D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;
> . . . .
> (N) the board determines that despite a party's due diligence; irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

ANALYSIS

1) Was the oral order to proceed with the hearing in Employee's absence correct?

Due process and fairness requires parties to have adequate hearing notice. AS 23.30.001(4). AS 23.30.110(c) requires each party to have at least 10 days' notice of the hearing, either personally or by certified mail. Employee last updated his address with the Division on April 18, 2023. On July 11, 2025, the Division served Employee with the August 13, 2025, hearing notice by certified mail, return receipt requested to his address of record with more than 10 days' notice. The Division had not received the hearing notice as returned before the hearing. USPS tracking showed notice of the certified mail was left at the address of record on July 15, 2025, was available for pick up the next day, a reminder was issued to schedule redelivery of the certified mail, and it was returned to sender as "unclaimed" on August 7, 2025. The Division received it on August 15, 2025. Because the certified mail was properly served on Employee at his mailing address of record, service of the hearing notice was complete. AS 23.30.110(c); 8 AAC 45.060(b), (f).

Division staff emailed Employee Zoom link instructions on August 12, 2025, to provide him the opportunity to attend the hearing by video. Employee last updated his telephone number of record on November 28, 2023, at the prehearing conference he attended. The chair attempted to contact Employee during the hearing by calling his telephone number of record and leaving a message and by calling the telephone number he provided at the August 12, 2024 deposition and leaving a message. He did not call back to attend the hearing. Employee was provided adequate notice of the hearing and additional efforts were made to notify Employee by email and telephone of the hearing. He was afforded due process and the opportunity to be heard and for his arguments and evidence to be fairly considered. AS 23.30.001(4); AS 23.30.135(a); *Rogers & Babler*.

When a party was served notice of the hearing and does not appear, the panel must determine the appropriate action. 8 AAC 45.070(f). The preferred action is for the panel to proceed with the

hearing in Employee's absence. 8 AAC 45.070(f)(1). Dismissing Employer's May 13, 2025 petition to dismiss Employee's claim without prejudice, the second option, would penalize Employer for Employee's failure to appear. 8 AAC 45.070(f)(2). The final choice is to adjourn, postpone, or continue the hearing, which Employer opposed. 8 AAC 45.070(f)(3).

Hearings will be held at the time and place fixed by notice served and continuances may only be granted in accordance with the Alaska Workers' Compensation Act (Act). 8 AAC 45.070(a). Continuances are not favored and will not be routinely granted. 8 AAC 45.074(b). "Good cause" is required to grant a continuance and the law provides different situations that constitute good cause. 8 AAC 45.074(b)(1).

Employee did not appear for the hearing; it is unknown why he was unavailable. There was not sufficient evidence to merit a continuance under 8 AAC 45.074(b)(1)(B), (C), (D). Good cause for a continuance exists when despite a party's due diligence, they may suffer irreparable harm if the continuance is not granted. 8 AAC 45.074(b)(1)(N). There is no evidence regarding Employee's diligence respecting the hearing. Employee did not answer Employer's May 13, 2025 petition to dismiss or oppose its June 24, 2025 ARH; he did not attend June 24, 2025 prehearing conference, after notice of the prehearing conference had been properly served on Employee on May 16, 2025 by first-class mail to his mailing address of record. Another prehearing conference was scheduled for July 10, 2025, because Employer planned on requesting a hearing on its May 3, 2025 petition. On July 25, 2025, Division staff served Employee notice of the July 10, 2025 prehearing conference and the June 24, 2025 prehearing conference summary to his mailing address of record by first-class mail. Employee did not attend the July 10, 2025 prehearing conference where the designee scheduled a hearing on Employer's May 13, 2025 petition and set deadlines for filing evidence and a hearing brief. The July 10, 2025 prehearing conference summary was properly served on Employee by certified mail, along with the August 13, 2025 hearing notice on July 11, 2025. Thus, there was not sufficient evidence to merit a continuance under 8 AAC 45.074(b)(1)(N). Therefore, there was not sufficient evidence to merit a continuance under 8 AAC 45.074(b). The oral order to proceed with the August 13, 2025 hearing in Employee's absence was correct. 8 AAC 45.070(a), (f)(1).

