ALASKA WORKERS' COMPENSATION BOARD

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

DANIEL NELSON, Employee, Claimant, v. WMLS, INC., Employer, and AMERICAN INTERSTATE INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202411963 AWCB Decision No. 25-0071 Filed with AWCB Anchorage, Alask on October 22, 2025

On October 21, 2025, a date selected on October 20, 2025, a hearing occurred in Anchorage, Alaska, to determine whether to approve the parties' proposed compromise and release (C&R) agreement. The parties' October 20, 2025 stipulation gave rise to this hearing. Non-attorney Daniel Nelson (Employee) represented himself and testified. Attorney Aaron Sandone represented WMLS, Inc. and its insurer (Employer). Both appeared by Zoom. The panel denied the C&R and the record closed at the hearing's conclusion on October 21, 2025.

ISSUE

An oral order at the hearing denied the C&R after the panel found it not to be in Employee's best interest. Employee requested a written decision and order explaining the denial.

Was the oral order denying the proposed C&R correct?

FINDINGS OF FACT

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

1) Employee testified that he has a high school education and went through apprentice training to become a glazier. His adult work experience includes landscaping, delivering pizza, and mostly working as a glazier. Employee described his glazier work as often requiring lifting heavy objects overhead and being able to move around, twist and use both upper extremities. (Record).

2) It is undisputed that Employee had preexisting cervical and lumbar symptoms resulting from degenerative changes. (Curtis Mina, MD report, November 7, 2023; Record).

3) On February 15, 2024, Dr. Mina performed a cervical discectomy and fusion at C4-5 for Employee's degenerative disc disease. (Mina report, February 15, 2024). At hearing, Employee testified that he did not believe the neck surgery was from a work-related injury, but arose from degeneration and wear and tear over his lifetime of hard work. (Record). Post-surgery Employee reported some symptomatic improvement. (Mina report, March 26, 2024).

4) On August 13, 2024, Rence Marchegiani, DO, evaluated Employee's cervical and lower-back pain, which Employee reported had developed over the last several years but was getting progressively worse. He provided no inciting event for his lower-back pain. (Marchegiani report, August 13, 2024).

5) On August 16, 2024, Employee told a physical therapist that he was not able to walk because his right foot was numb and he was having problems doing his job, to which he had returned post-cervical-surgery. (Physical therapy report, August 16, 2024; inferences from the above).

6) On September 3, 2024, Employee at age 53 injured his neck and upper and lower back while lifting overhead and twisting while on the job as a glazier for Employer. (Agency file: Injuries tab, September 3, 2024; record).

7) He timely reported his injury to Employer. (First Report of Injury, September 3, 2024).

8) X-rays taken on September 3, 2024, disclosed degenerative changes and post-surgical hardware in Employee's cervical spine, and multilevel disc-space narrowing and facet disease in the lumbar spine. His medical provider removed Employee from work effective September 3, 2024. (X-ray reports; Rich Ellis, PA-C, report, September 3, 2024).

9) On September 5, 2024, Dr. Marchegiani saw Employee in follow up. He complained of acute neck and lower-back pain that started after doing heavy lifting and twisting at work. Since that event, Employee had severe, sharp, stabbing pain that radiated from his neck into both hands and

from his lower-back into both lower extremities. Dr. Marchegiani recalled that Employee's "baseline" pain had radiated into both legs. He had multiple, tight and taut muscle bands in his cervical paraspinal muscles, trapezius and rhomboids that Dr. D Marchegiani believed contributed to his pain. He offered trigger point injections. (Marchegiani report, September 5, 2024).

10) On September 5, 2024, Dr. Mina evaluated Employee for his lower-back pain. Employee reported lifting something over his head a few days prior and felt a "pop"; he noted thereafter "profound worsening" of his back and neck pain. Employee felt like he was dragging his foot when walking. Dr. Mina recommended diagnostic imaging. He charted that Employee now had a positive straight-leg raising test on the right-hand side. Dr. Mina said Employee had "new onset" right-sided foot-drop and baseline left-arm weakness. (Mina report, September 5, 2024).

11) On September 9, 2024, magnetic resonance imaging (MRI) showed severe issues with Employee's cervical and lumbar spine. (MRI reports, September 9, 2024).

12) On September 16, 2024, Dr. Marchegiani examined Employee again and referenced his injury a few weeks earlier at work. Employee was concerned that this was the worst pain he had ever felt. He reported losing his balance and using a cane due to weakness in his lower extremities. (Marchegiani report, September 16, 2024).

13) On September 17, 2024, Dr. Mina evaluated Employee and recommended physical therapy but felt surgical intervention was likely to be required for the lumbar spine. He also evaluated Employee's cervical spine, and recommended physical therapy and medication to treat it symptomatically, but said definitive treatment would involve fusing the adjacent cervical level at C5-7. (Mina report, September 17, 2024).

14) On December 21, 2024, Jason Thompson, MD, orthopedic surgeon, saw Employee for an employer's medical evaluation (EME). Dr. Thompson charted that Employee had chronic neck and lower-back pain for many years and had previous cervical surgery. However, "he had recovered from the medical conditions sufficiently after that surgery to return to work and on the date of the injury, September 3, 2024, he had been at work full duties as a glazier." On the injury date, he was lifting and moving aluminum extrusions overhead that were over 20-feet-long, "which he had been able to do without a great deal of difficulty despite residual deficits from his prior neck injury." While doing so on the injury date, Employee reported he immediately had "an acute exacerbation of pain in the back of his neck and the back of his low back with searing pain shooting into his left shoulder and arm as well as down both of his legs." From that moment, Employee

stated he had been "getting progressively more clumsy with his upper extremities" and his left arm was weaker than before, and his legs were "numb and tingly." His legs became "unreliable" and he needed to use a cane, shopping cart or walker. (Thompson report, December 21, 2024).

15) Employee has not been able to return to work since September 3, 2024. Conservative treatment did not provide any relief and Employee felt he had "continued to deteriorate since September." Dr. Thompson charted:

> . . . He has been offered surgery first on his low back and then the plan would be to perform more surgery on his neck once the low back has stabilized. . . . He is left-hand dominant. . . . He reports that he is neither improved nor the same and is in fact worse. . . . He found it very difficult in the past week to take off or put on stockings or socks. (Thompson report, December 21, 2024).

16) Dr. Thompson performed a physical examination during his EME, and found:

> . . . [Employee] is jovial and compliant making efforts to perform all the activities that I asked of him. I have observed him walking in the hallway today, and he walks with a significant foreshortened gait with an antalgic gait using a cane in his right hand on which he bears a great deal of weight during ambulation. He cannot heel-to-toe walk because of poor balance. He cannot perform more than just beginning of a double leg squat due to poor balance and weakness in the legs. . . .
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> . . . He has absent biceps, triceps, brachioradialis reflexes bilaterally. He has atrophy of his left deltoid with significant weakness of the left deltoid. . . . He is subjectively stronger in his right non-dominant hand. . . . He has obvious foot drop on the right-hand side. . . . (Thompson report, December 21, 2024).

17) Dr. Thompson answered the adjuster's questions. He needed no further diagnostic studies or tests to perform his evaluation. Dr. Thompson diagnosed cervical spondylosis with preexisting degenerative spondylosis "now with active and acute bilateral cervical radiculopathy related to C5-C6 and C6-C7 degenerative changes." He also diagnosed lumbar spinal stenosis with progressive radiculomyelopathy. Dr. Thompson stated that the degenerative changes and prior cervical fusion were "clearly" contributing to his symptoms and disability. While he said these preexisting conditions were not caused by the work injury, Dr. Thompson opined:

> Yes, the pre-existing conditions of cervical spondylosis with radiculopathy at C5-C6 and C6-C7 were aggravated or exacerbated by the work injury leading to an extreme increase in his current level of symptomatology. In addition, the patient's pre-existing lumbar spinal stenosis has been obviously aggravated and exacerbated

by the work injury of September 3, 2024 contributing to a great portion of the patient's ongoing need for medical treatment and period of disability.

. . . .

The patient still remains within the period of aggravation or exacerbation and in fact is worsening neurologically as the symptoms have progressed. Therefore, he has not returned to the baseline level as it was immediately before the September 3, 2024 injury occurred.

. . . .

In this case while the patient clearly had pre-existing degenerative conditions in both his cervical and lumbar spines [sic]. The single substantial factor in bringing about the current period of disability is the work injury of September 3, 2024.

. . . .

In this case, the patient is continuing to suffer the ill effects of work injury of September 3, 2024 and the substantial cause of his current period of disability is the work injury of September 3, 2024, though ultimately apportionment will be required because of the pre-existing degenerative conditions in the neck and the back.

. . . .

. . . In this case, I cannot rule out the work injury of September 3, 2024 as the substantial cause of the symptoms.

. . . .

. . . The patient is currently under the care of what appears to be a well qualified medical team. I do not believe that the medical treatment that he has been provided or the upcoming medical treatment that has been proposed are unreasonable or unnecessary.

. . . .

With regards to the cervical spondylosis with radiculopathy, I recommend a C5-C6, C6-C7 anterior cervical decompression via discectomy and instrumented fusion surgery as the most effective likely curative medical treatment for his cervical radiculopathy. With regards to the lumbar spinal stenosis and progressive lumbar radiculomyelopathy, I would recommend an extensive lumbar laminectomy at all levels of stenosis. This includes the L3-L4 and L4-L5 levels at a minimum. In addition the patient may require stabilization by fusion of these levels, and I would allow that decision to be made by the treating physician team.

. . . .

In my medical opinion, the substantial cause of the need for the proposed surgical treatment of the lumbar spine was [the] September 3, 2024 work event, even in light of the fact that it was clearly known that the patient had lumbar spinal stenosis. In my opinion, the September 3, 2024 work injury was the substantial cause because

> he had successfully returned to work and comfortable function of his back and legs prior to the work injury of September 3, 2024, and it was only after this exacerbation or aggravation of the lumbar spinal stenosis of September 3, 2024 that he began having severe lower extremity symptomatology.
> . . . .
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> As stated above, it is my opinion that the discussed surgical treatment of the cervical spine including at C5-C6, C6-C7 anterior cervical discectomy for decompression and instrumented fusion surgery is both medically reasonable and necessary for the process of recovery and the increased symptomatology was caused by [the] September 3, 2024 work event.

In response to the adjuster's question of whether or not Employee was medically stable as defined in Alaska law, Dr. Thompson stated:

> No. . . . [Employee] is not medically stable because the symptomatology of both the cervical and lumbar conditions has deteriorated or worsened since the date of injury rather than improved. He has not had any objective medical improvement in the last 45 days. He has, in fact, had progressive weakness and numbness and decrease in overall function.
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> . . . It is premature to rate his permanent partial impairment [PPI] given his need for ongoing treatment.
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> . . . I believe that once [Employee] has successfully completed the proposed treatments for his neck and his back [and] the attendant rehabilitation. [Sic] Following those surgical procedures, he is likely to be able to return to his job as a journeyman glazier. . . . (Thompson report, December 21, 2024).

18) On January 30, 2025, Dr. Mina predicted that Employee would have a permanent partial impairment rating greater than zero. He also opined Employee would not have the ability to return to work as a Glazier, or a Construction Worker II, which are the jobs Employee had held in the 10-years prior to his work injury with Employer. (Mina response, January 30, 2025).

19) On February 5, 2025, Dr. Mina performed a laminotomy on Employee at the right L3-4 levels with lateral recess decompression and a nerve block on the right L5 transversing nerve root. (Operative Report, February 5, 2025).

20) On February 13, 2025, Jackie Doerner, rehabilitation specialist, prepared an eligibility evaluation report on referral from the Workers' Compensation Division (Division). When she first interviewed Employee, he advised that Dr. Mina was going to operate on his lumbar spine on

February 5, 2025, and "once this is taking care of, Dr. Mina will address the neck injury." Employee later told Doerner that "his neck still needs to be addressed" and that it was unknown what that treatment would entail. Ultimately, after reviewing all of the provided documentation and Dr. Mina's responses to her questions, Doerner recommended Employee be found eligible for reemployment benefits. (Eligibility Evaluation Report, February 13, 2025).

21) Post-surgery on February 27, 2025, Employee reported to his provider that his foot-drop had become worse. Dr. Mina's office recommended he return to physical therapy at Employee's request. (Michael Craig, PA report, February 27, 2025).

22) On March 5, 2025, the Reemployment Benefits Administrator Designee found Employee eligible for reemployment benefits based on Doerner's February 14, 2025 recommendations and supporting evidence. (Letter, March 5, 2025).

23) Initially, there were no records filed on Medical Summaries in Employee's agency file, although a few were provided to the Reemployment Benefits Administrator. (Agency file).

24) On March 21, 2025, Employee elected to waive reemployment benefits and receive a job dislocation benefit instead. (Election to Receive Reemployment Benefits or Waive Reemployment Benefits and Receive a Job Dislocation Benefit Instead form, March 21, 2025).

25) On April 1, 2025, Dr. Mina stated, "[Employee] needs retraining for a different career due to an orthopedic issue. He has reached a point of maximum medical improvement." (Mina report, April 1, 2025).

26) On May 5, 2025, Sean Taylor, MD, on referral from Dr. Mina noted that on September 3, 2024, Employee was lifting a 24-foot metal extrusion overhead weighing about 100 pounds when he developed a shooting pain in his neck into his left hand and left fingertips and into his bilateral middle toes. He added that Employee had not worked since September 3, 2024, and in April 2025, began receiving Social Security Disability Benefits (SSD) for "permanent total disability." Dr. Taylor reviewed pre- and post-injury records and considered Employee was medically stable on April 1, 2025, when Dr. Mina referred him for a PPI rating. He gave Employee a zero percent rating for his neck, finding "no new objective findings on examination." For the lumbar spine, Dr. Taylor provided a 19 percent whole-person PPI rating but then reduced that to 10 percent to account for Employee's preexisting lumbar issues. (Taylor report, May 5, 2025).

27) On September 15, 2025, Employee requested a list of workers' compensation lawyers from the Division, and Division staff emailed it to him. (Agency file: Judicial, Communications, Phone Call tabs, September 15, 2025).

28) On October 13, 2025, the Division received a fully executed C&R for review. The C&R was in the form prescribed by the Division director and included selected medical opinions. There were no medical records attached to the C&R and no Medical Summaries in Employee's agency file on this date. In the "Dispute" section, the C&R stated that Employee felt he was entitled to additional medical and other benefits. Employer contended that he was not and "all benefits owed have been paid." To resolve the case, Employer agreed to pay Employee $161,337.49, and in exchange Employee would waive his entitlement to all past, present and future compensation benefits for this injury including past and future medical and related benefits. He does not have an attorney. Of the total settlement amount, $35,000 was allocated as future "TTD/TPD/PTD" benefits with the remainder allocated to future medical benefits. The C&R also said a Medicare Set-Aside Agreement was attached, but it was not. (C&R, Employee and Employer's adjuster, October 8, 2025; Sandone, October 9, 2025).

29) On October 14, 2025, at the designated chair's request, Division staff called Sandone's office to request that all medical records in his clients' possession be filed on a Medical Summary. (Agency file, Judicial, Communications, Phone Call tabs, October 14, 2025).

30) On October 15, 2025, Employer filed a Medical Summary, which included among other records, Dr. Thompson's EME report, and served a copy on Employee, who by this time had already signed the C&R. (Medical Summary, October 15, 2025).

31) It cannot be determined from the record whether Employee had ever seen Dr. Thompson's EME report prior to receiving it on the October 15, 2025 Medical Summary, or if he had read it after receiving it. (Observations).

32) On October 16, 2025, the designated chair and a Board member reviewed, discussed and denied the C&R. On that same date, the Division served the denial letter on Employee and on Employer's attorney. The letter stated in part:

> Incomplete medical information. The agreement must be accompanied by all medical reports in the parties' possession that have not already been filed on a medical summary. Employee's treatment for his work injury, if any, after March 20, 2025, is unknown because there are no medical records in the file for care after

> March 20, 2025. At least two medical records cited in the settlement agreement are not in the agency file at the time of this writing.
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> No information about whether and when Employee returned to work. No information about Employee's future earning capacity.
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> Unjustified or unexplained waiver of medical benefits. There is no controversion in this case and no pending claim. Employer's medical evaluator (EME) stated that the work injury permanently aggravated Employee's neck and lower back. It is not clear why it would be in Employee's best interest to waive his right to all future medical benefits in this case. (Denial letter, October 16, 2025).

33) On October 16, 2025, Employer filed its second Medical Summary to which was attached Dr. Mina's April 1, 2025 "maximum medical improvement" report and Dr. Taylor's May 5, 2025 PPI rating report. (Medical Summary, October 16, 2025).

34) It cannot be determined from the record whether Employee had ever seen Dr. Mina's April 1, 2025 report or Dr. Taylor's May 5, 2025 PPI report prior to receiving Employer's October 16, 2025 Medical Summary, or if he had read them after receiving them. (Observations).

35) On October 20, 2025, the parties made a conference call to the Division and waived their right to 10-days' notice prior to a hearing, and requested a C&R hearing for October 21, 2025. (Agency file: Judicial, Communications, Phone Call tabs, October 20, 2025).

36) On October 21, 2025, the parties appeared by Zoom at an oral hearing. Employee testified that he is currently 53 years old and is a high-school graduate. His only post-high-school training was an apprenticeship with the glazier's union. In his adult life, Employee had worked in landscaping and delivered pizzas, but mostly worked as a glazier. He described his glazier work as requiring heavy lifting, twisting, climbing and using his upper extremities regularly. Employee had not returned to work since September 3, 2024, and recently was found eligible for SSD benefits. He testified that he can no longer be a glazier and cannot work productively. Employee conceded he had preexisting cervical and lumbar issues, and understood what a "baseline" level of pre-injury symptomatology was. When asked if he had ever return to that baseline, he emphatically stated "no," and explained that if he takes more than 15 steps he has a right-foot-drop. Employee said he cannot lift his dominant left arm much above chest-level. He uses a cane to ambulate. (Record).

37) The designated chair explained "adjacent disc syndrome" to Employee who said he understood and was familiar with the concept because his doctor had mentioned it to him as a

possibility in his case. Given his understanding, Employee was asked why he thought now would be the time to settle his case, since there was no claim pending and Employer had controverted nothing. Employee stated that he wanted to be "in charge" of his medical funds. The designee further explained that Employee did not have to settle his right to benefits and had the right to control his own medical care without waiving it. (Record).

38) When asked what he would do with his settlement funds if the C&R was approved, Employee said he would put it in a savings account. Employee testified that he cannot go to work, is not improving and at this point he is a "one-handed dude." He plans to support himself with his SSD benefits of around $2,900 per month, and his "almost" $1,000 per month union pension. Employee has no medical insurance (or Medicaid coverage, because his SSD is too high) and cannot afford the $800 per month health insurance marketplace rate. He anticipates being eligible for Medicare in September 2026. The designated chair explained that health insurance does not cover work-related injuries, and that if the panel approved the C&R, Employee would have to spend down $126,337.49 of his settlement on work-related medical care, and document it, or even Medicare would probably not cover any future work-related medical treatment. Employee said he understood. Sandone asked Employee if in light of all the above, he still wanted the Board to approve the C&R. Employee said he still wanted the Board to approve the C&R, because he thought it was in his best interest. When asked to explain why, Employee stated, "personal choice," and acknowledged "there is no basis behind it" other than that. (Record).

39) Employee stated he approached the adjuster to inquire about settlement. He instituted the negotiations. Contrary to the opinion from its own EME physician, Employer contended that there is no "opinion or guarantee" that any extensive ongoing future medical treatment may still be tied to Employee's ongoing symptoms. Moreover, it contended that it was "unknown, largely," what future treatment would look like for the work-related injury, and whether treatment he may or may not need is for the work injury versus his preexisting conditions. (Record).

40) When asked what he planned to do to return to work, Employee stated, "I do not know that I am able to go to work; I don't think I can. I am in too much pain." The chair explained the "permanent total disability" (PTD) concept to Employee and explained that if a Board panel found him to be in PTD status, he would receive at least $1,076 per week, tax-free, for the rest of his life or until his PTD status ended. That would amount to approximately $1.4 million if paid out during

his 26-year life expectancy, not including a required SSD offset. Employee stated that he understood and he still wanted the Board to approve the C&R (Record).

41) After deliberating, the panel advised the parties that it was denying the C&R based upon the evidence before it because the panel could not find the settlement to be in Employee's best interest. The panel advised Employee to seek advice from a workers' compensation attorney or renegotiate the settlement with Employer. Employee asked that the panel provide a written decision and order explaining its reasoning. (Record).

PRINCIPLES OF LAW

The Board may base its decision on direct testimony, medical findings, tangible 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). The Alaska Workers' Compensation Act (Act) creates an "adversarial system" between an injured worker and the employer's insurance company. This means a workers' compensation insurer has no duty of loyalty or disavowal of self-interest in respect to an injured worker. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079 (Alaska 2008).

> **AS 23.30.010. Coverage.** (a) . . . compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .
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> **AS 23.30.012. Agreements in regard to claims.** (a) At any time . . . after 30 days subsequent to the date of the injury, the employer and the employee . . . have the right to reach an agreement in regard to a claim for injury or death under this

chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. . . .

(b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state . . . or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

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

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, 23.30.043, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. . . .

AS 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter . . . .

Benefits sought by an injured worker are presumptively compensable and the presumption is applicable to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). *Meek* also stated:

> AS 23.30.180 . . . does not require that PTD benefits be excluded from the presumption. Rather, the statute specifies that, except for certain predetermined disabilities which automatically constitute permanent total disability, permanent total disability "is determined in accordance with the facts." . . . This language does not exempt PTD benefits from the presumption of compensability.
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> . . . Rather, they hold that once an employee establishes a claim of disability, the employee retains the presumption of continuing disability, unless and until the employer introduces substantial evidence to the contrary. This does not mean that the employee presumptively remains in one category of disability until substantial evidence is introduced to place the employee in another category. *Id*. at 1279, n. 5.

To attach the presumption, an injured employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once the presumption attaches, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). The fact-finders do not weigh credibility at this stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985).

If the employer's evidence rebuts the presumption, it drops out and the employee must prove his case by a preponderance of the evidence. *Runstrom v. Alaska Native Medical Center*, AWCAC Dec. No. 150 (March 25, 2011) (reversed on other grounds, *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016)). This means the employee must "induce a belief" in the fact finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences drawn and credibility considered. *Wolfer*. An injured worker is entitled to a presumption of continued work-related disability. *Kodiak Oilfield Haulers v. Adams*, 777 P.2d 1145 (Alaska 1989).

A fundamental principle in workers' compensation law is the "eggshell skull doctrine," which states an employer must take an employee "as he finds him." *Fox v. Alascom, Inc.*, 718 P.2d 977, 982 (Alaska 1986). A preexisting condition does not disqualify a claim if the employment aggravated, accelerated or combined with the preexisting condition to produce the disability or

need for medical treatment for which compensation is sought. Under the Act, there is no distinction between the aggravation of symptoms and the aggravation of the underlying condition. *DeYonge v. NANA/Marriott*, 1 P.3d 90, 96 (Alaska 2000).

> **AS 23.30.180. Permanent total disability.** (a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. . . .
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> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.
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> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $273,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.
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> **AS 23.30.395. Definitions.** In this chapter,
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> (16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;
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> **8 AAC 45.160. Agreed settlements**. . . .
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> (d) The board will, within 30 days after receipt of a written agreed settlement, review the written agreed settlement, the documents submitted by the parties, and the board's case file to determine
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> > (1) if it appears by a preponderance of the evidence that the agreed settlement is in accordance with AS 23.30.012; and
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> > (2) if the board finds the agreed settlement
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> > (B) lacks adequate supporting information to determine whether the agreed settlement appears to be in the employee's best interest or if the board finds that the agreed settlement is not in the employee's best interest, the board will deny approval of the agreed settlement, will notify the parties in writing of the denial, and will, in the board's discretion, inform the parties
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> > > (i) of the additional information that must be provided for the board to reconsider the agreed settlement; or
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> > > (ii) that either party may ask for a hearing to present additional evidence or argument for the board to reconsider the agreed settlement; . . . If a hearing is held under this section, the board will, in its discretion, notify the parties orally at the hearing of its decision or in writing within 30 days after the hearing; . . . or the agreed settlement does not appear to be in the employee's best interest, the board will deny approval of the agreed settlement; the board will not prepare a written decision and order containing findings of fact and conclusions of law unless, within 30 days after the board's notification, a party files with the board a written request for findings of fact and conclusions of law together with the opposing party's written agreement to the request.
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> **8 AAC 45.195. Waiver of procedures**. A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

ANALYSIS

Was the oral order denying the proposed C&R correct?

A separate panel reviewed this C&R and denied it, advising the parties in writing under 8 AAC 45.160(d)(2)(B)(i) as to the information it needed to determine if the C&R was in Employee's best interest. Among the other things requested, Employer provided medical records on a Medical

Summary, as requested, but only after Employee had already signed the C&R. It is unknown if Employee had ever seen the records, including the favorable EME report, before he signed the C&R, or if he has ever read Dr. Thompson's report. *Rogers & Babler*.

Employee has no attorney, but he has a right to settle his "claim for injury" under §.012(a). Along with all other benefits to which he may be entitled for this injury, Employee waives future medical benefits under §.095(a) in the proposed C&R. Thus, §.012(b) requires panel review and approval as does 8 AAC 45.160(d)(1). Under §.012(b) approval comes only if the settlement agreement appears to be in Employee's best interest. Since an oral order at hearing denied approval in this instance, Employee requested, and the parties are entitled to, an explanation. Ordinarily, there would be no written decision on a C&R denial unless a party filed a written request and the opposing party agreed to the request under 8 AAC 45.160(d)(B)(ii). Since Employee is self-represented and is not sophisticated in respect to workers' compensation practice and procedure, this rule is relaxed under 8 AAC 45.195 to accept Employee's oral request. Moreover, Employer did not voice an objection to a written decision after Employee requested one at hearing.

The presumption analysis under AS 23.30.120(a)(1) does not expressly apply to C&R review under §.012. However, presumption factors are useful in considering whether the C&R is in Employee's best interest. For example, appropriate best-interest considerations include whether Employee raised the presumption and whether Employer rebutted it. Additionally, C&R reviewers consider whether a limiting statute may bar or otherwise diminish the claim and if Employee is likely to prove his entitlement to benefits by a preponderance of the evidence. Employer accepted Employee's injuries and paid benefits. Employee has filed no claim, and Employer has raised no defenses and made no controversions in this case.

Benefits are payable under the Act if disability, which is defined in §395(16) as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment," or need for medical treatment "arose out of and in the course of employment." AS 23.30.010(a). To establish the statutory presumption under §.120(a)(1) that disability or need for medical treatment arose out of and in the course of his employment, Employee must establish a causal link between his employment and his disability or need for

treatment. *Meek*. Based on the evidence currently in the file, Employee raised the presumption through his testimony as to how the injury occurred and through Dr. Mina's opinions. *Tolbert*. Further, Dr. Thompson's EME report also raises the presumption when it states:

> In my medical opinion, the substantial cause of the need for the proposed surgical treatment of the lumbar spine was [the] September 3, 2024 work event, even in light of the fact that it was clearly known that the patient had lumbar spinal stenosis. In my opinion, the September 3, 2024 work injury was the substantial cause because he had successfully returned to work and comfortable function of his back and legs prior to the work injury of September 3, 2024, and it was only after this exacerbation or aggravation of the lumbar spinal stenosis of September 3, 2024 that he began having severe lower extremity symptomatology.
>
> As stated above, it is my opinion that the discussed surgical treatment of the cervical spine including at C5-C6, C6-C7 anterior cervical discectomy for decompression and instrumented fusion surgery is both medically reasonable and necessary for the process of recovery and the increased symptomatology was caused by [the] September 3, 2024 work event.

Because Employee raised the presumption, Employer was required to rebut it with substantial evidence showing the disability or need for medical treatment did not arise out of and in the course of employment. Employer can meet its burden either with substantial evidence showing that something other than work was the cause of disability or need for treatment, or by evidence that work could not have caused the disability or need for medical treatment. *Huit*. Without regard to credibility, and based on the current record, Employer did not rebut the presumption. *Wolfer*. In his December 21, 2024 EME report, Dr. Thompson made it clear that the September 3, 2024 work injury is the substantial cause of disability and need to treat both Employee's lumbar-spine and his neck, notwithstanding Employee's preexisting conditions. *DeYonge*. His opinion not only does not rebut the presumption, but it also reinforces the presumption. *Runstrom*; *Saxton*.

Because Employer failed to rebut the raised presumption, Employee would currently prevail without producing further evidence. *Huit*. If he wanted to proceed with the cervical surgery Drs. Thompson and Mina recommended, he could do so now, and Employer would be required to pay for it under §.095(a) and any related disability under §.185. The question is whether the work injury aggravated, accelerated or combined with Employee's preexisting condition causing his disability and need for medical care. *Fox*. The evidence in the record clearly shows that it does.

An injury is work-related if it is the substantial cause of an aggravation in Employee's symptoms, even though it does not cause or aggravate the underlying process or condition. *DeYonge*.

Employer's EME physician Dr. Thompson explicitly stated that he recommended additional cervical fusion to treat the effects of Employee's work injury. While Dr. Mina stated Employee was medically stable, and Dr. Taylor gave him a PPI rating, Employer's physician emphatically stated he was not medically stable and it was premature to give him a PPI rating. Dr. Taylor gave Employee a zero percent PPI rating for his neck, which is likely to change under §.190(a) if Employee undergoes cervical fusion. *Rogers & Babler*. Moreover, the law provides a presumption for continuing disability. *Meek*; *Adams*. Although Employer paid Employee PPI benefits, according to its own physician Employee is not medically stable and according to Employee he remains disabled. Thus, it appears that according to Employer's physician, Employee would be entitled to either TTD benefits under §.185 or PTD benefits under §.180(a) possibly adjusted for lump-sum PPI benefits already paid, until such time as he obtains his recommended cervical surgery and recovers from it or is no longer considered disabled.

Given this evidence and argument presented at hearing, the panel could find no cause to approve the proposed C&R. Employee may contact a workers' compensation technician at 269-4980 if he has questions about how to proceed with his claim. He previously requested and obtained a list of workers' compensation lawyers from the Division, which was provided. Since this is an "adversarial system" he is encouraged to consult with an attorney. *Seybert*. Lastly, to avoid a possible claim "bar," Employee must file a claim for additional benefits within two years of the date Employer last paid him disability or impairment benefits. AS 23.30.105.

CONCLUSION OF LAW

The oral order denying the proposed C&R was correct.

ORDER

The C&R is denied.

Dated in Anchorage, Alaska on October 22, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Michael Dennis, 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 Daniel Nelson, employee / claimant v. WMLS, Inc., employer; American Interstate Insurance Company, insurer / defendants; Case No. 202411963; 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 October 22, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician