ALASKA WORKERS' COMPENSATION BOARD

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

MICHAEL LINDBERG, Employee, Claimant, v. RED-E SOLUTIONS, LLC, Employer, and BENEFITS GUARANTY FUND, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202412488 AWCB Decision No. 25-0059 Filed with AWCB Anchorage, Alaska on September 11, 2025

By all parties' stipulation at hearing, Michael Lindberg's (Employee) September 9, 2025, petition for a Second Independent Medical Evaluation (SIME) was heard on September 10, 2025, in Anchorage, Alaska, a date selected on September 10, 2025. The September 9, 2025, petition gave rise to this hearing. Attorney John Franich represented Employee. Non-attorney Eustachius Stapleton represented Red-E Solutions, LLC (Employer). Non-attorneys McKenna Wentworth and Velma Thomas represented the Alaska Workers' Compensation Benefits Guaranty Fund (the Fund). Witnesses included Employee and Stapleton. All participants appeared by Zoom. This was originally scheduled as a merits hearing. However, Employee requested an SIME the day prior to hearing. At hearing Employer and the Fund agreed to waive their right to 20 days to formally answer, and all parties stipulated to presenting their SIME arguments orally, and to continue the merits hearing. The record closed on September 10, 2025.

ISSUE

Employee contends he suffered a work injury that arose out of and in the scope of his employment with Employer. He argues that significant medical disputes between Employee's attending physician and an employer's medical evaluator (EME) warrant an SIME. Employee further notes that the Fund has a right to recover its payments from Employer if Employee prevails.

Based on the EME report, Employer contends Employee had no work injury. It argues there is enough medical evidence in the agency file already to decide this matter on its merits.

The Fund agrees with Employer, relies on its EME report and contends there is adequate medical evidence already in the file to decide this case. Moreover, the Fund argues that SIMEs are expensive and ordering an SIME will unnecessarily deplete the Fund.

Shall this decision order an SIME?

FINDINGS OF FACT

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

1) On August 2, 2024, Employer was not insured for workplace injuries. (Agency file).

2) Employee contends that on August 2, 2024, he was injured while working for Employer. (First Report of Injury, September 16, 2024).

3) On August 5, 2024, John Koller, MD, saw Employee who was complaining about right-groin pain. Employee told Dr. Koller:

> He has been working manual labor, lifting lots of things, working long hours. He has been pushing heavy barrels of rocks up ramps and thinks he may have strained something in his right groin. He is status post right inguinal hernia repair on that side and is worried he may have torn something.

Dr. Koller found Employee tender in his right-groin area, but could not detect a mass, protrusion, swelling or bruising. Pain did not radiate into his testicle. Dr. Koller assessed a possible right-groin strain, or redevelopment of the preexisting inguinal hernia. He restricted Employee from work for two or three days and recommended an ultrasound. (Koller report, August 5, 2024).

4) On August 6, 2024, Providence Kodiak Island Medical Center saw Employee and took lumbar spine x-rays, which were normal. A right-groin ultrasound was also normal with no evidence of a right inguinal hernia. Pelvis x-rays showed no abnormalities other than mild, bilateral hip osteoarthritis. Right-groin computerized tomography (CT) scans disclosed no acute or suspicious abnormality in the abdomen or pelvis. (Providence records, August 6, 2024).

5) On August 16, 2024, Dr. Koller saw Employee for blood work and pain medication refills. He determined that Employee had a "workmen's comp injury to his right groin and back." Screening labs were ordered to rule out other intra-abdominal processes that could cause his discomfort in that area. (Koller report, August 16, 2024).

6) On August 21, 2024, Dr. Koller noted that Employee's imaging studies did not demonstrate any serious process or injury and "he may have strained his muscle in his back." Dr. Koller assessed lumbosacral back pain, one blood abnormality, and a right-groin pain and strain. (Koller report, August 21, 2024).

7) On August 22, 2024, another abdomen and pelvis CT scan on Employee showed no suspicious abnormalities. (CT scan, August 22, 2024).

8) On August 28, 2024, Dr. Koller saw Employee for follow-up on his work injury to his right groin and back. Employee reported his back was getting better, but he still felt discomfort in his right-groin area. Pain radiated around his flank to his back. Employee was concerned that something happened to the mesh from his prior hernia surgery. Dr. Koller examined Employee but could not find any hernia mass or protrusion. Employee's scans and x-rays did not demonstrate significant pathology other than the prior, right inguinal hernia repair. Dr. Koller assessed a lumbosacral back strain and a right-groin strain, but no hernia. Employee wanted to go back to work, light-duty. "Today, patient reiterated again that this incident occurred at work, which would qualify as a work comp injury." (Koller report, August 28, 2024).

9) On August 29, 2024, Employee filed with the Workers' Compensation Division (Division) a formal injury report on Division form 07-6100, dated August 28, 2024. He stated the injury happened "between 2-5 PM" on the job-site. He described his injury as, "Groin Pain/Sprain Hernia Patch." Employee described how his injury happened:

> The work crew and I had dug up the back yard, grass clods and soil, w/gravel and made several large piles that had to be removed. We took out part of the fence[,] parked a flatbed trailer on the other side[,] put a plank 4 x 12 up to the trailer, and

> pushed wheelbarrow loads of material up ramp[,] dump on trailer, repeat. Had to get a running start or it was to[o] heavey [sic]. Hurt groin pushing up.

Employee identified "Jim, Nick, Criss" as witnesses. (Employee Report of Occupational Injury or Illness to Employer, August 28, 2024).