2) Should Employee's claim be barred for failing to claim benefits timely?

Employer requests an order denying Employee's claim for disability and PPI benefits for failing to comply with AS 23.30.105. AS 23.30.105(a) acts as a "bar" to a claim for compensation for "disability" unless a claim for it is filed within two years after Employee had knowledge of the nature of his disability, its relationship to his employment, and "after disablement." PPI benefits are also covered by AS 23.30.105(a) statute of limitations because they, like disability payments, are considered "indemnity benefits." *Murphy*. This section ensures that employers have a reasonable, timely opportunity to investigate and defend against claims. *Vereen*. Employer has the burden to prove Employee failed to file his claim timely. *Egemo*.

Employee sought PTD benefits in his April 19, 2023 claim. Then, on November 28, 2023, Employee amended his claim to withdraw his request for PTD benefits and add TTD and TPD benefits. While Employer first denied PPI benefits on May 8, 2023, Employee never claimed PPI benefits. Therefore, this decision will address TTD and TPD benefits, not PPI benefits.

Before the defense can be considered, it must be raised and all parties given an opportunity to respond at the first hearing on Employee's claim. AS 23.30.105(b). This requirement is met. Employer first raised the defense in its May 8, 2023 controversion and answer, after Employee first sought PTD benefits on April 18, 2023. It raised it again on December 1, 2023, in another controversion and answer after Employee amended his claim on November 28, 2023. The August 13, 2025 hearing was the first in Employee's case and both parties were given the opportunity to be heard. AS 23.30.105(b).

The limitations statute begins to run only when the injured worker (1) knows of the disability, (2) knows of its relationship to the employment, and (3) is actually disabled. *Egemo*. The first step in determining if Employee's TTD and TPD claims are barred under AS 23.30.105(a) is to determine when the two-year clock began to run for the indemnity benefits he claimed. Employer has never paid Employee disability benefits under the Act. Employee did not specify for which period or periods he sought TPD and TTD benefits on his claim.

Knowledge means "awareness, information, or notice of the injury." *Hammer*. Disability means incapacitation due to injury to earn the wages which Employee was receiving when he was allegedly injured. AS 23.30.395(16). His education, intelligence, and experience must be considered when deciding when he knew or should have known his disability's nature and its relation to his employment. *W.R. Grasle Co.* Employee graduated high school in 2005 and had taken some college courses. He alleged in his July 20, 2018 claim that he fell and struck a pipe on his right side, sustaining injuries to his torso. Employee testified at deposition his ribs hurt immediately and he sustained contusions and wounds due to falling and striking the pipe. He had difficulty sleeping that night due to pain, and the next day he tried to work by giving his coworkers verbal instructions, but he quit to obtain medical treatment for the work injury. Therefore, he knew immediately he was injured at work on July 20, 2018, and he could not perform his job duties on July 21, 2018 when he first began losing wages. *Egemo*; *Hammer*; *W.R. Grasle Co.*; *Sullivan*; *Rogers & Babler*.

New medical treatment recommendations may restart the AS 23.30.105(a) statute of limitations for indemnity benefits. *Murphy*. Although Employee quit to seek medical treatment for the work injury, he did not obtain medical treatment until over eight months later, on March 27, 2019, when he was diagnosed with a left flank contusion. No physician in the record restricted Employee from working entirely. He was placed on modified work on March 27, 2019 for the work injury and cleared to return to full duty work on April 9, 2019, when he denied any lost worktime as a result of the work injury and confirmed other sources of employment. He testified at deposition that he worked for Thyssenkrupp from January through March 2019, applied for unemployment for some time 2019 and 2020, worked for XPO Logistics in 2020, worked for YRC Freight from November 2020 through April 2021, and he applied for Social Security Disability benefits on November 10, 2022 and he appealed its denial on March 21, 2024. Based on Employee's testimony and the medical record, Employee clearly sought TTD and TPD benefits for at least two time periods: (1) from July 21, 2018 through December 2018 since he began working for Thyssenkrupp January 2019 and (2) from May 1, 2021, after he stopped working for YRC on April 30, 2021, and then he applied for SSD benefits later in November 2022. It is unknown whether Employee sought TPD and TTD benefits in his claim for periods after the work injury but before April 30, 2021 when he stopped working for YRC when he worked intermittently and received unemployment benefits.

Two years after July 21, 2018, when the first period of disablement began, was July 21, 2020. AS 23.30.105(a)'s two-year limitation ended on July 21, 2020. *Collins*. Employee filed his claim on April 18, 2023, more than two years after he knew his work injury caused him to miss work. The first period of TTD and TPD benefits is barred under AS 23.30.105(a). *Id*. Two years after May 1, 2021, when the second period of disablement may have begun, was May 2, 2023, when AS 23.30.105(a)'s two-year ended had Employee produced medical evidence demonstrating new medical treatment resulting in wage loss for that time period. *Collins*; *Murphy*. Employee filed his claim on April 18, 2023, less than two years after he knew his work injury caused him to miss work. The second period of TTD and TPD benefits is not barred under AS 23.30.105(a). *Id.* Two years before Employee's April 18, 2023 claim was April 18, 2021. If Employee's April 18, 2023 claim sought TPD and TTD benefits for periods after the work injury but before April 18, 2021, assuming he had produced medical evidence demonstrating new medical treatment resulted in wage loss for that time period, TTD and TPD benefits would barred under AS 23.30.105(a) prior to April 18, 2021. Employer's petition to dismiss will be granted in part. *Id*. Employee's claim for TPD and TTD benefits from July 21, 2018 through December 31, 2018, and his claim for TPD and TTD benefits before April 18, 2021, will be barred under AS 23.30.105(a); his claim for TPD and TTD benefits beginning May 1, 2021, will not be barred under AS 23.30.105(a).

3) Should Employee's claim be denied for failing to timely request a hearing?

Employer contended Employee's claim should be dismissed for failing to request a hearing or additional time. Strict compliance is not required. *Kim*. However, a claimant may not ignore the statutory deadline and fail to file anything. *Pruitt*. The law required Employee to prosecute his claim timely once Employer controverted it. *Jonathan*. Statute of limitations-style defenses are "generally disfavored," and neither the law nor the facts should be twisted to aid them. *Tipton*; *Roberge*. The panel has an obligation to determine if there is a way around the AS 23.30.110(c) defense as hearings on the merits are required except where otherwise provided by statute. *Roberge*; AS 23.30.001(2). Employee has the burden to establish with substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline. *Hessel*. The two-year period was tolled only if Employee took "some action" showing his need for additional time before requesting a hearing. *Narcisse*.

Employee was informed five times by Division staff of the AS 23.30.110(c) deadline. Employee was informed of the deadline at the first prehearing conference held after he filed his claim, on May 23, 2023; and he confirmed receiving Employer's May 8, 2023 controversion notice and stated he understood. On June 1, 2023, due to a typographical error on the first prehearing conference summary and Employer's request for correction, the designee issued a corrected May 23, 2023 prehearing conference summary providing the deadline again. Employee did not attend second prehearing conference on August 30, 2023, but the summary included the AS 23.30.110(c) deadline. Employee sent an email to the Division that same day stating he could not find an attorney willing to take his case and he was "told I that I have 2 years to look for any discoveries." On October 25, 2023 and November 28, 2023, Employee attended two prehearing conferences and the summaries for those prehearing conferences also included the deadline. All the prehearing conference summaries were served on Employee at his mailing address of record. Employee was informed of the AS 23.30.110(c) deadline and he knew or should have known he had to request a hearing. Employee has not to date orally or in writing requested a hearing, requested more time to request a hearing, or filed an ARH on his claim. Therefore, he has not strictly complied with his duty to request a hearing timely or ask for more time to request a hearing after Employer controverted his claim. AS 23.30.110(c); *Kim*.

In the August 30, 2023 email and at the October 23, 2023 prehearing conference, Employee shared his difficulty in finding an attorney to take his case. However, he did not request additional time to request a hearing. He demonstrated he knew of the two-year deadline in the August 30, 2023 email and did not file anything suggesting he needed more time to prepare for a hearing. *Narcisse*. Employee did nothing to ask for more time or to request a hearing. He did not substantially comply with AS 23.30.110(c); he was noncompliant. *Kim*; *Pruitt*.

Certain "legal" grounds may excuse noncompliance with AS 233.30.110(c), including mental incapacity, incompetence, or equitable estoppel against the Division. *Tonoian*. There is nothing in the record demonstrating Employee was mentally incapacitated or incompetent. Neither mental incapacity nor incompetence will excuse Employee's noncompliance with AS 23.30.110(c). *Id*.

Division staff provided Employee with one date for his AS 23.30.110(c) deadline, May 8, 2025, in all prehearing conference summaries issued in his case. The date provided was incorrect. Employee actually had until Monday, May 12, 2025, to request a hearing because Employer served the May 8, 2023, controversion notice on Employee by first-class mail and two years and three days after fell on Sunday, May 11, 2025, which moved the deadline to Monday, May 12, 2025. AS 23.30.110(c); *Kim*; 8 AAC 45.060(b); 8 AAC 45.063(a). He had until May 12, 2025, to either ask for a hearing, request more time to ask for one, file an ARH, or take "some action" reasonably suggesting he needed more time to request a hearing. *Id*. Division's staff provided a deadline date which was four days shorter than the actual deadline. The Division satisfied its duty to Employee to inform him how to preserve his claim. *Bohlmann*. Employee's last contact with the Division was November 28, 2023, when he attended a prehearing conference; then he attended his August 12, 2024 deposition. His August 30, 2023 email indicated he was considering abandoning his claim. Employee's telephone number changed at least twice and he did not update his telephone number with the Division. He also failed to pick up his certified mail. There is no evidence the designee's failure to give him the correct date affected Employee's ability or willingness to request a hearing or seek more time to request one. Employee did nothing on or before May 12, 2025, to ask for more time or to request a hearing. He failed to strictly or substantially comply with AS 23.30.110(c) and failed to show a legal reason to excuse his noncompliance. *Tonoian*; *Saxton*. Employee filed one claim on April 18, 2023, and amended it on November 28, 2023. 8 AAC 45.050(e). His amended April 18, 2023 claim will be denied under AS 23.30.110(c).

CONCLUSIONS OF LAW

1) The oral order to proceed with the hearing in Employee's absence was correct.
2) Some of Employee's claim should be barred for failing to claim benefits timely.
3) Employee's claim should be denied for failing to timely request a hearing.

ORDER

1) Employer's May 13, 2025 petition to dismiss is granted in part and denied in part.

2) Employee's April 18, 2023 amended claim for TPD and TTD benefits from July 21, 2018 through December 31, 2018 and his claim for TPD and TTD benefits before April 18, 2021 will

be barred under AS 23.30.105(a); his claim for TPD and TTD benefits from May 1, 2021 is not barred under AS 23.30.105(a).

3) Employee's April 18, 2023 amended claim is denied under AS 23.30.110(c).

Dated in Anchorage, Alaska on September 10, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Randy Beltz, Member

unavailable for signature
Bronson Frye, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Nestor Valadez, employee / claimant v. Signature Seafoods, Inc., employer; Alaska National Insurance, insurer / defendants; Case No. 202207005; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on September 10, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician