

## Alaska Workers' Compensation Appeals Commission

Israel Abonce,  
Appellant,

vs.

Yardarm Knot Fisheries, LLC, and  
Commerce and Industry Insurance Co.,  
Appellees.

### Final Decision

Decision No. 111                      June 17, 2009

AWCAC Appeal No. 08-007

AWCB Decision No. 08-0019

AWCB Case No. 200424098

Appeal from Alaska Workers' Compensation Board Decision No. 08-0019, issued at Anchorage, Alaska, on February 1, 2008, by southcentral panel members Rosemary Foster, Chair, Patricia Vollendorf, Member for Labor, and Dave Kester, Member for Industry.<sup>1</sup>

Appearances: Israel Abonce, *pro se*, appellant.<sup>2</sup> Colby Smith, Griffin and Smith for appellees, Yardarm Knot Fisheries, LLC, and Commerce and Industry Insurance Co.

Commission proceedings: Appeal filed March 10, 2008. Appellant ordered to remedy default May 8, 2008, and July 10, 2008. Appellant's request to waive fees granted August 15, 2008. Board's request for extension of time to prepare record granted August 29, 2008. Appellees' request for extension of time to file brief granted December 23, 2008. Oral argument on appeal continued March 23, 2009, following appellant's failure to appear at hearing on March 20, 2009. Oral argument on appeal presented April 14, 2009.

Appeal Commissioners: David W. Richards, Stephen T. Hagedorn, Kristin Knudsen.

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<sup>1</sup> The board later completed and affirmed this decision in *Israel Abonce v. Yardarm Knot Fisheries, LLC*, Alaska Workers' Comp. Bd. Dec. No. 08-0193, 29 (Oct. 22, 2008) (*Abonce II*).

<sup>2</sup> Abonce is a native Spanish speaker with limited English skills. The commission permitted him to write his brief in Spanish, then obtained a translation of Abonce's appellate brief (and an interpreter during oral argument) through the Language Interpreter Center to assure commission understanding of the nuances of his argument. Commission-provided interpreters and translators serve the commission rather than the parties. The commission commends the very proficient interpreter and translator in this case.

*This decision has been edited to conform to technical standards for publication.*

By: Stephen T. Hagedorn, Appeals Commissioner.

Israel Abonce, who was an employee of Yardarm Knot Fisheries, LLC, appeals the board's decision to deny his claim for ongoing temporary total disability payments, as well as his claim for medical benefits. The board concluded that Abonce was medically stable after June 21, 2006, and that any further medical treatment needed for his right leg, right elbow, and low back was not due to his work injuries.

Abonce argues that the board unfairly relied on his employer's physicians and the board-appointed second independent medical evaluator, whom he contends conducted a "very superficial" examination, rather than his attending physicians. He also asserts that the board mistakenly found that there was a gap of 17 months during which he did not follow up with a physician for low back pain and, therefore, the board lacked substantial evidence to conclude his current low back pain was not related to his work injuries. Lastly, he argues that because he was healthy before the work accidents, those accidents must have caused his present disability.

The appellees contend that the board properly denied Abonce's claims for medical care and for temporary total disability compensation (TTD) after June 21, 2006, based on the employer medical examinations (EMEs) and the board-ordered second independent medical examination (SIME).

The parties' contentions require the commission to decide whether substantial evidence supports the board's decision to deny medical benefits and TTD. The commission concludes the board may properly rely on medical opinions of the EME or SIME physicians. Although Abonce may want the commission to evaluate the physicians' opinions differently, the commission declines to reweigh the evidence because doing so would impinge on the board's authority to assign the weight to conflicting medical reports under AS 23.30.122.

Moreover, the commission concludes that there is substantial evidence to support the board's finding that Abonce's low back pain was not work related, even if he can establish that the gap in seeking medical treatment was less than 17 months.

Lastly, Abonce's argument that the accidents caused his disability because he was healthy before the accidents is based on a logical fallacy, *post hoc, ergo promppter hoc*, that confuses sequence with consequence. Overall, the commission concludes that there is substantial evidence in light of the whole record to support the board's decision denying medical benefits for appellant's right leg, right elbow, low back, and denying TTD after June 21, 2006. The board's decision is affirmed.

*1. Factual background.*

Israel Abonce worked as a fish processor for Yardarm Knot Fisheries beginning on June 23, 2004.<sup>3</sup> Twice in three days, a forklift injured Abonce while he was packing frozen fish. On July 6, 2004, a forklift struck a plastic pallet that then bumped the pallet that Abonce was standing on, causing him to fall.<sup>4</sup> On July 8, 2004, a forklift struck him in the back when he was standing on a pallet.<sup>5</sup> As a result of these two incidents, Abonce reported injuring his right side, including his arm, leg and buttocks, and his back.<sup>6</sup> He was seen at the Camai Community Health Center on July 6, July 8, and July 10.<sup>7</sup> After the second injury, he was unable to return to work because of back pain.<sup>8</sup>

After the second incident, Abonce went back to his home in Mexico.<sup>9</sup> In June 2005, Abonce was diagnosed with bilateral carpal tunnel syndrome and cervical stenosis.<sup>10</sup>

Yardarm Knot Fisheries paid Abonce TTD from February 11, 2005, to June 21, 2006, permanent partial impairment compensation (PPI) in the amount of \$42,480, and

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<sup>3</sup> R. 0058.

<sup>4</sup> Tr. 31:4-7; 32:9-13; 47:14-15.

<sup>5</sup> Tr. 47:20 – 48:4.

<sup>6</sup> R. 0058-59.

<sup>7</sup> R. 0184-186.

<sup>8</sup> R. 0186.

<sup>9</sup> R. 0459.

<sup>10</sup> R. 0213, 0452.

additional PPI of \$1,770.<sup>11</sup> It also paid for medical benefits including carpal tunnel surgery on his right wrist, cervical fusion surgery, and carpal tunnel surgery on his left wrist.<sup>12</sup>

On December 2, 2005, a certified physician's assistant for Abonce's attending physician, Dr. Marshall Lewis, reported that the Abonce complained of pain extending from his lower back into his right knee. The report stated that "this office has never been told of this problem and the patient has not been evaluated for this."<sup>13</sup> Dr. Lewis released Abonce to return to work with restrictions at that time.<sup>14</sup> In February 2006, an MRI of his lower back was "completely normal."<sup>15</sup> On April 14, 2006, Lewis's physician's assistant concluded that Abonce's neck condition was "stable."<sup>16</sup>

On March 21, 2006, Drs. John Swanson and Gerald Reimer saw Abonce for an EME.<sup>17</sup> They stated the following diagnoses for Abonce:

- 1) Pre-existing cervical spondylosis consisting of arthritis of the uncovertebral and facet joints and degenerative disc disease of the cervical spine;
- 2) Pre-existing osteoarthritis of the right elbow;
- 3) History of previous forearm fracture with ulnar syloid non-union on the right with possible bilateral radiocarpal osteoarthritis;
- 4) Status post bilateral carpal tunnel releases;
- 5) Status postop C5-6 anterior cervical discectomy and fusion to treat the spondylosis of the cervical spine;
- 6) Subjective low back complaints starting 12/02/05;
- 7) Somatic focus with subjective complaints outweighing objective abnormalities, and
- 8) Evidence of symptom magnification with probable secondary gain.<sup>18</sup>

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<sup>11</sup> R. 0007, 0009.

<sup>12</sup> R. 0433, 0231, 0227.

<sup>13</sup> R. 0386.

<sup>14</sup> R. 0388.

<sup>15</sup> R. 0368.

<sup>16</sup> R. 0324.

<sup>17</sup> R. 0062.

<sup>18</sup> R. 0078-79.

Dr. Swanson and Dr. Reimer did not consider any of these conditions related to the work injury of July 8, 2004. They stated the work injuries “involved contusions and strains of the cervical and lumbar spine, which are resolved, stable and without impairment, and a contusion of the right elbow, which is resolved, stable and without impairment.”<sup>19</sup> They stated that Abonce was “in all medical probability, medically stable” and concluded that he could return to work as a fish processor.<sup>20</sup>

## *2. Board proceedings.*

On May 5, 2006, Yardarm Knot Fisheries controverted TTD, temporary partial disability compensation, and medical benefits.<sup>21</sup> The controversion was based on the EME report. Yardarm Knot asserted that Abonce was medically stable, that PPI was fully paid, that Abonce was able to return to work at his pre-injury job, and that no future medical care was required as a result of the work injury.<sup>22</sup> Abonce filed a claim with the board for the controverted benefits.<sup>23</sup>

Because there was a medical dispute on work causation of Abonce’s various complaints, the board ordered a SIME.<sup>24</sup> On November 17, 2006, Dr. Alan Roth saw Abonce.<sup>25</sup> Dr. Roth opined that the work injuries either herniated a cervical disc or exacerbated Abonce’s pre-existing degenerative cervical condition to the point where he needed surgery.<sup>26</sup> Dr. Roth also stated that Abonce “probably sustained a transient lumbar strain,” which had since resolved, due to the work injuries.<sup>27</sup> However, Dr. Roth concluded that Abonce’s degenerative joint disease at the right elbow and carpal tunnel

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<sup>19</sup> R. 0079.

<sup>20</sup> R. 0080.

<sup>21</sup> R. 0006.

<sup>22</sup> R. 0006.

<sup>23</sup> R. 0591.

<sup>24</sup> R. 0576-78.

<sup>25</sup> R. 0083.

<sup>26</sup> R. 0091-93.

<sup>27</sup> R. 0091-92.

syndrome were unrelated to his work injuries.<sup>28</sup> Dr. Roth concluded that Abonce reached medical stability “within nine months after his cervical fusion,”<sup>29</sup> which would have been June 21, 2006.<sup>30</sup>

Abonce’s claim was heard on November 8, 2007, on the agreed issues of whether he was entitled to medical care for his right elbow, low back, and right leg as a result of 2004 work injuries, and whether he was entitled TTD (for any injury) after June 21, 2006.<sup>31</sup> On February 1, 2008, the board issued a decision holding that Abonce was not entitled to medical care for his right elbow, low back and right leg conditions, as a result of the July 2004 work injuries, and that he was not entitled to additional TTD after June 21, 2006.<sup>32</sup> After going through the three-step analysis of the compensability presumption,<sup>33</sup> the board concluded that Abonce failed to prove his claims by a preponderance of the evidence. The board relied on Drs. Roth, Swanson and Reimer as well as Abonce’s attending physician Dr. Lewis, in concluding that pre-existing joint disease and a prior fracture caused the right elbow condition and that the right elbow’s current status was not related to the work injuries.<sup>34</sup> The board concluded

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<sup>28</sup> R. 0092. “Cumulative trauma during the two-week period can neither explain his degenerative changes at the elbow, nor can they explain carpal tunnel syndrome.” *Id.*

<sup>29</sup> R. 0093.

<sup>30</sup> Abonce’s cervical fusion surgery was on September 21, 2005. R. 0227.

<sup>31</sup> R. 0591; *Israel Abonce v. Yardam Knot Fisheries*, Alaska Workers’ Comp. Bd. Dec. No. 08-0019, 1 (Feb. 1, 2008) (R. Foster, chair) (*Abonce I*). *But see* R. 0587.

<sup>32</sup> *Id.* at 35.

<sup>33</sup> The board found that Abonce presented the minimal relevant evidence to establish a preliminary link between his injuries and his work (so as to raise the presumption of compensability) and that, without weighing the employer’s evidence and viewing it in isolation, the employer presented substantial evidence to rebut the presumption that Abonce’s right elbow, right leg, and lower back conditions were work-related. This meant that Abonce had to prove his claims by a preponderance of the evidence. *Id.* at 27-31. For cases laying out the presumption analysis, *see, e.g., Grainger v. Alaska Workers’ Comp. Bd.*, 805 P.2d 976, 977 (Alaska 1991); *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987).

<sup>34</sup> *Abonce I*, Bd. Dec. No. 08-0019 at 28-29.

Abonce's low back claims were not related to the work injuries, relying on a July 6, 2004, x-ray that revealed a normal spine;<sup>35</sup> reports by Drs. Roth, Swanson, and Reimer that concluded Abonce suffered a transient back strain; and, the gap of 17 months from July 2004 to December 2005 during which Abonce did not complain to his attending physician about lower back pain.<sup>36</sup> In addition, the board concluded that Abonce's right leg complaints also were not related to the work injuries because, although Abonce complained of right leg pain in the days immediately after the July 2004 injuries, he did not mention it again until December 2005, and because Drs. Roth, Swanson, and Reimer all concluded his right leg complaints were not related to the work injuries.<sup>37</sup>

The board also denied Abonce's claim for TTD after June 21, 2006. It found that all the physicians, including Drs. Roth, Swanson, Reimer, and Lewis, agreed that Abonce was medically stable at the latest by June 21, 2006; the board also found Abonce had offered no evidence to the contrary other than his testimony that he was unable to work from the date of the second injury in July 2004 to the date of the hearing.<sup>38</sup>

However, the board was concerned that the report by Dr. Swanson and Dr. Reimer was based on an incomplete review of the medical records.<sup>39</sup> After the missing records were given to Dr. Swanson and Dr. Reimer, Dr. Swanson submitted an addendum report, modifying his prior opinion in two respects. He concluded that, instead of the first back complaints surfacing in December 2005, Abonce had a lumbar strain on July 6, 2004, and a further lumbar strain on July 8, 2004, but that both those strains would have resolved three to eight months after the injuries, most likely by

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<sup>35</sup> R. 0492.

<sup>36</sup> *Id.* at 30-31.

<sup>37</sup> *Id.* at 30-31.

<sup>38</sup> *Id.* at 32-33.

<sup>39</sup> *Id.* at 33-34.

October 7, 2004.<sup>40</sup> He also concluded that only Abonce's lumbar spine was strained in the July 2004 work injuries but not his cervical spine.<sup>41</sup>

On October 22, 2008, the board issued its second decision.<sup>42</sup> The board, relying primarily on Dr. Roth's SIME report and Dr. Swanson's addendum EME report, reaffirmed its decision of February 1, 2008, denying Abonce's claim for medical benefits for his right elbow, low back and right leg, and denying TTD after June 21, 2006.<sup>43</sup>

Abonce appeals the board's February 1, 2008, decision.<sup>44</sup>

### 3. *Standard of review.*

The commission must uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record.<sup>45</sup> "The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."<sup>46</sup> The commission independently examines questions of law.<sup>47</sup>

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<sup>40</sup> R. 0501-503.

<sup>41</sup> R. 0502.

<sup>42</sup> *Abonce II*, Bd. Dec. No. 08-0193 at 1.

<sup>43</sup> *Id.* at 28-29.

<sup>44</sup> Abonce did not file a second appeal of the Oct. 22, 2008, decision. However, the commission recognized that the board retained jurisdiction over two issues in *Abonce I*, and extended the time to prepare the record to allow the board to complete its decision. Order Extending Time to Prepare Record, August 29, 2008. The order directing the parties to prepare briefs was issued after *Abonce II* was issued. Notice and Instruction to File Briefs, Oct. 24, 2008. From Abonce's brief and argument, it appears he wanted to appeal the final board decision to deny him further benefits as well as the first decision. The appellees also addressed *Abonce II* in their argument. Appellees' Br. 19, 21. The commission therefore considered this appeal as if Abonce had also appealed *Abonce II*, rather than deem an appeal of the merits of the board's decision in *Abonce II* waived.

<sup>45</sup> AS 23.30.128(b).

<sup>46</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054, 6 (August 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-89 (Alaska 1984)).

<sup>47</sup> AS 23.30.128(b).

However, the commission “will not reweigh conflicting evidence, determine witness credibility, or evaluate competing inferences from testimony because those functions are reserved to the Board.”<sup>48</sup> Thus, “even when conflicting evidence exists, we uphold the Board’s decision if substantial evidence supports it.”<sup>49</sup> Because the commission makes its decision based on the record before the board, the briefs, and oral argument, no new evidence may be presented.<sup>50</sup>

*4. Substantial evidence supports the board’s decision.*

Reading his brief liberally, Abonce raises three points in his appeal,<sup>51</sup> all of which are fundamentally factual challenges to the board’s decision. We address each in turn.

*a. The board may properly rely on medical opinions from physicians other than the employee’s attending physician.*

Abonce argues that the board unfairly relied on the physicians that the insurance company sent him to see.<sup>52</sup> He specifically argues the SIME by Dr. Roth is inadequate, stating that his examination was “very superficial.”<sup>53</sup>

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<sup>48</sup> *Lindhag v. State, Dep’t of Natural Res.*, 123 P.3d 948, 952 (Alaska 2005) (quoting *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 493 (Alaska 2003)). See also AS 23.30.122 (providing “[t]he board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness’s testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions.”); AS 23.30.128(b) (providing the “board’s findings regarding the credibility of testimony of a witness before the board are binding on the commission”).

<sup>49</sup> *Lindhag*, 123 P.3d at 952 (quoting *Bradbury v. Chugach Elec. Assoc.*, 71 P.3d 901, 905 (Alaska 2003)).

<sup>50</sup> AS 23.30.128(a).

<sup>51</sup> Appellees agreed at oral argument before the commission that these are the points Abonce raises on appeal.

<sup>52</sup> On commission questioning during oral argument, Abonce stated that he does not claim the physicians were biased against him. He also conceded that he was free to choose his own physician as AS 23.30.095(a) requires.

<sup>53</sup> Appellant’s Br. 5. In addition, we note that Dr. Roth was selected by the board from a list established and maintained by the board to conduct second

Abonce's arguments seem to suggest that his attending physician's opinions should be entitled to greater weight than the other physicians because his own physician best knows his conditions. But the Alaska Supreme Court has refused to adopt any rule that an attending physician's opinion is presumptively entitled to greater weight than the opinion of an employer's expert.<sup>54</sup> The board is tasked with evaluating credibility and deciding the weight to accord physicians' reports and testimony.<sup>55</sup> Abonce may attempt to discredit Dr. Roth's opinions by arguing that his evaluation was "very superficial," but it remains up to the board to decide whether to rely on Dr. Roth's and the other physicians' opinions. In addition, the opinions of Abonce's attending physician, Dr. Lewis, were largely consistent with the other physicians' opinions on Abonce's low back, right leg, and right elbow. The board relied on a report from Dr. Lewis's office that noted the first time that Abonce complained of low back and right leg pain was in December 2005.<sup>56</sup>

In any event, the commission cannot reweigh this evidence on appeal because the board determines the weight to be accorded conflicting evidence.<sup>57</sup> The commission's role on appeal is to determine whether substantial evidence supports the board's decision:

We examine the evidence objectively so as to determine whether a reasonable mind could rely upon it to support the board's conclusion. We do not consider whether the board relied on the weightiest or most persuasive evidence . . . The commission will not reweigh the evidence or choose between competing inferences, as the board's assessment of the weight to be accorded conflicting evidence is conclusive. The

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independent medical evaluations when there is a medical dispute regarding causation, medical stability or other issues under AS 23.30.095(k). R. 0576-78.

<sup>54</sup> *Smith v. Univ. of Alaska, Fairbanks*, 172 P.3d 782, 793 (Alaska 2007); *Safeway v. Mackey*, 965 P.2d 22, 29 (Alaska 1998).

<sup>55</sup> AS 23.30.122.

<sup>56</sup> R. 0386.

<sup>57</sup> AS 23.30.122.

commission will uphold the board's findings when the evidence is merely adequate to support a conclusion in a reasonable mind.<sup>58</sup>

In Abonce's case, substantial evidence supports the board's conclusion that the low back, right elbow, and right leg injuries were not the result of the July 6 and July 8, 2004, injuries. The reports of Dr. Roth, Dr. Reimer, and Dr. Swanson are adequate to support this conclusion in a reasonable mind.

There is substantial evidence in the record to support the board's finding that Abonce was not entitled to TTD after June 21, 2006, because he was medically stable.<sup>59</sup> Drs. Roth, Reimer, Swanson, and Lewis agreed that Abonce was medically stable after his cervical fusion and wrist surgeries in spring 2006. The board adopted the latest possible date of medical stability, June 21, 2006. Because the medical evidence supports this conclusion, the board had substantial evidence to end Abonce's entitlement to TTD.

Finally, nothing suggests that the physicians' reports were based on an incomplete review of Abonce's medical history. To the contrary, the board made sure that the physicians' reports were based on a complete review of Abonce's records. In *Abonce I*, the board listed medical records that were not discussed in Dr. Swanson and Dr. Reimer's report and it held the record open to receive a corrected report if those physicians had not reviewed the listed records.<sup>60</sup> Dr. Swanson submitted an addendum report.<sup>61</sup> In addition, Abonce conceded in oral argument before the commission that the board had all the relevant medical records by the second decision. Based on the

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<sup>58</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054, 6 (August 28, 2007) (citations omitted).

<sup>59</sup> See AS 23.30.185 providing in part that "[t]emporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability" and AS 23.30.395(27) defining medical stability as "the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time . . ."

<sup>60</sup> *Abonce I*, Bd. Dec. No. 08-0019 at 33-34.

<sup>61</sup> R. 0501-503.

addendum report and the evidence the board relied on in *Abonce I*, the board reaffirmed its findings and conclusions that Abonce was not entitled to medical care for his right elbow, low back, and right leg, nor to TTD after June 21, 2006.<sup>62</sup> There is substantial evidence in the record to support the board's findings.

*b. A smaller gap between the injury and complaints of back pain does not require reversal of the board's decision that Abonce's low back pain was not work related.*

Next, Abonce argues that the board was mistaken when it stated that he did not see a physician for low back pain between July 10, 2004, and December 2, 2005. Thus, he suggests, substantial evidence does not support the conclusion that his low back pain was not work related. However, even if Abonce saw a physician in Mexico, his evidence shrinks, but does not eliminate, the gap between his work injuries and the documentation of back pain. Abonce does not explain why a smaller gap must change the board's decision.

Moreover, although the board gave weight to the gap in the medical record of Abonce's symptoms, it relied on other evidence to support its decision. Dr. Roth, Dr. Swanson, and Dr. Reimer agreed that the July 2004 work injuries at most caused a low back strain that had long since resolved. Abonce had the opportunity to submit evidence on this point<sup>63</sup> and the board could have changed its decision in the second decision. The board was not required to change its mind by any evidence Abonce submitted. There was substantial evidence to support the board's final decision.

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<sup>62</sup> *Abonce II*, Bd. Dec. No. 08-0193 at 28-29.

<sup>63</sup> R. 0576-78 (prehearing conference summary laying out how Abonce could get medical reports not already included in the record to the board and SIME physician).

c. *Abonce's assertions that he was healthy before the accidents, and that his various medical conditions developed after the accidents, are insufficient alone to establish causation in the face of the substantial evidence overcoming the presumption.*

Lastly, Abonce makes a *post hoc, ergo propter hoc* argument;<sup>64</sup> that is, because he was “perfectly fine and healthy” before the July 2004 work injuries and has been in pain since then, the work accidents must have caused his disability.<sup>65</sup> The Supreme Court rejected use of this logical fallacy to support a finding that a causal relationship exists in complex medical cases when the presumption has been overcome.<sup>66</sup> Once the employer overcomes the presumption of compensability, it is the employee’s burden to prove his case by a preponderance of the evidence.<sup>67</sup> When the key controversy centers on the *medical evidence* of causes of the employee’s conditions, timing alone is not enough to satisfy this burden and establish causation of the disabling condition.<sup>68</sup>

Accepting for argument’s sake that Abonce believed he was healthy before the work injuries, his personal belief in his health does not necessarily contradict evidence of pre-existing undiagnosed conditions (e.g., the right elbow arthritis identified by

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<sup>64</sup> *Post hoc, ergo propter hoc* literally means “after this, therefore because of this.” Bryan A. Garner, *A Dictionary of Modern Legal Usage* 676 (Oxford Univ. Press 2nd ed. 1995).

<sup>65</sup> Appellant’s Br. 5.

<sup>66</sup> *Lindhag*, 123 P.3d at 954 (rejecting workers’ compensation claimant’s *post hoc, ergo propter hoc* argument and concluding that the board could rely on a physician’s opinion that even though the claimant was diagnosed with asthma after her workplace exposure to toxins, that exposure did not cause her asthma).

This argument may carry more validity in some cultures. However, Abonce has not alleged that a minor physical injury led to a disabling mental conversion disorder that would allow the board to consider a psychiatrist’s opinion that takes into account cultural context and a patient’s belief system.

<sup>67</sup> *E.g., Safeway v. Mackey*, 965 P.2d at 27. Appellant did argue that the appellees failed to overcome the presumption.

<sup>68</sup> *Lindhag*, 123 P.3d at 954.

Drs. Roth, Swanson, and Reimer), or coincidental development of conditions unrelated to the work injuries (i.e., the carpal tunnel syndrome identified by Dr. Roth). In the face of the medical evidence the board found credible, appellant's belief that he was healthy before the work accidents and his assumption that he would have remained so had he not been injured are insufficient to contradict the medical evidence and prove that the work injuries caused all his current medical conditions.

Moreover, Abonce's argument asks the commission to choose his testimony to the board over medical evidence that consistently rejected the proposition that his low back, right leg, and right elbow conditions were related to the July 2004 work injuries. Because the commission cannot reweigh the evidence or determine witness credibility on review of a board decision,<sup>69</sup> Abonce's argument must fail.

*5. Conclusion.*

The board had sufficient evidence to support its findings that Abonce's low back, right elbow, and right leg conditions were not the result of the July 2004 work injuries, and to find that Abonce was medically stable and therefore not entitled to TTD after June 21, 2006. The board's decision is AFFIRMED.

Date: 17 June 2009

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



*Signed*

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Stephen T. Hagedorn, Appeals Commissioner

*Signed*

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David W. Richards, Appeals Commissioner

*Signed*

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Kristin Knudsen, Chair

APPEAL PROCEDURES

This is a final decision on this appeal. The appeals commission AFFIRMED the board's decision denying Israel Abonce's claim for additional compensation and medical benefits. The appeals commission's decision ends all administrative proceedings on

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<sup>69</sup> AS 23.30.122; AS 23.30.128(b).

Mr. Abonce's workers' compensation claim. This decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started). To see the date this decision is distributed, look at the Certificate of Distribution in the box below.

Proceedings to appeal this decision must be instituted in the Alaska Supreme Court within 30 days of the date this final decision is mailed or otherwise distributed and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure.

You may wish to consider consulting with legal counsel before filing an appeal.

If you want to request commission reconsideration, you must file a request in writing within 30 days of the date of mailing of the decision. If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal, if appeal is available, must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier.

If you wish to appeal this decision to the Alaska Supreme Court, or petition the Supreme Court for other review, you should contact the Alaska Appellate Courts **immediately**:

Clerk of the Appellate Courts  
303 K Street  
Anchorage, AK 99501-2084  
Telephone 907-264-0612

#### RECONSIDERATION

A party may ask the appeals commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the appeals commission within 30 days after mailing of this decision.

#### CERTIFICATION

I certify that the foregoing is a full, true, and correct copy of the Alaska Workers' Compensation Appeals Commission's Decision No. 111, the final decision in the appeal of *Israel Abonce-Juarez v. Yardarm Knot Fisheries, LLC, and Commerce and Industry Insurance Co.*, AWCAC Appeal No.08-007, dated and filed in the office of the Alaska Worker's Compensation Appeals Commission in Anchorage, Alaska, this 17<sup>th</sup> day of June, 2009.

Signed  
L. Beard, Appeals Commission Clerk

<p style="text-align: center;"><u>Certificate of Distribution</u></p> <p>I certify that a copy of this Final Decision in AWCAC Appeal No. 08-007 was mailed on <u>6-17-09</u> to Israel Abonce (certified) &amp; C. Smith at their addresses of record and faxed to C. Smith, Director WCD, &amp; AWCB Appeals Clerk.</p> <p style="text-align: center;"><u>Signed</u> B. Ward, Deputy Appeals Commission Clerk</p>
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