10) On September 4, 2024, Dr. Koller saw Employee who said he was in "excruciating pain." He suggested, absent evidence of an inguinal hernia, that Employee see a neurologist. Notwithstanding normal x-rays, Employee's lumbosacral pain now caused some mild sciatica-like symptoms in his right lower-extremity, which radiated toward his testicle. Dr. Koller added:

> He states that his employer became very angry with him when he reported the injury and especially since he is not going to be able to return to work full duty. I did give him a light duty release but the employer declined the opportunity for the patient to do some kind of menial work that does not involve any strenuous activity, lifting, pushing, pulling, or heights.

On examination, Employee had tenderness in the right-groin area. Dr. Koller did not palpate any enlargement there, but Employee was "very sensitive in the area and winching [sic] with light palpation." Employee's lumbosacral pain now radiated down into his posterior buttock and thigh region. Dr. Koller assessed lumbosacral back strain and right-groin pain. He added, "I am not able to clarify what might be going on." Dr. Koller was concerned that something may have torn around the hernia mesh causing impingement on the vas deferens, even though nothing showed up on ultrasound or CT scans. He again suggested Employee see a neurologist. Employee requested "some kind of narcotic to alleviate his pain symptoms." Dr. Koller was reluctant, so he prescribed gabapentin. He advised Employee to limit his activity. (Koller report, September 4, 2024).

11) On September 6, 2024, Employee told Dr. Koller he was still having right-groin and right-lower-quadrant abdominal pain. There was nothing on Employee's imaging studies "that would be causing the pain" or to warrant it. Employee was going to see a surgeon. Dr. Koller assessed right-lower-quadrant groin pain and said Employee needed pain management. He released Employee to "work light duty." (Koller report, September 6, 2024).

12) On September 11, 2024, in a claim dated September 10, 2024, Employee claimed benefits against Employer and the Fund. He requested temporary total disability (TTD) and medical benefits, a compensation rate adjustment, a penalty for late-paid compensation, attorney fees and costs. Describing his injuries, Employee stated:

> Breakup concrete, pushing wheelbarrows loaded with gravel up a ramp to the trailer for disposal. Pushing a load up the ramp I felt a twinge through my groin. The affected area is my groin muscles, lower stomach muscles and lower back muscles.

Employee added that he was injured and "unable to work" under doctors' orders and had been in pain for a month. (Claim for Workers' Compensation Benefits, September 10, 2024).

13) On September 13, 2024, Dr. Koller saw Employee again, examined him and found no mass or hernia. Employee responded to light touch and was very sensitive in that region. Dr. Koller assessed a right-groin strain, work-related and lumbosacral back pain with possible upper-level sciatica to the groin area. He again encouraged Employee to follow up with his urologist, with whom Employee had an appointment scheduled. (Koller report, September 13, 2024).

14) On September 20, 2024, Employee told Dr. Koller he was still having "a lot of pain" in the right-groin area. The more active he became, the worse was his pain. Employee had not received any payment from workers' compensation "so he is having to assist with cutting wood." Employee's family was taking care of him. His pain radiated down into his testicle and then around "to his backside." There was no pain going down his leg in a sciatic nerve distribution. Dr. Koller could still find no hernia or protrusion. He assessed Employee with a right-groin strain. "He will remain off work for now and continue resting." (Koller report, September 20, 2024).

15) On September 30, 2024, Employee told Dr. Koller he still had pain in the right groin although it had gotten better with his limited activity. He had an appointment with a physician in Anchorage, but he had not yet heard back from the adjuster regarding his travel. Employee reported that sitting and standing up too quickly caused groin pain that radiated into his testicle. He was still taking gabapentin. However, given Employee's complaints, Dr. Koller prescribed trazodone to help with his sleep. Dr. Koller was "fairly certain" the hernia mesh from the previous hernia surgery had something to do with his ongoing pain. (Koller report, September 30, 2024).

16) On October 16, 2024, the Fund denied Employee's claim for "All Benefits." It asserted:

> All benefits denied as the WCC [Workers' Compensation Claim] lacks sufficient grounds to establish all elements to collect against the . . . [Fund] as follows:
>
> - The injured worker must have been an employee of an uninsured employer at the time of injury.
> - The employee's work for the employer must have been the substantial factor in the cause of the injury or illness.

> • The injured worker must file a claim for benefits against the uninsured employer, and a separate claim for benefits against the Fund. Both claims must be filed within two years of the injury, or knowledge that an injury or illness was work related.
> • The injured worker's claim against the employer must result in an order by the Alaska Worker's Compensation Board (Board) to pay benefits to the injured worker.
> • The employer must be found by the Board to be in default of the aforementioned order. (Controversion Notice, October 16, 2024).

The Fund's same-dated answer denied all claims and offered the same list, above, as affirmative defenses. (Initial Answer to the Employee's Claim for Benefits from the Alaska Workers' Compensation Benefits Guaranty Fund, October 16, 2024).

17) On October 18, 2024, Employee told Dr. Koller his "injury has improved" and he was not having pain or discomfort with movement or lifting. "The patient can probably return to working." Dr. Koller suggested lighter-duty work to initiate and then a follow-up in two weeks for a recheck. (Koller report, October 18, 2024).

18) On October 29, 2024, Employee told Dr. Koller about his visit with a specialist in Anchorage. The specialist said he was probably having a neuritic pain in his groin area but it could be emanating from his back or it could be retrograde. The physician recommended a magnetic resonance imaging (MRI) scan. Employee had not described to Dr. Koller "any significant back injury," but he had done years of hard-labor and heavy-lifting. Employee said he was recently cutting wood and that seemed to aggravate his back. He was feeling some tingling and discomfort into his right-leg area and groin. Dr. Koller recommended he be evaluated for lumbosacral radiculopathy and ordered a lumbar MRI. (Koller report, October 29, 2024).

