

Chapter 45. Compensation, Medical

Benefits, and Proceedings

Before the Alaska

Workers' Compensation Board

8 AAC 45.510 is repealed and readopted to read:

8 AAC 45.510. Request for reemployment benefits eligibility evaluation. (a) For injuries occurring on or after November 7, 2005, an employee or an employer requesting an eligibility evaluation for reemployment benefits must file with the administrator and serve all other parties with

(1) a written request for the evaluation;

(2) a physician's prediction the injury may permanently preclude the employee from returning to the employee's job at time of injury; and

(3) documentation the employee has been totally unable to return to the employee's employment at time of injury for 60 - 89 consecutive days, as a result of the injury.

(b) The administrator will consider a written request for an eligibility evaluation for reemployment benefits unless the employer controverts on grounds the employee's injury did not arise out of and in the course of employment or on grounds the employee's total inability to return to the employee's employment at the time of injury is not a result of the injury. If reemployment benefits have been controverted on these grounds, the administrator will forward the matter to the board to conduct a prehearing conference regarding the controversion within 30 days. If requested by a party, the board shall conduct a hearing within 90 days of the prehearing

in accordance with 8 AAC 45.060(e) and .070(b)(3), limited to the grounds set forth in this subsection.

(c) If the request for an evaluation for reemployment benefits is incomplete, within 5 working days of receipt of the request, the administrator will send a letter to

(1) the employee and the employer asking for additional medical documentation regarding the employee's total inability as a result of the injury to return to the employee's employment at time of injury; or

(2) the employee and the employer asking for documentation, within 10 working days, of the employee's total inability to return to the employee's employment at time of injury for 60 - 89 consecutive days. Upon expiration of the prescribed time period, the administrator will rely on the division's record, including any documents submitted by the parties, to determine the employee's total inability to return to the employee's employment at time of injury for 60 - 89 days.

(d) Within 14 days of receiving a complete request for an evaluation for reemployment benefits under (a) of this subsection, the administrator will send a letter to the employee and the employer indicating whether the employee is entitled to an eligibility evaluation. If the employee is found to be entitled to an eligibility evaluation the administrator's letter will include the name and address of the rehabilitation specialist selected in accordance with AS 23.30.041(c) to evaluate the employee.

(e) If a firm or person who employs a rehabilitation specialist, or the rehabilitation specialist selected to complete an eligibility evaluation, is performing any other work on the same workers' compensation claim involving the injured employee, the rehabilitation specialist shall notify the administrator and the parties within 5 working days of receiving the referral

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letter. The administrator will select a different specialist in accordance with AS 23.30.041(c) to evaluate the employee.

(f) Within 10 working days of receipt of the administrator's letter selecting a rehabilitation specialist, the employer at the time of injury or its adjuster shall forward a copy of the employee's resume' and job application, if available, and a job description or summary of the employee's job duties to the rehabilitation specialist, the employee and the administrator. The adjuster shall also forward a copy of the report of injury and all medical reports, compensation reports and controversions to the rehabilitation specialist, the employee and the administrator.

(g) If either party disputes the administrator's decision rendered under this section, they must petition the board for review of the administrator's decision within 10 days of the filing of that decision.

(Eff. __/__/____, Register ____)

Authority: AS 23.30.001 AS 23.30.005 AS 23.30.010
AS 23.30.041(c)

8 AAC 45.520 is repealed:

8 AAC 45.520. Determination of unusual and extenuating circumstances.

Repealed. (Eff. __/__/____, Register ____)

Editor's note: The former statute providing for unusual and extenuating circumstances was repealed effective November 7, 2005.

8 AAC 45 is amended by adding a new section to read:

8 AAC 45.522. Ordering an eligibility evaluation without a request. (a) For injuries occurring on or after November 7, 2005, if an employee has been totally unable to return to the

employee's employment at time of injury for 90 consecutive days as a result of the injury, the administrator shall refer the employee for an eligibility evaluation unless the injury has been controverted on grounds identified in 8 AAC 45.510(b). If the injury has been so controverted, the administrator will forward the matter to the board to conduct a prehearing conference regarding the controversion within 30 days and hold a hearing in accord with 8 AAC 45.510(b).

(b) If no controversion notice has been filed under (a) above, the administrator shall send a letter to the parties within 5 working days identifying the name and address of the rehabilitation specialist selected in accordance with AS 23.30.041(c) to evaluate the employee.

(c) If a firm or person who employs a rehabilitation specialist, or a rehabilitation specialist assigned to complete an eligibility evaluation, is performing any other work on the same workers' compensation claim involving the injured employee, the rehabilitation specialist shall notify the administrator and the parties within 5 working days of receiving the referral letter. The administrator will select a different specialist in accordance with AS 23.30.041(c) to evaluate the employee.

(d) Within 10 working days of receipt of the administrator's letter selecting a rehabilitation specialist, the employer at the time of injury or its adjuster shall forward a copy of the employee's resume' and job application, if available, and a job description or summary of the employee's job duties to the rehabilitation specialist, the employee and the administrator. The adjuster shall also forward a copy of the report of injury and all medical reports, compensation reports and controversions to the rehabilitation specialist, the employee and the administrator.

(Eff. __/__/____, Register ____)

Authority: AS 23.30.001 AS 23.30.005 AS 23.30.041(c)

8 AAC 45.525 is amended to read:

8 AAC 45.525. Reemployment benefit eligibility evaluations. (a) If an employee is found **entitled to** [ELIGIBLE FOR] an eligibility evaluation for reemployment benefits under **AS 23.30.041(c)** [8 AAC 45.510 OR 8AAC 45.520], the rehabilitation specialist **whose name appears on the referral letter** shall

(1) **within 5 working days after receiving the referral letter,** interview the employee and [IF NECESSARY] the employer **and review all written job descriptions existing at the time of injury describing the employee's job** at time of injury, to obtain a description of the tasks and duties of the employee's job at time of injury;

(2) review the **appropriate** [FOLLOWING] volume **from (A) or (B) below** **and** choose the most appropriate job title or titles **which describe** [BASED ON THE DESCRIPTION OF] the employee's job **as defined in the employer's written job description(s) existing at the time of injury describing the employee's job at the time of injury.** [;] **If at the time of injury no written job description existed, the rehabilitation specialist shall review the appropriate volume from (A) or (B) below and choose the most appropriate job title or titles which describe the essential functions of the employee's job at the time of injury as defined in 29 CFR 1630.2(n). If the employee's injury occurred** [THE VOLUME TO BE REVIEWED UNDER THIS PARAGRAPH IS]

(A) on or after July 2, 1988 **but before** [AND UNTIL] August **30** [29], 1998, the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" (1981) (SCODDOT) **shall be used;** [AND]

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(B) on or after August 30, 1998, [the effective date of the amendment of AS 23.30.041(e) BY SEC. 1, CH. 59, SLA 1998], the effective date of the amendment of AS 23.30.041(e) by sec. 1, ch. 59, SLA 1998, the 1993 edition of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" **(SCODRDOT) shall be used** unless, under AS 23.30.041(**p**)[(q)], the board has designated a later revision or version of that volume; and

(3) submit **all** [THE] **DOT** job [TITLE OR] titles **identified** [CHOSEN] under (2) of this subsection to **the employee's** [A] physician, **the employee, the employer and the administrator.**

(b) When interviewing the employee the rehabilitation specialist **whose name appears on the referral letter** shall obtain descriptions of the tasks and duties for other jobs [THAT] the employee [HAS] held or for which the employee received training within 10 years before the injury, and any jobs held after the injury. The rehabilitation specialist shall

(1) **conduct research to independently identify and verify employee's jobs in the 10 years prior to the injury and any held after the injury.**

(2) review the **appropriate** [FOLLOWING] volume [AND,] from **(A) or (B) below and** [THE VOLUME,] choose the most appropriate job title or titles **which describe** [BASED ON THE EMPLOYEE'S DESCRIPTIONS OF] the job[']s held and training received. [; THE VOLUME TO BE REVIEWED UNDER THIS PARAGRAPH IS] **If the employee's injury occurred**

(A) on or after July 2, 1988 **but before** [AND UNTIL] August **30** [29], 1998, the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" (1981) (SCODDOT) **shall be used;** [AND]

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(B) on or after August 30, 1998, [THE EFFECTIVE DATE OF THE AMENDMENT OF AS 23.30.041(e) BY SEC. 1, CH. 59, SLA 1998] the 1993 edition of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" (**SCODRDOT**) **shall be used** unless, under AS 23.30.041(**p**)[(q)], the board has designated a later revision or version of that volume;

(3) **identify all DOT titles selected under (b)(1) for which the employee meets** [DETERMINE WHETHER THE EMPLOYEE HELD THE JOBS LONG ENOUGH TO MEET] the specific vocational preparation codes as described in the volume;

(4) submit **all** [THE] **DOT** job [TITLE OR] titles **identified** [CHOSEN] under [(1)—](2) of this subsection [, FOR WHICH THE EMPLOYEE MEETS THE SPECIFIC VOCATIONAL PREPARATION CODES,] to **the employee's** [A] physician, **the employee, the employer and the administrator.**

(5) If **a** [THE] physician predicts the employee will have [THE] permanent physical capacities equal to or greater than the physical demands of a job or jobs submitted under (b)(4) of this subsection, conduct [A] labor market **research** [SURVEY] **to determine whether the job(s) exists in the labor market as defined in AS 23.30.041(r)(3).** [A REASONABLE NUMBER OF JOB VACANCIES EXIST FOR THOSE JOBS].

(c) The rehabilitation specialist **whose name appears on the referral letter** shall contact the employee's employer at time of injury about employment in accordance with AS 23.30.041(f)(1). If the employer offers employment, the rehabilitation specialist shall

(1) complete a job analysis, including a description of the job duties, tasks, and physical requirements, and **submit the job analysis** [GIVE THIS DESCRIPTION] to a physician, **with a copy to the employee, the employer and the administrator,** to

predict whether the job's physical demands are within the employee's post-injury physical capacities;

(2) require the employer to complete an offer of employment on a form prescribed by the administrator, and document [THAT] the job offered will pay the employee at least the state minimum wage under AS 23.10.065 or an amount [THAT IS] at least equal to 75 percent of the employee's gross hourly wages at the time of injury, **whichever is greater**; and

(3) submit [A] labor market **research** [SURVEY] if the offer of employment meets the requirements of AS 23.30.041(f)(1); the **research** [SURVEY] must document [THAT] the offered employment prepares the employee to be employable in other jobs that exist in the labor market **at a level consistent with employee's predicted post injury physical capacities and at a wage equivalent to at least the state minimum wage under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of injury, whichever is greater.**

(d) The rehabilitation specialist **whose name appears on the referral letter** shall [ASK IF] **determine whether** the employee has ever

(1) [BEEN REHABILITATED IN A PRIOR WORKERS' COMPENSATION CLAIM] previously declined development of a reemployment benefits plan and received a job dislocation benefit and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury or

(2) been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury.

(e) If the employee has **received a job dislocation benefit or has** been **previously** rehabilitated in a [PRIOR] **former workers' compensation** claim, the specialist shall [TRY TO] obtain documentation of [THIS] **the previous job dislocation benefit or** rehabilitation for purposes of AS 23.30.041(f)(2 - **3**).

(f)[E] The rehabilitation specialist **whose name appears on the referral letter** shall document whether [OR NOT] a permanent impairment is identified or expected at the time of medical stability. This documentation may be either a physician's rating according to the appropriate edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, [USE OF WHICH IS DIRECTED BY] **under** AS 23.30.190 or a physician's statement [THAT] an impairment rating is or is not expected.

(g)[F] In accordance with 8 AAC 45.500 and within 30 days after **being selected** the rehabilitation specialist [RECEIVED NOTIFICATION UNDER 8 AAC 45.510(e)(2)(A) OF BEING SELECTED, THE REHABILITATION SPECIALIST] **whose name appears on the referral letter** shall submit **to the administrator, with simultaneous copies to the employee and employer**

(1) a report of findings, including a recommendation regarding eligibility for reemployment benefits, together with

(A) copies of **all predictions by any physician along with job titles identified under (a)(3) and (b)(4) above and job analyses identified under (d)(1) and (2) above** [THE PHYSICIAN'S PREDICTIONS];

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(B) the completed offer of employment form, if employment has been offered;

(C) labor market **research** [SURVEYS], if necessary;

(D) documentation of previous **job dislocation benefit or** rehabilitation [IF RECEIVED] **or evidence of efforts to obtain the information if not received;**

(E) **all** [THE] physicians' [']S ratings or statements regarding permanent impairment; or

(2) a written request for a 30-day extension explaining the unusual and extenuating circumstances, in accordance with AS 23.30.041(d), that prevented the rehabilitation specialist from completing the evaluation within 30 days [OF NOTIFICATION] of selection, **documenting the employee, employer, and the employee's physician were contacted within the first 30 days and the rehabilitation specialist is awaiting a response from one or more of the contacts.** If the administrator grants an extension requested under this paragraph, [NO LATER THAN AT THE END OF THE 30-DAY EXTENSION] the rehabilitation specialist shall prepare and submit a report of findings in accordance with (1) of this subsection **within a total of 60 days from the date the rehabilitation specialist was selected.**

(Eff. _ / _ / __, Register ____)

Authority: AS 23.30.005 AS 23.30.041(e-f) AS 23.30.041(p)

8 AAC 45.525 is amended by adding new subsections to read:

8 AAC 45.525. Reemployment benefit eligibility evaluations.

(h) **Any additional information for the administrator's consideration in the eligibility determination shall be filed with the administrator and served on all**

parties and the rehabilitation specialist within 10 days after the rehabilitation specialist's report is filed.

- (i) **The employer shall pay costs associated with the employee's physician's review of documents submitted under this section.**

(Eff. _ / _ / __, Register ____)

Authority: AS 23.30.005 AS 23.30.041(e-f) AS 23.30.041(p)

8 AAC 45.530(b) and (c) are amended to read:

8 AAC 45.530. Determination on eligibility for reemployment benefits.

(b) If the administrator determines the eligibility evaluation is not in accordance with 8 AAC 45.525, or the information on the board's case file is insufficient or does not support the eligibility recommendation, the administrator

(1) may not decide the employee's eligibility for reemployment benefits; and

(2) shall notify the employee, the employer, or the rehabilitation specialist to submit additional information within a specified date so eligibility can be determined **or** [.]

(3) may reassign the employee to a new rehabilitation specialist in accordance with 8 AAC 45.430.

(c) If the administrator determines the **employee** [EMPLOYER] is eligible for reemployment benefits, the administrator's notice must

(1) state [THAT] the employee shall **either elect reemployment benefits and select a rehabilitation specialist to assist in formulating a plan or the employee shall accept a job dislocation benefit. The employee's election must be made** within **30** [10] days after the employee receives the notice;

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(2) be accompanied by copies [A COPY] of the administrator's "Election To Either Receive Reemployment Benefits or Waive Reemployment Benefits and Receive A Job Dislocation Benefit Instead" form and a list of rehabilitation specialists; under this paragraph, if the employee

(A) resides in the state, the administrator will send the list of rehabilitation specialists in Alaska as defined in 8 AAC 45.400(b)(1); or

(B) does not reside in the state, the administrator will send a list of rehabilitation specialists nearest the employee based on the geographic area, as defined in 8 AAC 45.400(b)(2); and

(3) inform the employee [ON] how to notify [THE EMPLOYEE SHALL TELL] the employer and administrator of either the election of a job dislocation benefit or the name of the rehabilitation specialist selected to assist in the formulation of a plan.

(Eff. __/__/__, Register)

Authority: AS 23.30.005 AS 23.30.041(d) and (g)

8 AAC 45.535 is repealed and reenacted to read:

8 AAC 45.535. Election of either a job dislocation benefit or a rehabilitation specialist. Within 30 days after receipt of the administrator's notice under 8 AAC 45.530 of the employee's eligibility for benefits, the employee must file the completed election form with the administrator and serve a copy upon the employer that provides notice of

(1) the employee's election of a job dislocation benefit under AS 23.30.041(g)(2); or

(2) the employee's selection of a rehabilitation specialist under AS 23.30.041(g)(1).

(Eff. __/__/____, Register)

Authority: AS 23.30.005 AS 23.30.041(g)

8 AAC 45.540 is repealed and reenacted to read:

8 AAC 45.540. Rehabilitation specialist assignment for reemployment benefits. (a)

If the employer objects to the rehabilitation specialist selected by the employee under 8 AAC 45.535(a)(2)

(1) the employer must file with the administrator, and serve the employee and the rehabilitation specialist, written notice of objection within 10 days after receipt of the employee's selection;

(2) upon receipt of the employer's notice of objection, the administrator shall contact the parties in an effort to resolve the dispute. If the parties are unable to agree on a rehabilitation specialist, the administrator shall select a new rehabilitation specialist in accord with 8 AAC 45.430 and shall notify the employee and employer, in writing, of the assignment.

(b) Within 10 days after receipt of the administrator's notice under 8 AAC 45.540(a)(2), the employee may file with the administrator, and serve all parties and the rehabilitation specialist, a written notice objecting to the selection. Upon receipt of the employee's notice of objection, the administrator shall select a new rehabilitation specialist in accord with 8 AAC 45.430 and shall notify the employee and the employer of the selection in writing.

(c) If the employer does not object to the rehabilitation specialist selected by the employee under 8 AAC 45.535(a)(2), the administrator shall send a letter to the rehabilitation specialist, and serve the parties, notifying the rehabilitation specialist to begin development of a

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reemployment plan. If the selected rehabilitation specialist did not perform the eligibility evaluation, the rehabilitation specialist who performed the eligibility evaluation shall forward a copy of their complete file to the selected rehabilitation specialist, within 5 working days after receipt of the letter. (Eff. __/__/____, Register)

Authority: AS 23.30.005 AS 23.30.041(g)(1-3)

8 AAC 45.542(a) is amended to read:

8 AAC 45.542. Change of rehabilitation specialist. (a) If an employee has selected or been assigned a rehabilitation specialist **to perform an evaluation or** to develop a plan and, before the **evaluation is completed or the** plan is formulated, a change of residence by the employee or a change of business address by the rehabilitation specialist places the employee and rehabilitation specialist in different geographical locations, upon written notice that the worker or rehabilitation specialist has relocated, the administrator will decide if another rehabilitation specialist should be assigned to **complete the evaluation or to** develop a plan.

(Eff. __/__/____, Register)

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.550(a)(3) and (6) are amended to read:

8 AAC 45.550. Plans. (a) If an employee is found eligible for development of a reemployment plan, the rehabilitation specialist **whose name appears on the referral letter** shall

(3) compute the employee's remunerative employability wage; the wage computed under this paragraph must meet the standards of compensation set out in the definition

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of “remunerative employability” under AS 23.30.041(r)(7) [(p)] and meet the requirements of “gross hourly wages at the time of injury” under 8 AAC 45.490;

(6) submit **research** [A SURVEY] **documenting** [THAT] **the plan will provide** [FOR] the **employee** [EMPLOYEE’S] **the** occupational **skills to be employable within the plan’s occupational** goal, [DOCUMENTS EMPLOYMENT OPPORTUNITIES THAT] **the occupational goal exists** in the labor market, as [THAT TERM IS] defined by AS 23.30.041(r)(3)(A-D) [(p)(3)], **and** [THAT] **the plan ensures remunerative employability;** [PAY A WAGE THAT COMPLIES WITH THIS SUBSECTION;] (Eff. __/__/__, Register)

Authority: AS 23.30.005 AS 23.30.041(h-i) AS 23.30.041(r)

8 AAC 45.550(b) is amended to read:

8 AAC 45.550. Plans.

(b) Within 90 days after the date of the employee’s referral to the rehabilitation specialist for development of a reemployment plan, the rehabilitation specialist **whose name appears on the referral letter** shall submit (Eff. __/__/__, Register)

Authority: AS 23.30.005 AS 23.30.041 (h-i)

8 AAC 45 is amended by adding a new section to read:

8 AAC 45.560. Informal Rehabilitation Conferences. (a) When an employee is in the reemployment benefits process, either the employee, the employer, the rehabilitation specialist, the administrator or its designee may request an informal conference to be held before the administrator or its designee. The request shall be in writing to the administrator, served on all parties and the rehabilitation specialist, and include the issues to be discussed at the conference. The administrator will exercise discretion in scheduling and directing the parties or their

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representatives and the assigned rehabilitation specialist to appear for an informal rehabilitation conference.

(b) If an informal conference is held, the administrator will serve the parties and the rehabilitation specialist a written conference summary within 10 working days of the date the conference is held.

(Eff. __/__/____. Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.900 is amended by adding a new subsection to read:

(i)(4) For settlements occurring after the effective date of this regulation, previously rehabilitated under AS 23.30.041(f)(3) means being found eligible for retraining and having (1) completed a rehabilitation plan, or (2) waived rehabilitation benefits under AS 23.30.012 or through a similar process in another jurisdiction; and (3) returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury.

RECORD OF PUBLIC COMMENTS RECEIVED DEALING WITH PROPOSED CHANGES IN TITLE 8, CHAPTER 45, OF THE ALASKA ADMINISTRATIVE CODE, RELATING TO REEMPLOYMENT BENEFITS

DATE: February 19, 2010

NOTE: To conserve paper, only the sections or (subsection) that received comment are included.

| Proposed Regulation | Written Comments Received From | Summary of Comments | Agency Decision After Review of Comments |
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| 8 AAC 45.510(a)(2) | <p>2/5/10 letter, received the same date, by Jeffrey D. Holloway and Rebecca Holdiman Miller of Holmes Weddle & Barcott, employer attorneys</p> <p>2/8/10 Fax cover sheet and signature on Holloway/ Miller letter, received the same date, by Shelby Neunke-Davison of</p> | <p>Commented regarding subsection. "...there is now a requirement that, when a request for an ...evaluation is submitted, one party submit 'a physician's prediction the injury may permanently preclude the employee from returning to the ...job at the time of injury.' We believe that this requirement is inconsistent with041(c) which states that an injured worker shall be referred... once 90 consecutive days of time loss are met." Requirement only in place when employee has missed 60-89 consecutive days. Subsection needs to be clarified.</p> <p>"I concur with these statements."</p> | <p>The agency recommends insertion of language in proposed 8 AAC 45.510(a) "...November 7, 2005, <i>if the employee has been totally unable to return to the employee's employment at time of injury for 60-89 days as a result of the injury, the employee or employer may request an eligibility evaluation. The requesting party</i> must file with the administrator..."</p> <p>The agency notes this regulation does only address those cases where an employee has missed 60-89 consecutive days and further notes these cases are the only ones where the concept of a request is applicable. Proposed 8 AAC 45.522, referencing the mandatory referrals with 90 days consecutive days of time loss,</p> |

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| | <p>Budzinski of Russell Wagg Gabbert & Budzinski, defense attorney</p> | <p>The controversion, in itself, does not create an issue for the board to hear, it gives the grounds for the employer's denial of a benefit, but until a claim is filed by the injured worker there is no actual pleading that sets out a dispute. As written would require prehearing and hearing even if the employee did not disagree. Should reflect a hearing will be held if there was a disagreement and would be even better if a claim were required. Notes other defenses can justify denial of an eligibility evaluation including statute of limitations under AS 23.30.100, .105, .110, fraud defenses and the existence of permanent impairment. Subsection should include statement it does not preclude other defenses.</p> | <p>not violated by the regulation.</p> <p>Because neither party is entitled to full-blown discovery like in a trial setting, the regulation, as written, brings the process in line with the fundamental concept behind workers' compensation as articulated in AS 23.30.001. The board can place reasonable time limits on discovery just like we can on hearings and presentation of evidence developed through discovery. Speeding up the discovery is in complete harmony with AS 23.30.001.</p> <p>Therefore, establishing timelines for holding a hearing within 90 days protects the quick, efficient, fair and predictable provision of benefits at the least cost to employers and protects both employees' and employers' interests established in AS 23.30.001.</p> |
| | <p>2/5/10 Public comment of Daniel A. LaBrosse of DAL</p> | <p>This comment really applies to controversion during the plan process which is not addressed in any of the proposed regulations. It is placed here for lack of a more suitable location. References the ability of employers/insurers to controvert reemployment benefits beyond course and scope</p> | <p>The agency notes the employee does not need a rehabilitation specialist to indicate to the employer and RBS they are interested in resuming cooperation.</p> |

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| | Enterprises, LLC, rehabilitation specialist | issues. Has been personally controverted several times when, despite his best efforts to keep the employee cooperating in the plan, the employee has failed to cooperate. Employee is told by employer to get back in compliance and will resume benefits. Then the employer controverts rehab specialist and the employee has no ability to get back in to plan without the rehabilitation counselor. That may be the intention but thinks will be problematic as it stretches case out. He has filed claims to get his fees paid. | |
| 8 AAC 45.510(f) | Holloway/ Miller Davison Budzinski | Opines subsection needs to be clarified. "Many employers do not have job descriptions or summaries of the employee's job duties that are readily available. ...it is unclear whether this subsection would require an employer to find an actual SCODDOT job description" to match job at time of injury or if subjective summary of job duties is appropriate. "I concur with these statements" Noted most employers do not have job descriptions. They are either small or simply do not have one. Asks if employer would have to create one and, if so, notes that job descriptions generated post-injury could be problematic. | The agency recommends that proposed 8 AAC 45.510(f) be changed to read "...the employer at the time of injury or its adjuster shall forward a copy of the employee's résumé, job application and a job description or summary of the employee's job duties, if available , to the rehabilitation specialist, the employee and the administrator...." The employer is not asked to retrospectively develop a job description. They are also not asked to use SCODDOT or SCODRDOT. The rehabilitation specialist is charged with discussing the job duties and tasks with the employer and may discuss DOT titles with them. |

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| | <p>2/1/10 letter from Janice Shipman, Employment Solutions, LLC, rehabilitation specialist, rec'd 2/5/10; also commented on 2/5/10</p> <p>2/4/10 letter from Betty A. Lees of Vocational Choices, LLC, rehabilitation specialist, rec'd 2/8/10</p> | <p>Notes employer is given ten working days to provide the employee's résumé and job application and a job description, whereas rehabilitation specialist under the proposed 8 AAC 45.525(a)(1) only has five working days to interview employee and employer. Suggests insurer provide the required information to Reemployment Benefits Section or specialist when referral notification is received. Specialist needs the information for interviews to identify correct DOT titles. Nice to have the information before meeting with injured worker. Notes other regulations would need to change accordingly.</p> <p>Notes the information required of the employer at the time of injury will add additional cost to the insurer and employers, as well as additional time and expense for the State to file, maintain and store the information. Regulation will conflict with 8 AAC 45.525 in that specialist has tighter timelines that would require information from the employer sooner than is required in this regulation.</p> | <p>See "Agency Decision" re: 8 AAC 45.525(a)(1)</p> <p>The agency notes the requested information allows for an evaluation process that is fair, impartial and predictable from the outset with the most complete, relevant information available to the specialist and parties from the outset.</p> |
| 8 AAC 45.522(a) | Holloway/ Miller | <p>Oppose subsection. "...we believe ...type of controversion... required under [this subsection] is too restrictive and violates the employer's due process and statutory rights. ...an eligibility evaluation is denied only if the employer controverts on the grounds that the employee's injury did not arise out of the course and scope of employment or ... that the employee's total inability to return to the employment at the time of injury is not result of the injury... There are other full defenses... that an employer can use to deny <u>all</u> benefits" such as AS 23.30.100, .022, .105, .110 and .250.</p> | <p>Legislative history research reveals the legislature's intent is rehabilitation move forward rapidly in order to have the greatest likelihood of success in rehabilitating and returning the employee to the work force and ending the employee's disability.</p> |

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| | | <p>Should also stop evaluation if controverted under .010 that work injury is not substantial cause of medical condition or symptoms. ...subsection “needs to be rewritten to reflect that any controversion that could deny reemployment benefits stops an eligibility evaluation.”</p> <p>Mandates for prehearing conference and hearing triggered by controversions “violate AS 23.30.110 and 8 AAC 45.070... ‘a hearing will not be scheduled unless a claim or petition has been filed.’” Requirement to hold hearing within 90 days violates both parties’ rights to discovery, including right to gather pertinent records or to conduct an SIME.</p> <p>“I concur with these statements”</p> <p>Referenced Holloway/Miller letter. Regulation appears to call for hearing without a claim being filed, based upon a controversion, which is technically procedurally incorrect. The controversion, in itself, does not create an issue for the board to hear, it gives the grounds for the employer’s denial of a benefit, but until a claim is filed by the injured worker there is no actual pleading that sets out a dispute. As written would require prehearing and hearing even if the employee did not disagree. Should reflect a hearing will be held if there was a disagreement and would be even better if a claim were required. Notes other defenses can justify denial of an eligibility evaluation including statute of limitations under AS 23.30.100, .105, .110, fraud defenses and the existence of permanent impairment. Subsection should include statement it does not preclude other defenses.</p> <p>Opines only a controversion on grounds the employee’s injury did not arise out of and in the course of employment</p> | <p>In balancing quick, efficient, fair and predictable at a reasonable cost to the employer, it is not unreasonable to require the rehabilitation efforts to move forward, even in light of defenses the employer might assert in light of the legislature’s intent and the definitive deadlines established in the proposed regulation.</p> <p>Under <i>Childs v. Copper Valley Electric</i>, no party is entitled to a full-blown trial and the Board is permitted to establish time restrictions; therefore, the parties’ rights to due process are not violated by the regulation.</p> <p>Because neither party is entitled to full-blown discovery like in a trial setting, the regulation, as written, brings the process in line with the fundamental concept behind workers’ compensation as articulated in AS 23.30.001. The board can place reasonable time limits on discovery just like we can on hearings and presentation of evidence developed through discovery. Speeding up the discovery is in complete</p> |
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| | | should stop an eligibility evaluation. | <p>harmony with AS 23.30.001.</p> <p>Therefore, establishing timelines for holding a hearing within 90 days protects the quick, efficient, fair and predictable provision of benefits at the least cost to employers and protects both employees' and employers' interests established in AS 23.30.001.</p> |
| 8 AAC 45.522(d) | <p>Holloway/ Miller</p> <p>Davison</p> <p>Budzinski</p> | <p>No one specifically referenced this subsection, but public comment on 8 AAC 45.510(d) above effectively applies here as well.</p> <p>Opines subsection needs to be clarified. "Many employers do not have job descriptions or summaries of the employee's job duties that are readily available. ...it is unclear whether this subsection would require an employer to find an actual SCODDOT job description" to match job at time of injury or if subjective summary of job duties is appropriate.</p> <p>"I concur with these statements"</p> <p>Noted most employers do not have job descriptions. They are either small or simply do not have one. Asks if employer would have to create one and, if so, notes that job descriptions generated post-injury could be problematic.</p> | <p>The agency recommends that proposed 8 AAC 45.510(f) be changed to read "...the employer at the time of injury or its adjuster shall forward a copy of the employee's résumé, job application and a job description or summary of the employee's job duties, if available, to the rehabilitation specialist, the employee and the administrator...."</p> <p>The employer is not asked to retrospectively develop a job description. They are also not asked to use SCODDOT or SCODRDOT. The rehabilitation specialist is charged with discussing the job duties and tasks with the</p> |

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| | Shipman | Notes employer is given ten working days to provide the employee's résumé and job application and a job description, whereas rehabilitation specialist under the proposed 8 AAC 45.525(a)(1) only has five working days to interview employee and employer. Suggests insurer provide the required information to Reemployment Benefits Section or specialist when referral notification is received. Specialist needs the information for interviews to identify correct DOT titles. Notes other regulations would need to change accordingly. | employer and may discuss DOT titles with them. See "Agency Decision" re: 8 AAC 45.525(a)(1) |
| | Lees | Notes the information required of the employer at the time of injury will add additional cost to the insurer and employers, as well as additional time and expense for the State to file, maintain and store the information. Regulation will conflict with 8 AAC 45.525 in that specialist has tighter timelines that would require information from the employer sooner than is required in this regulation. | The agency notes the requested information allows for an evaluation process that is fair, impartial and predictable from the outset with the most complete, relevant information available to the specialist and parties from the outset. |
| 8 AAC 45.525(a)(1) | Shipman | Proposes revision to regulation. Notes specialist even reaching the employee within 5 working days of receiving referral is sometimes difficult, especially if travel required, making conducting an interview in that timeframe even more unlikely. Also notes that employer contact is not possible until the employee has signed a release. Proposes the specialist be required to contact the employee by phone within five working days and the employer within ten working days. Can get preliminary info prior to meeting and conduct title research in advance. | The agency recommends removal of " <u>within 5 working days after receiving the referral letter</u> " as the employer under 8 AAC 45.510(f) and 8 AAC 45.522(d) has 10 working days to submit records to the rehabilitation specialist. Deadlines in these subsections must be realistic in relation to each other. |

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| | <p>2/5/10 Public Comment of Denise Van Der Pol, Southeast Rehabilitation Services, rehabilitation specialist; 2/4/10 letter rec'd 2/5/10.</p> <p>Lees</p> | <p>Proposes revision to regulation. Should require specialist to contact, not interview, employee and employer within 5 working days. Interview takes place after file received and reviewed. "To do so beforehand is not appropriate, in that the RS has no information, and not in the best interest of the injured worker, in that the RS is unprepared to work with them."</p> <p>Opposes regulation. Unlikely specialist will have all information necessary to complete employee interview when employer has ten days to provide records/information. Asks if specialist is going to try to get information from employer within 5 days that employer is otherwise not required to present for 10 days. Accomplishing the interview in five days is unreasonable, occurs at most 50% of the time. Five day requirement will require specialist to work on weekends at times.</p> | |
| <p>8 AAC 45.525(a)(3)</p> | <p>Van Der Pol</p> | <p>References 8 AAC 45.525(B)(3) in written comment but is actually (a)(3). Says unclear when submission of job titles takes place in the process; should not be sent separately from evaluation report because they are attached to it now. Issue is submitting <u>all</u> titles; only jobs that meet SVP are submitted.</p> | <p>The agency notes the intent is to provide both parties the submitted job title(s) simultaneously in case they have concerns regarding possible errors and/or wish to submit them to other physicians. The ten days provided after the evaluation is over alone may not be sufficient to fully develop a party's concerns. This affords the parties more due process and</p> |

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| | | | <p>ensures the quick, efficient, fair and predictable delivery of benefits as required under AS 23.30.001.</p> <p>It is further noted all titles are submitted to the physician as this subsection pertains to the job at the time of injury; SVP is not a factor in determining what titles are sent.</p> |
| 8 AAC 45.525(b)(1) | <p>Shipman</p> <p>Van Der Pol</p> <p>Lees</p> | <p>References 8 AAC 45.525(A)(1) in written comment but is actually (b)(1). Seeks clarification as to what is sought. Specialists do not have access to a database and SSA will not release information to them. Will need more guidance or follow-up letter from RBA. Suggests addition of language requiring the insurer to pay the specialist for time involved in task.</p> <p>Opines “This doubts the veracity of the employee and the [specialist’s] skills at obtaining complete work history...” Not necessary to independently verify unless the specialist deems it necessary.</p> <p>Notes regulation needs to clarify what extent of research is being required. A special release will need to be signed by employee and sent to each former employer; not readily available without release and unethical to improperly obtain. Many employers will not participate, adding delay and additional costs.</p> | <p>The agency recommends changing proposed 8 AAC 45.525(b)(1) to read “...<u>and any held after the injury, documenting best efforts when verification is not achieved.</u>”</p> <p>The intent of this subsection is to ensure the employee’s work history is fully documented so proper DOT titles can be evaluated by the physician. Verification from past employers of the employee’s job duties is sought. The agency proposed this subsection given numerous instances where an evaluation is remanded back to the RBS when additional work history comes to light after the evaluation.</p> <p>The agency is working on</p> |

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| | | | avenues to provide the specialist with the most information available about the employee's work history from Unemployment Insurance. |
| 8 AAC 45.525(b)(4) | Van Der Pol | Did not specify this subsection, but comments would apply here as well. Says unclear when submission of job titles takes place in the process; should not be sent separately from evaluation report because they are attached to it now. Issue is submitting <u>all</u> titles; only jobs that meet SVP are submitted. | <p>The agency notes the intent is to provide both parties the submitted job title(s) simultaneously in case they have concerns regarding possible errors and/or wish to submit them to other physicians. The ten days provided after the evaluation is over alone may not be sufficient to fully develop a party's concerns. This affords the parties more due process and ensures the quick, efficient, fair and predictable delivery of benefits as required under AS 23.30.001.</p> <p>The agency further notes proposed 8 AAC 45.525(b)(3) does prescribe that SVP is taken into account.</p> |
| | LaBrosse | Opines this is a substantial change from current practice. The specialist is being asked to break a job apart and view the DOTs as separate entities and if EE is able to do any part, they could be determined ineligible. Gave example of Commercial Pilot in Fairbanks area who loads own plane requiring titles of Commercial Pilot(light) and Airport Utility | The agency notes that the proposed regulations only outline the procedure for identifying titles to be submitted to the physician, and the requirement for subsequent |

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| | | <p>Worker (heavy) to describe duties. Doctor approves the light Commercial Pilot and not the heavier Airport Utility Worker. When doing labor market under proposed 8 AAC 45.525(5), one finds no jobs in local market for standalone “light” Commercial Pilot, but in Anchorage and national labor market will find positions that are light. Would have to find employee ineligible.</p> | <p>labor market research, not how the physician input is used in determining the eligibility of the employee.</p> |
| <p>8 AAC 45.525(a)(3), (b)(4) and (5), (c)(1), (f)(1), (g)(1)(A) and (E); and (i)</p> | <p>LaBrosse</p> | <p>Commenter did not specify regulations; broadly covered topics that impact much of proposed changes to 8 AAC 45.525. Opines regulation will be problematic in long run. Addresses existing practice of use of employer doctors in the eligibility determination process. Has had several employees irate that their treating physician has not had time to provide input on titles or whether the employee will have a PPI rating. The employee is examined by an employer’s physician who either gives them a zero percent PPI or releases them to all their jobs after meeting with them for five minutes. Employees talk about appeals, lawsuits. When specialist finally meets with employee physician and asks what delayed provision of input, the common response is the employee physician has not been paid by the employer. Then the employee’s physician will often give opposite opinion, after the employee is already being found ineligible based on employer’s physician.</p> | <p>The agency recommends that proposed 8 AAC 45.525(c)(1) be further changed to read “...and submit the job analysis [GIVE THIS DESCRIPTION] to <i>the employee’s [A]</i> physician,....” This is consistent with changes from “a physician” to “the employee’s physician” elsewhere in 8 AAC 45.525.</p> <p>The agency notes that fair and impartial implementation of the statute allows the employer to seek the opinion of a physician of their choosing. The agency provides every reasonable opportunity for the employee’s physician to provide input, before considering reliance solely on the opinion of the employer’s physician. The addition of 8 AAC 45.525(i) below addresses the issue of the employee physician receiving compensation for that input.</p> |

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| 8 AAC 45.525(c)(1) | Van Der Pol | Notes the job analysis arising from an offer of alternate employment by the employer at the time of injury “should not be sent separately, or ahead of, the report to which they are attached.” | The agency notes the intent is to provide both parties the submitted job analysis simultaneously in case they have concerns regarding possible errors and/or wish to submit it to other physicians. The ten days provided after the evaluation is over alone may not be sufficient to fully develop a party’s concerns. This affords the parties more due process and ensures the quick, efficient, fair and predictable delivery of benefits as required under AS 23.30.001. |
| 8 AAC 45.525(g) | Shipman | Regarding the 30 day deadline, notes some of the time can be taken up by mail and asks about delays by the Reemployment Benefits Section, holidays and specialists outside the Anchorage area. Opines it should read that the report is due within 30 days of receiving the referral. | The agency notes the proposed language is consistent with AS 23.30.041(d)... “Within 30 days after the referral by the administrator...”The RBS mails the letter on the date of the letter. |
| 8 AAC 45.525(i) | Holloway/ Miller Davison | Does not disagree with the employer paying costs associated with the employee’s physician’s review of documentation required in the evaluation process, but “we believe there must be clarification that any such payment or review is subject to the reasonableness of the charge by the physician and subject to any reductions in the Alaska Fee Schedule under AS 23.30.097.” “I concur with these statements” | The agency recommends changing proposed 8 AAC 45.525(i) to read: “... <u>submitted under this section in accord with AS 23.30.097.</u> ” |

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| | Budzinski | Charges must be subject to the fee schedule. | |
| 8 AAC 45.530(b)(3) | Shipman | Opposes proposed regulation. "...assigning a new rehab specialist will cause duplication of service, create a cost increase to the insurer and creates further delays to the employer/insurer and the injured worker." | This regulation is intended to allow for a reassignment when the assigned rehabilitation specialist is not documenting progress toward completing the evaluation. Given the time and costs incurred, such a reassignment is not undertaken lightly. |
| 8 AAC 45.540 (a) and (b) | Shipman | Opposes proposed regulation; believes it allows the employer more than one right of refusal. "The injured workers have the right to choose their medical care provider and their attorney without the insurance company declining their choice. They should have the choice and legal right as a person with a disability, to choose their vocational provider as well." | The agency notes the proposed regulation allows one right of refusal for each party. The employer's is under 8 AAC 45.540(a)(1) and the employee's is under (b). The agency is not readily aware of any jurisdiction in private or public vocational rehabilitation in which the client gets to choose the rehabilitation counselor with whom they work. It appears to be a unique right. |
| | Lees | Opposes subsection (a)(2). Concerned that effort to resolve dispute will cause delays; seems possible for insurer and RBA office to "select" specialist, rather than next person on list so injured worker would not file an objection. | The agency notes efforts to resolve the dispute are required in statute and have been limited to phone contact with the parties and a one week delay at most. The parties agree to a specialist or they do not. The RBS does not work with the insurer to select a specialist. |

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| 8 AAC 45.540(c) | <p>Shipman</p> <p>Van Der Pol</p> <p>Lees</p> | <p>Opposed to requirement that evaluating specialist copy file to the specialist selected for plan development. Opines the adjuster should provide the copies. The only documents would be the SCODDOTs and the evaluation. Otherwise asks that the adjuster be required to pay the evaluating specialist for their copying and mailing expenses.</p> <p>Opposed to requirement that evaluating specialist copy the specialist selected for plan development. Asks who will notify the evaluating specialist. Opines only document the specialist can copy and send is the eligibility evaluation and attachments. Suggests the plan development specialist obtain records from the employee. Asks who will “police” compliance with timelines.</p> <p>Asks who will pay the evaluating specialist’s expenses. Recommends the insurer provide the records to the new specialist.</p> | <p>The agency notes it originally proposed the adjuster forward the necessary records to the specialist selected for plan development in cases the specialist did not conduct the eligibility evaluation. This may still be the optimal approach as they likely have the most complete record.</p> <p>Currently the evaluating specialist is not notified who has been selected for plan development when they are not selected.</p> <p>The agency is not aware that disclosure or transfer of records is contraindicated or limited. Ethics allow for such and specialist releases can include such scenarios. Legal requirement would diminish ethics concerns.</p> <p>The employer should be required to pay reasonable copying and mailing charges if the evaluating specialist is required to pay such.</p> |
| 8 AAC 45.560 | Holloway/ Miller | Agree regulation is needed, but are concerned about impact of conducting informal rehabilitation conferences during the | The agency recommends proposed 8 AAC 45.560(b) be |

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| | | <p>eligibility evaluation process. Concerned RBA or designee may rely on information discussed at conference that is not adequately supported by the record or contained in the specialist's report. Regulation should require conference be recorded and preserved for the record in the event of Board review of RBA or designee decision.</p> | <p>changed to read: "...is held, <i>it shall be recorded and</i> the administrator will...."</p> |
| | Davison | "I concur with these statements" | |
| | Budzinski | Opines an informal rehabilitation conference during the eligibility evaluation process is premature; is more useful during the plan process. | The agency has rarely used informal rehabilitation conferences in the evaluation phase. They are held with all parties and the specialist in an attempt to resolve any barriers to bringing the evaluation to completion. |
| 8 AAC 45.900(j)(4) | LaBrosse | Opines this regulation allows the employer to deny future reemployment benefits in the event of a prior C&R, much like the statute for dislocation benefits. Thinks will cause a lot of appeals and court determinations when the employee comes back around and has not been successfully rehabilitated. All it does is dump employees into public Division of Vocational Rehabilitation. | The agency notes that the RBS determines the eligibility of an employee, not the employer. |