19) On November 12, 2024, Employee gave Dr. Koller paperwork to fill out. He had not yet gotten his MRI because Medicaid required at least two weeks of physical therapy (PT) before authorizing an MRI. Dr. Koller prescribed PT for Employee's lower-back strain and possible degenerative joint disease with right radiculopathy. (Koller report, November 12, 2024).

20) By November 13, 2024, Employee reported his right-groin pain had "improved considerably" and he thought he could probably return to work at light-duty. Dr. Koller diagnosed right-lower-quadrant abdominal pain and recommended a lumbosacral evaluation as previously discussed. (Koller report, November 13, 2024).

21) On November 19, 2024, Dr. Koller stated Employee needed a physical capacity evaluation (PCE) from PT. No therapists in Kodiak did these. Employee still had pain in the groin area but

it was less frequent and less intense. He was not working construction, "but [had] been hauling and working with cutting wood" and doing "firewood distribution." Activity caused his pain to increase. Dr. Koller's assessment remained the same. He referred Employee to Advanced PT in Anchorage for a PCE. (Koller report, November 19, 2024).

22) On November 20, 2024, Dr. Koller made an "Addendum" to his records:

> The patient presented today with some additional information. He has been in touch with an attorney. He has learned that his employer did not carry work comp insurance and is being ordered to cover all his medical expenses and anything associated or related to his work injury. . . . He states also he called Medicaid and informed Medicaid that his back injury was work related, and should not be covered under Medicaid and that [if] anything all his visits starting from back in September should be covered under work comp and not Medicaid. I do not think that is absolutely true. I think he had some non-work related visits here. The concerning problem now is what exactly was the work injury[;] when he initially presented, it was his right groin, and it was not until later that the back became more introduced as part of the injury. After he met with his urologist, Dr. [blank line] who suggested that his groin pain was not related to any injury, or strain in the groin area, but possibly to his back and recommended a back MRI, which is still in the outstanding order that has not been filled. His lumbosacral back x-rays were read as normal, but now the issue seems to be not the groin, but his back. This presents as a problematic grey area. . . .
>
> Mike states that he continues having pain in the right groin region and pain radiating down into his leg now. He feels numbness there. At night, he has intense pain that will wake him up. He has been taking gabapentin, which does help alleviate and relax him, but he does not like taking it during the day. Currently, he is not working, and even if he was released to return to work full duty, his impression is that the employer will refuse to hire him back on. He has been replaced is the message that he received. . . .

Dr. Koller gave Employee a referral to Providence for PT, and to Arctic PT for a PCE at an attorney's request. He also refilled Employee's lidocaine patches. Employee was using those as well as gabapentin, ibuprofen and trazodone. (Koller report, November 30, 2024).

23) At some point, Dr. Koller "corrected" his November 20, 2024, chart note. In respect to Employee's subjective work-injury history, Dr. Koller charted:

> In regards to his work comp, the patient stated that he had been working a long day and then began developing pain in his right groin area. He does recall an incident where he was pushing a wheelbarrow up a ramp. On the initial visit, I did not get an incident of a specific injury or event that occurred that precipitated back pain,

> but I have heard from ancillary sources that [the] patient is indicating that he was pushing a wheelbarrow up a ramp and he slipped and fell down, and that is when the injury occurred. He has had a thorough work up evaluation regarding the right groin area, both by imaging and by seeing his [specialist]. We [sic] placed the hernia screen in his abdomen in his right groin. Whatever back issue is developing was not part of the initial incident, injury and seems to have developed more since. Generally, pain emanating from the back area in the region designated would be more sciatic and going down his right buttock, right thigh and leg, but not transpiring around to the right groin area and down into the testicle.

Dr. Koller assessed right-flank and groin pain and a right-groin strain. Employee was still trying to get a lumbosacral MRI. If Medicaid denied it, "we will try getting this under his Workmen's Comp." If that was denied, then Dr. Koller would recommend Employee having a CT scan of his back. (Koller report, November 20, 2024).

24) On December 10, 2024, in a document dated December 4, 2024, Employer denied Employee's claim to "All Benefits" based on various personal documents and photographs attached to the notice. (Controversion Notice, December 4, 2024).

25) On January 17, 2025, Employee told Dr. Koller that he did strain his back with the work incident. Dr. Koller wanted to see Employee's paperwork regarding this case so he knew what was going on. Employee still had "a lot of pain" in the groin area and was still assisting his son with wood cutting but "does not carry more than one piece of wood to his truck when needed." He also had "a lot of back pain" and pain radiating to his right-groin area. Employee's urologist told him there was no herniation or injury to the mesh although he could have a strained groin muscle. Dr. Koller assessed a right-groin strain, "work related," and a lumbosacral back strain and possible radiculopathy. He thought the workers' compensation adjuster should be covering the recommended lumbosacral MRI. (Koller report, January 17, 2025).

26) On January 24, 2025, Dr. Koller noted that Employee had not attended PT. Employee reported generalized weakness to his back and legs, limping, stiff joints and difficulty with coordination in his lower extremities. Dr. Koller noted that the normal x-rays did not rule out the possibility Employee had a herniated disc with radiculopathy. He still had pain going into his right-groin area especially if he did any lifting or moving. "He is trying to limit himself to less than a 10 pound or 5 pounds lift or single block of wood." Dr. Koller assessed a lumbosacral back pain and strain. (Koller report, January 24, 2025).

27) On January 27, 2025, Dr. Koller reviewed the Fund's October 16, 2024, controversion and discussed it at length. He also showed Employee a workers' compensation claim form and suggested he complete and submit it. Employee was still having back and right-groin pain. He had significant pain following PT recently. Dr. Koller assessed right-groin pain and strain with possible lumbosacral radiculopathy, "work related." Dr. Koller was going to call the adjuster and the Division to "find out what exactly is going on." Employee was looking for an attorney and when he found one Dr. Koller could "assist him through the work comp needs." He suggested Employee continue with PT. Dr. Koller spent 65 minutes assisting Employee with paperwork for his claim and "what benefits he is deserving and how he should go about protecting his rights with the work injury." Employee told Dr. Koller that Employer "had fired him shortly after he was taken off work." Dr. Koller was going to contact the adjuster the following week. (Koller report, January 27, 2025).

28) On January 28, 2025, in a document dated January 27, 2025, Employee requested temporary partial disability (TPD) and medical benefits, a compensation rate adjustment, an unfair or frivolous controversion, a penalty for late-paid compensation, interest, attorney fees, and costs and alleged "discrimination." He claimed Employer fired him and his son and hired two other laborers after Employee filed his initial claim. He described his injury:

> Severe pain in lowwer [sic] back, stomache [sic] and groin, working construction pushing wheelbarrow loads of gravel and grass load[s] up 4 x 12 plank[;] dump onto a flatbed trailer for disposal. Slipped on plank[,] lost momentum, pushed off to go on plank[;] felt pain in back and groin. Next day, could not walk, I was in pain. (Claim for Workers' Compensation Benefits, January 27, 2025).

29) On February 6, 2025, Dr. Koller saw Employee who had been attending PT. He reported severe pain after his first PT visit. However, Employee said he was getting some benefit from it. Employee reported that his therapist told him he had "nerve damage."

> In terms of activity, he has been doing light activity, no heavy lifting, pushing, pulling. He works with his son cutting wood but states he does not do a lot of lifting, maybe single parts of wood at most.

Dr. Koller assessed right-lower-abdominal groin-strain with a possible radicular component. He advised Employee to continue with PT and obtain a lumbosacral MRI. Dr. Koller said Employee had been compliant with conservative measures. (Koller report, February 6, 2025).

30) On March 7, 2025, Dr. Koller saw Employee to renew his PT prescription. He had missed appointments, so the therapist required a new prescription. Employee was still looking for an attorney. Conservative care for "well over eight weeks" had not provided significant improvement. Dr. Koller's assessment remained the same and he was hopeful Medicaid would now pay for a lumbosacral MRI. (Koller report, March 7, 2025).

31) On March 13, 2025, Employee said he had been going to PT, which helped "a little bit" but had not resolved his symptoms. "He has not gone back to work in construction." Employee appeared uncomfortable with some lumbosacral pain but "most of the pain and discomfort is in the right groin area." His assessment remained essentially the same as before. Employee was to see Dr. Koller again after he had a lumbosacral MRI. (Koller report, March 13, 2025).

32) On April 23, 2025, Dr. Koller saw Employee who requested another PT prescription renewal. Employee thought the PT was helping. His groin, hip and back pain had gotten better. Dr. Koller reviewed the PT treatment plan and concurred with it. He recommended Employee have two PT visits per week for an additional eight weeks. Dr. Koller's assessment remained the same. (Koller report, April 23, 2025).

33) On June 9, 2025, Employee filed and served a hearing request on his September 10, 2024 and January 27, 2025, claims. (Affidavit of Readiness for Hearing, June 9, 2025).

34) On June 30, 2025, Employee told Dr. Koller he was still "having a lot of back pain." His therapist had done everything they could for his back. "They do not feel pain that he has been exhibiting is related [to] his injury or a disc issue." Dr. Koller referred Employee to a specialist to consider back injections to see if a nerve block would help with his pain. Employee had been seeing his urologist for his right-groin pain, and that physician did not think Employee's symptoms had anything to do with his hernia surgery or related mesh. Dr. Koller referred Employee to Arctic PT and to "Dr. Urban" to manage his pain and perhaps diagnose its source. Employee was to see Dr. Koller at least monthly. Dr. Koller's assessment was now lumbosacral back-pain with right-flank and groin radiculopathy. (Koller report, June 30, 2025).

35) On July 3, 2025, the parties attended a prehearing conference before a Board designee. The parties mutually agreed to a merits hearing and the designee set a September 10, 2025, hearing on Employee's claims. (Prehearing Conference Summary, July 3, 2025).

36) On July 10, 2025, Employee reported ongoing back and groin pain and discomfort. He wanted to see Dr. Urban in Kodiak. Dr. Koller stated, "Pain seems to emanate from his lower

lumbar back around to his right groin area and sometimes radiates down into his testicular area." His physical therapist had dismissed him because they did not think his issues were backrelated. Dr. Koller suggested a different PT provider with a "separate set of eyes" that might come to a "separate conclusion." Dr. Koller's assessment remained lumbosacral back-strain with right-groin radiating pain. (Koller report, July 10, 2025).

37) On August 4, 2025, Jared Kirkham, MD, physiatrist, performed an EME on Employee, who reported right-sided low-back and right-groin pain. Employee underwent a right-inguinal hernia repair in 2010, with mesh. He denied any history of chronic low-back or right-groin pain. Employee described his injury with Employer to Dr. Kirkham as follows:

> . . . On August 2, 2024, he reports he was doing a variety of activities including breaking up concrete with a 70-pound steel bar, moving concrete blocks, demolishing decks, and moving gravel by wheelbarrow up and down a ramp. He reports he told management, "Are you guys crazy, I am not doing that." He reports that while moving a wheelbarrow up a ramp, he slipped and felt pain in his right buttock with radiation into his right groin, "Like someone shot me with a bullet." He continued to work that day and was able to load gravel into the wheelbarrow with a shovel. His pain subsided and essentially resolved. He was able to drive home and eat dinner and then he went to bed. He reports that the next morning he rolled out of bed and his pain returned. He reports, "It was so intense, I almost threw up and passed out. . . . I couldn't walk. . . . I thought I tore out my hernia." He then reports that, "My boss was super pissed off that I filed a claim." He reports he has an attorney. He reports, "It has been a nightmare."

Employee further reported:

> . . . He reports that he needed to earn some money this winter, so he cut and sold firewood. This requires loading wood into a truck. He reports his son does most of the work. He reports, "Nobody will hire me due to my injury. . . . If I work for 2 to 3 hours, I will be out for 3 days. . . . Even sitting causes my back to ache. . . . I definitely cannot go back to construction." (Kirkham report, August 4, 2025).

38) On physical examination, Dr. Kirkham found Employee with a "high degree of exaggerated pain behavior" including wincing, grimacing and breathing deeply. He limped on his right leg. Dr. Kirkham found no palpable hernia in the right groin. He reviewed Employee's past diagnostic imaging and found only insignificant bilateral hip arthritis. Dr. Kirkham diagnosed: (1) "No objective evidence of occupational injury." This included Employee's hernia, hips and lower back. (2) "Chronic right upper buttock and right groin pain." He found no physiologic explanation for

his pain the cause of which was "unclear." In Dr. Kirkham's view, Employee's degree of pain and disability was "out of proportion to objective findings." He suggested, "It is likely that his pain is substantially caused by psychosocial factors." (3) "Prominent psychosocial component to [Employee's] degree of pain and disability." This included an "antagonistic relationship with his employer." Dr. Kirkham noted that Employee had stated, "My boss was super pissed off that I filed a claim," and opined that Employee "feels a sense of injustice regarding his work conditions." As support for this opinion, Dr. Kirkham relied on Employee's statement to his supervisor, "Are you guys crazy, I am not doing that." He also noted what he considered Employee's exaggerated symptoms. Dr. Kirkham further opined that Employee has a "high degree of fear avoidance" as illustrated by his failure to try lifting, fearing that something was going to go wrong in his back. In his opinion, Employee had evidence of catastrophizing and reported having a herniated disk even though his MRI did not show evidence of one. Dr. Kirkham attributed Employee's statement that "nobody will hire me due to my injury" to him having a "strong disability conviction." He also cited what he opined were hypervigilant responses and non-physiologic findings including tenderness to light, superficial palpation, and several positive Waddell's signs. He "has also retained an attorney, which is a negative prognostic factor for improvement" in Dr. Kirkham's opinion. (4) "History of right inguinal hernia repair in 2010 with no evidence of current hernia formation." (Kirkham report, August 4, 2025).

39) Dr. Kirkham summarized his findings as follows:

> [Employee] reports the development of right-sided low back and right groin pain after moving a heavy wheelbarrow up a ramp on August 2, 2024. This could potentially cause a hip, groin, or lumbar spine injury, but there has been no evidence of objective injury based upon his extensive workup. In particular, there is no evidence of lumbar spine fracture, lumbar disc herniation, lumbar radiculopathy, intraarticular hip injury, hip fracture, recurrent hernia formation, psoas tendon injury, or any other pathology.
>
> There is a profound psychosocial component to his degree of pain and disability, and it is much more likely that his current pain symptoms are substantially caused by psychosocial factors rather than any injury from the work event on August 2, 2024.

Dr. Kirkham responded to the adjuster's questions, repeated his above opinions and added that while Employee's pain was substantially caused by psychosocial factors as described above, "there may be minor contributions from age, genetics, and chronic degenerative changes in the low back

and right hip." In his opinion, because there is no "objective evidence of occupational injury," the August 2, 2024, work injury "is not the substantial cause" of Employee's current pain complaints. Thus, it cannot be the substantial cause for his need for medical treatment. The injury caused no aggravation of a preexisting condition, including the right-hernia repair, in Dr. Kirkham's opinion. Nonetheless, without regard to causation, the medical treatment Employee had to date was within the realm of medically reasonable options. In Dr. Kirkham's view, the treatment had been "rather protracted" and there was "no medical reason to provide any restrictions on his work activities." (Kirkham report, August 4, 2025).

40) Dr. Kirkham further opined that medical stability was "not applicable" because there was no objective evidence of an injury. Likewise, he said Employee needed no treatment, either curative or palliative. There was no objective evidence supporting a permanent partial impairment. Dr. Kirkham found Employee had physical capacities to work as a laborer, and he did not recommend any formal work restrictions. (Kirkham report, August 4, 2025).

41) With exception of the Fund's $120 payment for *per diem* related to its EME, neither Employer nor the Fund has paid Employee any benefits in this case. (State of Alaska General Warrant, August 20, 2025; agency file).

42) On September 4, 2025, Jann Urban, MD, pain specialist, saw Employee on referral from Dr. Koller. Employee had mid- and low-lumbar pain and some radicular symptoms on the right side extending at times down to his foot. He said this began after a work injury on "8/12/24." Employee had conservative treatment including PT without pain relief. Dr. Urban's report did not record any exaggerated pain behavior. On imaging review, Dr. Urban found a "disc bulge" at L2-3 with minimal left- and mild right-foraminal narrowing as well as another disc bulge to the right at L4-5 with mild right-foraminal narrowing on Employee's April 2, 2025, MRI. Employee's August 13, 2024, pelvis x-rays showed mild bilateral-hip osteoarthritis, while his August 6, 2024, lumbar spine x-rays were normal. Employee's July 10, 2023, CT scan showed mild multilevel disc degeneration. (Urban report, September 4, 2025).

43) Dr. Urban assessed Employee with axial mid- and lower-lumbar pain likely from facet arthropathy. "He also has a small disc bulge at L4-5 with some mild foraminal stenosis that could be resulting in the radicular symptoms that he reports that are persisting despite conservative treatment." Dr. Urban provided a right L4-5 transforaminal injection to address Employee's radicular symptoms. He also opined that Employee had pain in the right-groin related to his right

hip. Dr. Urban relied on Employee's hip x-rays that showed mild, bilateral hip osteoarthritis. His report did not give a specific causation opinion. (Urban report, September 4, 2025).

44) On September 4, 2025, the Fund filed and served its brief for the September 10, 2025, hearing. It agreed that on the August 2, 2024, alleged injury date, Employer did not have workers' compensation insurance. The Fund's brief reviewed the salient medical opinions including Dr. Kirkham's August 4, 2025, EME report. The brief stated that Employee claimed he suffered a groin and back injury while working for Employer. It further noted that Employer disputed that Employee's injuries are work-related. The Fund asserted that it is not liable for penalties levied against Employer. Moreover, it contended its defenses and controversion were all carried out in "good faith." The Fund argued that Employee must prove his work with Employer was a substantial aggravation of a preexisting condition. It reserved its right to not pay TTD benefits to Employee for a week in which he received wages from Employer or self-employment, or from unemployment. The Fund denied liability for payment to Employee unless the Board issued a supplementary order showing Employer had defaulted on any Board-awarded benefits. (Benefits Guaranty Fund Hearing Brief, September 4, 2025).

45) On September 5, 2025, Employee filed and served a request to cross-examine Dr. Kirkham on his August 4, 2025, EME report. (Request for Cross-Examination, September 5, 2025).

46) On September 9, 2025, Employee filed and served a petition to continue the September 10, 2025, hearing, and requested an SIME. He noted that the designee on July 3, 2025, set his claims on for merits hearing for September 10, 2025. However, the Fund subsequently obtained an EME that showed medical disputes that could warrant an SIME. Employee asked the Board to continue the September 10, 2025, merits hearing and order an SIME. He attached to his petition an SIME form showing opinions from Drs. Koller and Urban, which he said supported his claims, versus opinions from EME Dr. Kirkham, which disputed Employee's position. Employee requested a physiatrist (physical medicine and rehabilitation specialist) to perform the SIME. (Petition; SIME form, September 9, 2025).

47) At hearing on September 10, 2025, Employee raised his petition to continue and for an SIME as a preliminary issue. After the chair provided the parties with procedural options, Employer, the Fund and its adjuster each waived their right to 20 days in which to formally reply to Employee's September 9, 2025 petition. Rather, all parties agreed to make their arguments for or against

Employee's petition for a continuance and an SIME at the hearing, thus transferring it from a merits hearing to an SIME hearing. (Record).

48) Employee contended he was fully prepared for hearing in June and July 2025, when, on July 3, 2025, the designee calendared his claims for a merits hearing on September 10, 2025. Moreover, he noted the Fund never opposed his hearing request, and Employer non-opposed it. However, he stated that on August 4, 2025, the Fund sent him to Dr. Kirkham's EME, which created medical disputes between his attending physicians and Dr. Kirkham. Employee contended that the Fund admitted there were medical disputes between these physicians, and he contended the disputes were significant and an SIME would help the Board decide this case, pursuant to *Bah*. He further argued that the Fund had no problem diminishing its reserves when it ordered an EME with Dr. Kirkham, but now that Dr. Kirkham's opinions created medical disputes, the Fund cannot argue that an SIME is an inappropriate drain on the Fund's resources. If the Board were to order an SIME, Employee said a physiatrist would probably be the best choice. (Record).

49) Employer, who was familiar with an SIME, opposed it stating that the panel had adequate medical evidence with which to decide this case already in its file. (Record).

50) The Fund also objected to an SIME noting that it may cost anywhere from $12,000 to $30,000 not including deposition costs. It stated the Fund typically does not obtain an EME, but agreed it had paid Dr. Kirkham $4,976 for his, in this case. The Fund argued that the Board must consider depletion from the Fund's approximate $300,000 current balance when considering whether or not to order an SIME. The Fund agreed that there are medical disputes between the relevant physicians, but contended there was enough existing evidence for the Board to decide this case. It also contended that an SIME was premature given the current evidence. Were the Board to order an SIME, the Fund agreed that causation, medical stability and functional capacity were SIME issues based on the current evidence. It too agreed that a physiatrist would be the best SIME specialty. (Record).

51) In the panel's experience, virtually any medical diagnostics and treatment is expensive. (Experience, judgment, and observations).

52) In the panel's experience, not all legitimate symptoms are easily discernible by objective testing. (Experience, judgment, and observations).

PRINCIPLES OF LAW

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

> (1) this chapter be interpreted so as to ensure . . . quick, efficient, fair, and predictable delivery of . . . benefits to injured workers at a reasonable cost to . . . employers; . . .

The Board may base its decision on testimony, evidence, the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.095. Medical treatments, services, and examinations. . . .

> (k) In the event of a medical dispute regarding . . . causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. . . .

The Alaska Workers' Compensation Appeals Commission in *Bah v. Trident Seafoods Corp.*, AWCAC Dec. No. 073 (February 27, 2008) addressed the Board's authority to order an SIME under §095(k). *Bah* stated in *dicta*, that before ordering an SIME it is necessary to find the medical dispute is significant or relevant to a pending claim or petition. *Bah* said when deciding whether to order an SIME, the Board considers three criteria, though the statute requires only one:

> 1) Is there a medical dispute between Employee's physician and an EME?
> 2) Is the dispute significant? and
> 3) Will an SIME physician's opinion assist the Board in resolving the disputes? (*Id*.).

Geister v. Kid's Corps, Inc., AWCAC Dec. No. 045 (June 6, 2007) involved a Board decision denying a requested SIME. *Geister* stated why a panel may choose not to order an SIME:

> Based on the commission's experience of the workers' compensation system, there are reasons why a board panel may exercise its discretion not to grant a request for an SIME, even when there is a medical dispute. After weighing the expense of the evaluation, delay, . . . significance of the medical dispute to the material and contested issues in the claim, quantity of medical evidence already in the record, [and] likelihood

> of new and useful information, . . . the board may decide that it is "more doubtful" that an SIME would assist . . . in reaching a decision on the material and contested issues before it and therefore it will not grant a request for an SIME. *Id*. at 7.

Section .095(k) is procedural, not substantive. *Deal v. Municipality of Anchorage*, AWCB Dec. No. 97-0165 (July 23, 1997). Wide discretion exists to consider any evidence available in deciding to order an SIME to assist in investigating and deciding medical issues in claims. *Bah*. An SIME's purpose is for an independent medical expert to provide an opinion about contested issues. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1097 (Alaska 2008). An SIME is not a discovery tool for parties; it is an investigative tool for the Board to assist it by providing a disinterested opinion. *Olafson v. State Depart. of Transp.*, AWCAC Dec. No. 06-0301 (October 25, 2007).

ANALYSIS

Shall this decision order an SIME?

Employee requested an SIME under §.095(k) and Employer and the Fund objected. The SIME request is the only issue being decided here. The Alaska Workers' Compensation Act (Act) under §.001(1) must be interpreted to ensure quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers, if they are entitled to benefits, at a reasonable cost to employers. Employee's SIME petition and related medical records contain differing opinions and thus create medical disputes between at least Employee's treating physician Dr. Koller and ostensibly Dr. Urban, and Employer's EME physician Dr. Kirkham on several points. *Bah*:

(1) Are there medical disputes between Employee's physician and the EME? Dr. Koller opined that Employee has a work-related right-groin pain or strain with a possible lumbosacral radiculopathy component. On August 16, 2024, Dr. Koller stated Employee had a "workmen's comp injury to his right groin and back." By contrast, EME Dr. Kirkham plainly disagreed with Dr. Koller's opinion and stated there was no objective evidence that Employee even had a work-related injury. This creates a medical dispute about "causation" of Employee's symptoms and need for treatment since August 2, 2024, and continuing. Likewise, Dr. Koller referred Employee to PT and a PCE and to Dr. Urban for further evaluation and treatment. Dr. Kirkham on the other hand opined since there was no work injury, any treatment Employee had received to this point and ongoing was caused by "psychosocial" factors. In Dr. Kirkham's opinion, Employee needs

no further medical care. This creates a medical dispute on "the amount and efficacy of the continuance of or necessity of treatment." Moreover, it also creates a dispute concerning "medical stability." Dr. Kirkham said medically stable was not applicable, because there was no work injury. Dr. Koller recommended additional diagnostics and potential treatment, which by implication makes Employee not medically stable in his opinion. If Dr. Koller's opinions were accepted by the factfinders, this would render Employee not medically stable until treatment was completed. Dr. Koller released Employee to light-duty work, while Dr. Kirkham stated there was no objective reason why Employee could not return to full-duty. This creates a medical dispute over Employee's "functional capacity." Numerous medical disputes exist under §.095(k).

(2) Are the medical disputes significant? Drs. Koller and Urban agree that Employee may need additional evaluation and treatment; Dr. Kirkham says no. Experience teaches that some medical conditions that cause physical symptoms are difficult to discern without further diagnostic workup. *Rogers & Babler*. The parties agree that medical treatment is expensive. Employee has received no benefits under the Act since August 2, 2024, other than per diem for his EME. Depending upon the outcome of his claims on their merits, Employee could be entitled to considerable TTD or TPD benefits as well. Therefore, significant benefits are at stake. *Seybert*.

(3)Will an SIME physician's opinion assist the factfinders to resolve the disputes? An SIME may be ordered if it will assist factfinders in determining the parties' rights when there is a significant dispute between attending physicians and an EME. *Deal*; *Bah*; *Olafson*. An SIME's purpose is to have an independent medical expert provide an opinion about a contested issue. *Seybert*. Employee currently claims TTD, TPD and medical benefits, a compensation rate adjustment, a penalty, and interest. Drs. Koller and Urban and Dr. Kirkham disagree over causation, medical treatment, medical stability and functional capacity. Given the issues in Employee's pending claims an SIME will assist the factfinders in this matter. *Geister*. Moreover, ordering an SIME under this case's facts will help ensure quick, efficient, fair, and predictable delivery of benefits to Employee, if he is entitled to them, at a reasonable cost to Employer under §001(1).

The Fund argues that this decision must consider costs involved with ordering an SIME. *Geister* suggested cost is a factor to consider. There must be a balance between "quick" and "efficient,"

delivery of benefits to Employee if he is entitled to them, and a "reasonable cost" to Employer, and in this case the Fund, under §.001(1). Employee correctly noted that he was ready to proceed to hearing in June 2025. But for the Fund obtaining Dr. Kirkham's opinion in August, Employee's claims would have been heard and decided on their merits on September 10, 2025. To be clear, the panel does not fault either party for exercising their statutory rights to an EME and to request an SIME, respectively. As the Fund pointed out, SIMEs, like other medical evaluations, can be costly. But the Fund spent roughly $5,000 to obtain Dr. Kirkham's EME opinion, which reduced the Fund's balance. Diminishing it more for an SIME is not a persuasive reason to not order an SIME when the SIME request complies with statutory and decisional law.

Moreover, if the evidence as a whole, including an impartial SIME physician's opinion, ultimately shows Employer is not responsible for Employee's symptoms or treatment, it will save Employer and the Fund from having to pay for what could be expensive treatments, past and ongoing disability and potential impairment. Conversely, after an SIME the evidence may preponderate in Employee's favor thus hastening his ability to obtain prompt treatment for any work-related injuries. Therefore, his SIME request will be granted and a physiatrist shall perform it.

CONCLUSION OF LAW

This decision shall order an SIME.

ORDER

1) Employee's September 9, 2025, petition for an SIME is granted.
2) An SIME will be performed by a **physiatrist** selected from the authorized list. If, at the time of processing, the designee determines that no physician on the authorized list is available or qualified to perform the examination under 8 AAC 45.092(e), the designee will notify the parties and request that they provide the names, addresses, and curriculum vitae of physicians with a specialty in **physiatry** in accordance with 8 AAC 45.092(f).
3) The medical disputes for the SIME to address include: **causation** of Employee's low-back and groin symptoms; efficacy, reasonableness and necessity for past and any ongoing need for additional **medical treatment** for Employee's symptoms; **functional capacity**; and **medical stability** for all alleged work-related conditions and symptoms.

4) All filings regarding the SIME must be sent to workerscomp@alaska.gov and served concurrently on opposing parties.

5) The Fund will make **three** copies of Employee's medical records in its possession, including medical providers' depositions, put the copies in chronological order by treatment date, starting with the first medical treatment and proceeding to the most recent medical treatment, number the pages consecutively and put them in **three** binders. This must be done on or before **October 10, 2025**. The Fund must serve one binder on Employer, one on Employee and file one with the Division, with an affidavit verifying the binders contain all medical records in its possession, by **no later than 5:00 PM Alaska time on October 10, 2025**.

6) The binders may be returned for reorganization if not properly Bates-stamped and prepared in accordance with this decision.

7) **Not later than 10-days after receipt of the binders**, Employee and Employer must review the binders to determine if they contain all Employee's medical records in their possession. If the binders are complete, **Employee** and **Employer** must each file an affidavit with the Division verifying the binders contain all medical records in their possession. If the binders are incomplete, Employee and Employer must make **three** copies of any additional medical records missing from the first binders. Each copy must be put in a separate binder (as described above). Then one set of the supplemental binders and an affidavit verifying the medical records' completeness must be filed with the Division. The remaining supplemental binders must be served upon Employee and Employer together with an affidavit verifying that it is identical to the binder filed with the Division. **Employee and Employer are directed to file the binders with the Division and serve a binder on the other two parties within 10 days of receipt**.

8) Any party who receives additional medical records or physicians' depositions after the binders have been prepared and filed with the Division, is directed to make **three** supplemental binders as described above with copies of the additional records and depositions. **Within seven days** after receiving any additional records or depositions, the party must file one supplemental binder with the Division, and serve one supplemental binder on the other parties together with an affidavit verifying that it is identical to the binder filed with the Division. All service on Employee must be made on Employee's attorney. If the Fund or Employer obtains an attorney, all service on them must be made on their respective attorneys.

9) The assigned workers' compensation officer will review, prepare, and submit to the SIME physician questions in accordance with 8 AAC 45.092(h).

10) The parties may review their rights under 8 AAC 45.092(j) to question an SIME physician after the parties receive the SIME physician's report.

11) **The parties are advised that a failure to comply with the above orders may result in the SIME going forward notwithstanding a party's noncompliance**.

12) SIME physicians are often located outside of Alaska and long-distance travel may be required. If Employee requires travel accommodations, he must request an accommodation from the Fund. The accommodation request must be accompanied by a letter from Employee's attending physician in his workers' compensation case, pursuant to and within the constraints of AS 23.30.095(a) and 8 AAC 45.082(b), detailing the necessary accommodation.

13) As there are numerous medical records referenced in the existing agency file that are not found in the file, **Employee's attorney is directed** to obtain those medical records promptly and file and serve them on the other parties on Medical Summaries in accordance with the Act and the applicable regulations. These records include but are not limited to Employee's MRI report, PT records, records from his urologist, and any other records from providers who have evaluated or treated Employee for his alleged work injury.

Dated in Anchorage, Alaska on September 11, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

PETITION FOR REVIEW

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

or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Michael Lindberg, employee / claimant v. Red-E Solutions, LLC, employer; Benefits Guaranty Fund, insurer / defendants; Case No. 202412488; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on September 11, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician