Alaska Workers' Compensation Appeals Commission

Terry M. Parsons, Appellant/Cross-Appellee, vs. Craig City School District and Alaska Municipal League Joint Insurance Association, Appellees/Cross-Appellants.	Final Decision Decision No. 168 August 30, 2012 AWCAC Appeal No. 11-019 AWCB Decision No. 11-0140 AWCB Case No. 200111621

Final decision on appeal from Alaska Workers' Compensation Board Decision and Order No. 11-0140, issued at Juneau on September 13, 2011, by southern panel members Marie Y. Marx, Chair, and Chuck Collins, Member for Industry.

Appearances: Terry M. Parsons, self-represented appellant/cross-appellee; Rebecca Holdiman Miller, Holmes Weddle & Barcott, P.C., for appellees/cross-appellants, Craig City School District and Alaska Municipal League/Joint Insurance Association.

Commission proceedings: Appeal filed October 12, 2011; cross-appeal filed November 8, 2011; briefing completed April 16, 2012; oral argument held August 2, 2012.

Commissioners: James N. Rhodes, Philip E. Ulmer, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction and procedural background.

Appellant and cross-appellee, Terry M. Parsons (Parsons), worked for appellee and cross-appellant, Craig City School District (CCSD), as a custodian. Parsons reported she was injured in late June 2001,[1] and filed a Workers' Compensation Claim (WCC or claim) with the Alaska Workers' Compensation Board (board) dated November 28, 2001.[2] CCSD answered and initially controverted the claim on December 26, 2001.[3]

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1 Exc. 001. Parsons reported she bruised her arms.

2 Exc. 025-26.

3 Exc. 027-31.

Following an employer's medical evaluation (EME), CCSD controverted all benefits on March 19, 2002.[4]

On May 13, 2010, Parsons was informed that CCSD would not retain her for the following school year.[5] The next day she sought medical treatment for pain that she attributed to the work incident in 2001.[6] On June 15, 2010, Parsons filed another WCC relating to that incident.[7] CCSD controverted and answered the claim on September 24, 2010.[8] CCSD filed a petition on February 16, 2011, seeking dismissal of the 2001 claim pursuant to AS 23.30.110(c) and AS 23.30.105(a).[9] Parsons filed an amended claim dated April 12, 2011.[10]

A hearing before the board was held on August 16, 2011.[11] Following the hearing, in its decision,[12] the board declined to dismiss the 2001 WCC; otherwise, the board did not award Parsons any benefits.[13] Parsons appeals and CCSD cross-appeals denial of its petition for dismissal under AS 23.30.110(c). We, the Workers' Compensation Appeals Commission (commission), reverse the board's denial of CCSD's petition and affirm the board's denial of benefits.

2. Factual background.

Parsons was reportedly injured on June 29, 2001. According to her, when closing a pull down attic ladder, it came back down and bruised her arms.[14] Soon after the

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4 Exc. 048.

5 Exc. 049.

6 Exc. 050-52.

7 Exc. 053-54.

8 Exc. 076-80.

9 Exc. 163-64.

10 Exc. 169-70.

11 Exc. 225-49.

12 *See Terry M. Parsons v. Craig City School District, et al.*, Alaska Workers' Comp. Bd. Dec. No. 11-0140 (September 13, 2011).

13 *See Parsons*, Bd. Dec. No. 11-0140 at 22.

14 Exc. 001.

incident, Parsons began to complain of symptoms encompassing almost every part of her body, including pain in her head, neck, shoulders, arms, legs, chest, back, abdomen, pelvis, inflammation throughout her entire body, and diarrhea.[15] On July 9, 2001, Christopher Occhino, M.D., treated Parsons for back pain. He diagnosed a biceps hematoma.[16] In a note dated July 13, 2001, Dr. Occhino released her to work without restrictions on July 16, 2001.[17] On July 23, 2001, Michael A. Melendrez, D.C., treated Parsons for head, neck, abdomen, arm, and back pain[18] and released her to work with restrictions on July 23, 2001.[19]

On August 10, 2001, Robert Crochelt, M.D., evaluated Parsons regarding her complaints and symptoms. Dr. Crochelt made no diagnoses; however, he indicated there might be psychological issues at work.[20] Later that month, on August 23, 2001, K. Richey, M.D., treated Parsons for multiple pains and assessed possible gallbladder disease. Dr. Richey had difficulty relating her abdominal pains, headache, and neck pains to the work injury, as Parsons had.[21] That same day, Deborah L. Aaron, M.D., treated her for complaints of body pain. Dr. Aaron made no diagnosis, reported no bruising, swelling, discoloration or visible deformities, and reported no palpable areas of tenderness. Despite no findings on physical examination, at the request of Parsons, Dr. Aaron scheduled an abdominal ultrasound, thinking it might be of some reassurance to Parsons.[22] The following day, August 24, 2001, Charles Hase, RAD, conducted an abdominal ultrasound

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15 Exc. 001; Parsons Dep. 77:7–86:5, 91:1–92:17, Jan. 11, 2011; Exc. 009.

16 Exc. 004.

17 Exc. 006.

18 R. 0854.

19 Exc. 007.

20 Exc. 008.

21 Exc. 009-12.

22 Exc. 013.

and reported a normal ultrasound of the upper abdomen.[23] On August 27, 2001, Dr. Aaron released Parsons to work as of August 24, 2001, without restrictions.[24]

In September and October 2001, Parsons consulted Richard W. McGrath, D.O., for a second opinion. Dr. McGrath diagnosed polymyalgia, chronic pain syndrome, and anxiety/depression.[25] On October 8, 2001, Dr. McGrath treated Parsons for body pain and related her polymyalgia to the work injury.[26] In a follow-up visit on October 23, 2001, Dr. McGrath treated Parsons for body pain, noted decreasing polymyalgia, and diagnosed costochondral inflammation secondary to the work injury.[27]

On November 6, 2001, urological surgeon, Greg O. Lund, M.D., examined Parsons in connection with an EME. Dr. Lund indicated that, other than a biceps hematoma, none of her complaints and symptoms were related to her work injury.[28] CCSD controverted Parsons' entitlement to benefits for her abdominal and back pain based on Dr. Lund's report on November 8, 2001.[29] Dr. McGrath, having treated Parsons on November 26, 2001, recommended a computed tomography (CT) scan.[30] Parsons filed a WCC dated November 28, 2001, seeking temporary total disability (TTD), temporary partial disability (TPD), medical and related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. She reported injuries to her arms, sides, back, hands, abdomen, and upper body.[31]

On December 4, 2001, Larkin Breed, M.D., interpreted a CT scan of Parsons' abdomen and pelvis, which showed diffuse fatty infiltration of the liver and previous

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23 R. 0845.

24 Exc. 014.

25 Exc. 015.

26 Exc. 017.

27 R. 0829.

28 Exc. 018-22.

29 Exc. 023-24.

30 R. 1013.

31 Exc. 025-26.

hysterectomy, but was otherwise negative.[32] On December 12, 2001, Dr. McGrath treated Parsons for abdominal pain and diagnosed scar tissue of her lower abdomen secondary to her hysterectomy surgery and tear of the scar tissue secondary to her injury.[33] Shortly thereafter, on December 26, 2001, CCSD controverted all benefits except those relating to Parsons' biceps injury.[34]

On February 28, 2002, orthopedic surgeon, Larry D. Iversen, M.D., general surgeon, Howard B. Kellogg, Jr., M.D., and psychiatrist, Richard Carter, M.D., examined Parsons as part of an EME. Dr. Kellogg diagnosed: 1) contusion of the right biceps tendon, related to the work injury but resolved, 2) left wrist contusion, related to the work injury but resolved, and 3) multiple complaints relative to Parsons' entire body, without objective findings, unrelated to the work injury. Dr. Carter diagnosed histrionic personality traits with somatic focus, unrelated to the work injury. Drs. Kellogg, Carter, and Iversen were of the opinion that Parsons was medically stable relating to her work injury conditions and symptoms, had no permanent impairment related to the work injury, was not disabled, and recommended no further treatment relating to the work injury.[35] In a notice dated March 19, 2002, CCSD controverted all benefits based on the findings in Drs. Kellogg, Carter, and Iversen's EME report.[36] Parsons could not recall whether she received that controversion notice.[37]

On January 2, 2003, Molloy Loulie, M.D., interpreted a magnetic resonance imaging (MRI) scan of Parsons' thoracic spine and an MRI of her lumbar spine. The thoracic MRI impression was a small 2 mm right paracentral disk protrusion at T7-8

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[32] R. 1012.

[33] R. 1010.

[34] Exc. 027. The controversion notice was signed by Elise Rose, the attorney for CCSD and its carrier at that time. Although their practice was to serve both the front side and the reverse side of the controversion notice on the claimant, CCSD did not file a copy of the reverse side with the board nor retain a copy for its file. Exc. 220-21.

[35] Exc. 032-47.

[36] Exc. 048. This controversion notice was signed by Elise Rose.

[37] Parsons Dep. 64:14-22, Jan. 11, 2011.

touching the anterior cord; the lumbar MRI impression was minimal central stenosis primarily due to ligamentum flavum/facet hypertrophy at L4-5 and L5-S1 with AP diameter of the canal 12 mm at these levels.[38] On March 20, 2003, Dr. McGrath evaluated Parsons, diagnosed recurrent right rib pain with no etiology, and diagnosed low back pain with negative MRI. Dr. McGrath did not relate Parsons' diagnoses to her work injury.[39] On May 7, 2003, C. Bruce Schwartz, M.D., indicated the conditions revealed in the MRIs taken January 2, 2003, were not work-related.[40] Later that month, on May 23, 2003, Maile Roper, D.O., diagnosed trigger point dysfunction and possible reflex sympathetic dystrophy syndrome (RSD).[41] On May 29, 2003, Dr. Roper diagnosed somatic dysfunction secondary to Parsons' work injury in 2001. Furthermore, he indicated that subsequent trigger point therapy was called for.[42]

On May 16, 2006, Dr. McGrath treated Parsons for back pain. He diagnosed mechanical dysfunction and muscle soreness in her mid-to-low back; however, he did not relate Parsons' complaints to her work injury.[43] Dr. McGrath treated Parsons for pain on September 24, 2008. He diagnosed acute pneumonia and mechanical dysfunction. Dr. McGrath did not relate her complaints to her work injury of June 2001.[44] On December 14, 2009, Robert C. Thomas, M.D., treated Parsons for pain, including right hip pain. Dr. Thomas recommended a right hip MRI.[45] Eight days later, on December 23, 2009, Peter C. Buetow, M.D., interpreted an MRI of Parsons' right hip. The MRI showed bilateral sacroiliitis.[46] On February 1, 2010, Dr. Thomas treated

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38 R. 0747-48.

39 R. 0746.

40 R. 0983.

41 R. 0700.1.

42 R. 0700.

43 R. 0731.

44 R. 0947.

45 R. 0712.

46 R. 0724.

Parsons for pain and referred her to Dr. Schwartz for evaluation of sacroiliitis.[47] On April 2, 2010, Dr. Schwartz evaluated Parsons and diagnosed bilateral sacroiliitis and bilateral trochanteric bursitis in the hips.[48] On April 16, 2010, Jason M. Stone, M.D., interpreted an MRI of Parsons' lumbar spine. The MRI showed the presence of bilateral sacroiliitis.[49] Shortly thereafter, on April 19, 2010, Dr. Schwartz confirmed the diagnoses of bilateral sacroiliitis.[50] On May 4, 2010, Dr. Thomas treated Parsons as a follow-up to Dr. Schwartz's evaluation. Dr. Thomas noted that "she was frustrated that no physician will link the pain with the [2001 work] injury[.]"[51]

Parsons was terminated by CCSD on May 13, 2010, effective June 3, 2010.[52] On May 14, 2010, Scott H. Schultz, M.D., treated Parsons for abdominal pain. He speculated: "[I]n reviewing her prior notes . . . I wonder if this is not related to her trying to blame a chest injury from a ladder falling on her a decade ago [and] her subsequent health problems."[53] Parsons filed a WCC dated June 15, 2010, claiming permanent partial impairment (PPI) benefits, among others.[54] On June 24, 2010, Dr. Thomas evaluated Parsons for follow-up care. He made no diagnosis and stated: "She also, once again, is asking for me to write down that the fall was the cause of her hip pain . . . and back pain and for her general feeling poorly. I have declined to do

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47 R. 0940.

48 R. 0937.

49 R. 0704, 0722.

50 R. 0719.

51 R. 0925.

52 Exc. 049. Parsons had continued to work full time for CCSD from the date of her injury in June 2001 to June 2010. Her job duties included vacuuming, sweeping, mopping, dusting, stripping and waxing floors. Parsons Dep. 38:16-23, 46:17-20, Jan. 11, 2011. She also operated Jo-Jo's Cleaning Service as a sole proprietor from 2004 through early January 2011. Her work consisted of cleaning commercial businesses. Parsons Dep. 15:2–17:22, Jan. 11, 2011.

53 Exc. 051.

54 Exc. 053-54.

this."[55] However, when asked to by Parsons, Dr. Thomas referred her to a rheumatologist, Sanjay Garg, M.D.[56] On August 17, 2010, Dr. Garg evaluated Parsons and diagnosed undifferentiated spondyloarthropathy. Dr. Garg was of the opinion that Parsons' work injury did not cause her current inflammatory spondyloarthropathy and that she did not have any disability related to her condition.[57]

On September 2, 2010, reporting complaints and symptoms of body inflammation, and injuries to her arms, chest, head, right side, legs, and shoulders, Parsons filed another claim relating to her June 29, 2001, work injury.[58] Her claim, as amended on April 12, 2011,[59] requested TTD, TPD, permanent total disability (PTD), PPI, medical and related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. CCSD filed a controversion and answer dated September 24, 2010.[60] Parsons filed and served an affidavit of readiness for hearing (ARH) dated October 28, 2010.[61] CCSD filed an opposition.[62]

On January 13, 2011, orthopedic surgeon, Lance N. Brigham, M.D., general surgeon, Dr. Kellogg, and psychiatrist, Dr. Carter, examined Parsons in conjunction with an EME. They diagnosed: 1) low back sprain related to work injury, resolved, 2) right biceps contusion and left forearm contusion, related to work injury, resolved, 3) chest contusion, related to work injury, resolved, 4) complaints of cervical and right upper arm pain with nonphysiologic findings, unrelated to work injury, 5) x-rays and MRI showing sclerosis of bilateral sacroiliac joints, 6) cholecystectomy, not work-related, 7) severe pain behavior unrelated to any medical condition, 8) multiple abdominal complaints without

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55 Exc. 066-67.

56 Exc. 066-67; Exc. 074-75.

57 Exc. 074-75.

58 R. 0024-26.

59 Exc. 169-70.

60 Exc. 076-80. CCSD filed additional controversions on October 19, 2010, R. 0008, February 7, 2011, Exc. 158-59, and June 10, 2011, Exc. 210-11.

61 Exc. 081.

62 Exc. 082-84.

objective findings, unrelated to work injury, and 9) major depressive episode. Drs. Brigham, Kellogg, and Carter stated their opinion that there was no objective evidence to support any diagnosis other than marked pain behavior without positive orthopedic or neurologic findings, and that Parsons had been medically stable with regard to her diagnosed conditions since February 28, 2002. They recommended no further treatment and found no restrictions to Parsons returning to work as a custodian.[63]

3. Standard of review.

The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record.[64] The board's credibility findings are binding on the commission.[65] Its weight findings are conclusive.[66] We exercise our independent judgment when reviewing questions of law and procedure.[67]

4. Discussion.

a. Applicable law.

With respect to the issue whether the board erred in not dismissing Parsons' 2001 claim, the relevant statutory subsection is AS 23.30.110(c).

AS 23.30.110. Procedure on claims.

. . . .

> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within

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63 Exc. 125-51.

64 Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *See, e.g., Norcon, Inc. v. Alaska Workers' Compensation Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

65 *See* AS 23.30.128(b).

66 *See* AS 23.30.122.

67 *See* AS 23.30.128(b).

two years following the filing of the controversion notice, the claim is denied.

The information that is required to be conveyed in a controversion notice is stated in another statutory subsection, AS 23.30.155(a).

> **AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, on a form prescribed by the director, stating
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> (1) that the right of the employee to compensation is controverted;
> (2) the name of the employee;
> (3) the name of the employer;
> (4) the date of the alleged injury or death; and
> (5) the type of compensation and all grounds upon which the right to compensation is controverted.

A subsection of a board regulation also provides:

> **8 AAC 45.025. Forms.** (a) The board will, in its discretion from time to time, prescribe and require the use of forms for the reporting of any information required by this chapter or by the Act.

b. Parsons' arguments are not developed.

First, we note that Parsons' briefing was inadequate in several respects. From her arguments in her initial and reply briefs, we glean Parsons' basic premise to be that she was injured, required medical care, and should be paid benefits, including TTD, TPD, PTD, PPI, medical benefits, and interest. Otherwise, Parsons' briefing is devoid of legal authority and her arguments are cursory, undeveloped, and only marginally comprehensible. Consequently, to quote the Alaska Supreme Court, "[t]he quality of her briefing greatly impairs any viable arguments she may have, as well as this [commission's] ability to deal with the issues presented."[68]

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[68] *A.H. v. W.P.,* 896 P.2d 240, 243 (Alaska 1995). However, we do not go so far as to consider her arguments waived or abandoned. *Cf. Dougan v. Aurora Elec. Inc.*, 50 P.3d 789, 795-96 (Alaska 2002).

c. Did the board err in failing to dismiss the claim under AS 23.30.110(c)?

AS 23.30.110(c) requires an employee, once a claim has been filed and controverted by the employer, to prosecute the claim in a timely manner.[69] Generally, failure to request a hearing within the two-year time limitation requires that the claim be dismissed.[70] Substantial compliance with AS 23.30.110(c) is sufficient to toll its time bar, and the board has discretion to extend the deadline for good cause, absent significant prejudice to the other party.[71] The board has the power to excuse failure to file a timely request for hearing when the evidence supports application of a recognized form of equitable relief, such as when the parties are participating in the second independent medical evaluation process.[72] A claimant bears the burden of establishing with substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline.[73]

The record in this case reveals that Parsons neglected to file anything between November 2001, when she first filed her claim,[74] and June 2010, when she filed another claim.[75] Otherwise, Parsons took no action to prosecute her 2001 claim.[76] Specifically, in terms of AS 23.30.110(c), she did not file an ARH within two years of CCSD's controversion of all benefits dated March 19, 2002.

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[69] *See Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995).

[70] *See generally*, *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321 (Alaska 2005).

[71] *See Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196 (Alaska 2008).

[72] *See Kim*, 197 P.3d at 194, 197.

[73] *See Providence Health System v. Hessel*, Alaska Workers' Comp. App. Comm'n Dec. No. 131, 8 (March 24, 2010).

[74] Exc. 025-26.

[75] Exc. 053-54.

[76] The board found that, despite filing multiple claims, Parsons had not suffered any new work injury since June 29, 2001. Her pain complaints had remained essentially the same, except for an increase in pain severity. *See Parsons*, Bd. Dec. No. 11-0140 at 9. Parsons Dep. 50:5–51:12, 67:2–69:14, Jan. 11, 2011.

Given this sequence of events, there was no substantial compliance by Parsons with the foregoing requirement in subsection .110(c).[77] However, as we understand it, the basis for the board's denial of CCSD's petition was not that Parsons failed to substantially comply with subsection .110(c). Instead, the board held that CCSD's March 19, 2002,[78] controversion "was legally ineffective to start the running of AS 23.30.110(c)'s limitations period."[79] It noted that CCSD and/or its carrier did not file the reverse side of the March 2002 controversion notice with the board, nor retain a copy in their files, in order to avoid proliferation of unnecessary paperwork.[80] The reverse side of the notice contains a warning to claimants of the two-year time limit to request a hearing, as provided in AS 23.30.110(c).[81] Based on this evidence, the board concluded that CCSD and/or its carrier had failed to prove that they had served the reverse side of the board-prescribed controversion notice form on Parsons.[82] Without adequate proof that the warning that appears on the reverse side was served on Parsons, the board was apparently unwilling to hold Parsons to the two-year time limit for requesting a hearing.

In the exercise of our independent judgment, we reverse the board's holding that CCSD's March 2002 controversion was legally ineffective to start the running of the two-year time limit in AS 23.30.110(c). Even though the board has the authority to require the use of its double-sided controversion notice form,[83] the evidence presented to the board demonstrated that the reverse side of the March 19, 2002, controversion notice was served on Parsons. The affidavit of CCSD's attorney at the time, Elise Rose, who issued the controversion notice, indicated that she had prepared and served

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77 *See Denny's of Alaska v. Colrud*, Alaska Workers' Comp. App. Comm'n Dec. No. 148, 12 (March 10, 2011).

78 Exc. 048.

79 *Parsons*, Bd. Dec. No. 11-0140 at 17.

80 *See Parsons*, Bd. Dec. No. 11-0140 at 9. Exc. 220-21.

81 Exc. 211.

82 *See Parsons*, Bd. Dec. No. 11-0140 at 17.

83 *See* 8 AAC 45.025(a).

controversion notices on Parsons. Furthermore, her affidavit stated: "It is standard procedure in my office to serve the entire controversion notice, including the second page, on the employee/claimant."[84] Under the business records exception to the hearsay rule,[85] this evidence sufficed to prove that the controversion notice, including the warning on the reverse side, was served on Parsons. Technically, the specific business record subject to the exception was the front side of the March 19, 2002, controversion notice. The manner in which that record was handled by Ms. Rose, and her office, was set forth in her affidavit. Moreover, the affidavit explained that both the front side and the reverse side of the controversion notice were served. Parsons' inability to recall whether she received the controversion notice is immaterial.[86] Even in the board's view, there was no issue whether she was served with the front side. Because Parsons was served with the front side of the controversion notice, according to the evidence, she was also served with the reverse side.[87]

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[84] Exc. 220.

[85] **ER 803. Hearsay Exceptions – Availability of Declarant Immaterial.**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

> (6) **Business Records.** A memorandum [or] record . . . in any form, of acts [or] events . . . made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum [or] record . . . all as shown by the testimony of [a] qualified witness[.]

[86] Parsons Dep. 64:14-22, Jan. 11, 2011.

[87] As a cautionary tale, we would encourage employers and/or their carriers to, at the very least, retain double-sided copies of their controversion notices in their files. Given the importance of a claimant's compliance with the time limit for requesting a hearing stated on the reverse side and the insignificant burden on employers/carriers to make double-sided copies of the notices, it would be prudent for them to do so. Furthermore, it would alleviate the time, effort, and expense of having to litigate the issue whether the claimant received notice of the time limit, as occurred here.

d. Was the board's denial of benefits supported by substantial evidence?

The second issue presented in this appeal is whether Parsons' 2001 WCC is compensable, that is, whether her symptoms, conditions, and need for treatment were work-related. Under AS 23.30.120(a)(1),[88] benefits sought by an injured worker are presumed to be compensable.[89] A three-step presumption analysis is used to evaluate the compensability of a claim.[90]

In order to attach the presumption of compensability, the employee must first establish a "preliminary link" between his or her injury and the employment.[91] The board found that the evidence provided by treating physicians, Drs. McGrath and Roper, sufficed to attach the presumption.[92] We agree.

Dr. McGrath diagnosed polymyalgia and costochondral inflammation. His opinion was that they were related to Parsons' work injury.[93] Dr. Roper related her pain to somatic dysfunction secondary to the work injury in 2001.[94] He stated,

> [I]t was noted that she had marked trigger points within the sternocleidomastoid, trapezius and anterior chest wall. . . .
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> . . . I definitely feel that these trigger points were set up wit[h] the original accident at Craig Middle School and that it is possible for her to obtain more relief with subsequent trigger point therapy.[95]

These opinions sufficed to establish the preliminary link between injury and employment.

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88 **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[.]

89 *See, e.g., Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996).

90 *See, e.g., McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011).

91 *See, e.g., Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999).

92 *See Parsons*, Bd. Dec. No. 11-0140 at 18.

93 Exc. 015; R. 0829.

94 R. 0700.

95 R. 0699-700.

Once the employee establishes this preliminary link, the presumption may be overcome if the employer presents substantial evidence that the injury was not work-related.[96] Presentation of a qualified expert's opinion that employment was probably not a substantial factor in causing the disability suffices for this purpose.[97] Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at this point.[98] The board also found that CCSD had rebutted the presumption with substantial evidence.[99] We agree.

CCSD relied on the opinions of a number of physicians who evaluated and treated Parsons, including her treating physicians, Drs. Richey, Schwartz, Schultz, Garg, and Thomas, and its EME physicians, Drs. Lund, Iversen, Kellogg, Carter, and Brigham. Their opinions were that Parsons' pain complaints were unrelated to her 2001 work injury. Dr. Lund was of the opinion that her multiple and diverse complaints were not work-related and were not supported by any significant medical findings.[100] Drs. Kellogg, Carter, and Brigham opined that Parsons suffered bruising of her right upper arm and left forearm, a chest contusion, and a low back sprain, which resolved by February 28, 2002.[101] They also concluded that her pain conditions and symptoms lacked positive orthopedic or neurologic findings and stated there was no objective evidence to support any other diagnosis.[102] These same doctors indicated that Parsons' x-rays and MRIs

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[96] *See Tolbert*, 973 P.2d at 611 (explaining that to rebut the presumption "an employer must present substantial evidence that either '(1) provides an alternative explanation which, if accepted, would *exclude* work-related factors as a substantial cause of the disability; or (2) directly eliminates *any reasonable possibility* that employment was a factor in causing the disability.'") (italics in original, footnote omitted); *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978).

[97] *See, e.g., Big K Grocery v. Gibson*, 836 P.2d 941, 942 (Alaska 1992).

[98] *See, e.g., Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

[99] *See Parsons*, Bd. Dec. No. 11-0140 at 19.

[100] R. 0827.

[101] R. 1090-91.

[102] R. 1090.

showed "sclerosis of bilateral sacroiliac joints, possibly indicating ankylosing spondylitis."[103] Their report alone was substantial evidence rebutting the presumption because it ruled out the work injury as a cause of Parsons' complaints and symptoms. It also provided an alternative explanation for her conditions and symptoms. Furthermore, some of her treating physicians, Drs. Richey, Schwartz, Schultz, Garg, and Thomas, either explicitly stated Parsons' pain complaints, symptoms, and treatment were not work-related or, when asked by Parsons, refused to report that her complaints were related to her work injury.[104] These physicians' opinions provide substantial evidence rebutting the presumption.

If the board finds that the employer's evidence is sufficient to rebut the presumption of compensability, it drops out and the employee must prove his or her case by a preponderance of the evidence.[105] This means that the employee must "induce a belief" in the minds of the board members that the facts being asserted are probably true.[106] At this point, the board weighs the evidence, determines what inferences to draw from the evidence, and considers the question of credibility. The board found that Parsons was unable to meet this burden.[107] We agree.

At first, only Drs. McGrath and Roper concluded that Parsons' pain complaints and symptoms were related to the 2001 work injury.[108] However, Dr. McGrath considered her conditions and symptoms no longer related to that injury, informing her she was "no longer on state comp claim" when he evaluated her in March 2003.[109] He did not relate his diagnoses, evaluations, and treatment of Parsons after March 2003 to her work injury,

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103 R. 1089.

104 Exc. 009, R. 0795, 0983, 0798, 1105, 0911-12.

105 *See Miller*, 577 P.2d at 1046.

106 *See Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

107 *See Parsons*, Bd. Dec. No. 11-0140 at 19.

108 R. 0833, 0699-700.1

109 R. 0746.

noting her MRI results were negative and stating her rib pain was of unknown etiology.[110] The board found that 1) Dr. McGrath's subsequent opinions lessened the weight of his 2001 statements relating Parsons' pain symptoms to her work injury; 2) his 2001 opinions were not strong evidence that her ongoing complaints and symptoms were work-related; and 3) his 2003 opinion supported CCSD's contention that Parsons' ongoing complaints and symptoms were not work-related.[111] Moreover, two years after the work injury, and immediately after Dr. McGrath conveyed his opinion that her symptoms and treatment no longer related to her workers' compensation claim, Parsons treated briefly with Dr. Roper. Dr. Roper evaluated Parsons once and two months later treated her three times over an approximately two-week period.[112] Dr. Roper's opinion, based on the limited treatment provided to Parsons two years after the injury, was not strong evidence, according to the board.[113] These findings by the board concerning the weight to accord Drs. McGrath and Roper's evidence are conclusive.

In contrast, most of Parsons' treating physicians did not think the 2001 work injury caused her conditions and symptoms. Dr. Richey, stated: "She thinks that maybe her continued problems are a result of this work injury. Although it is difficult to see how abdominal pains, headache, and neck pains would happen as a result of this."[114] Another treating physician, Dr. Schwartz, was of the opinion that Parsons' thoracic and lumbar spine conditions, as evidenced in MRIs, were not work-related.[115] Yet another treating physician, Dr. Schultz, commented: "[I]n reviewing her prior notes . . . I wonder if this is not related to her trying to blame a chest injury from a ladder falling on her a decade ago of [sic] her subsequent health problems."[116] Another treating physician,

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110 R. 0746.

111 *See Parsons*, Bd. Dec. No. 11-0140 at 19.

112 R. 0706-07, 0699-700.

113 *See Parsons*, Bd. Dec. No. 11-0140 at 19-20.

114 Exc. 009.

115 R. 0983.

116 R. 0798.

Dr. Thomas, declined to accede to Parsons' request that he relate her hip pain to the work injury.[117] Significantly, Dr. Garg, the treating physician that Parsons identified as most knowledgeable about her condition, diagnosed undifferentiated spondyloarthropathy. His opinions were that her work injury did not cause her current inflammatory arthropathy[118] and that Parsons did not have any disability related to her condition.[119] As the physician with the specialization most relevant to Parsons' condition, Dr. Garg's opinion was given the greatest weight of all her treating physicians by the board.[120]

The board also gave great weight to the opinions of EME physicians Drs. Kellogg and Carter, who evaluated Parsons in 2002 and in 2011.[121] They had thoroughly reviewed her medical history and performed examinations in 2002 and 2011, which gave them a clearer and more complete picture of Parsons' medical history than other physicians, including Drs. McGrath and Roper. Of the treating physicians, Drs. Richey, Schwartz, Schultz, Thomas, and Garg, and the EME physicians, Drs. Lund, Iversen, Kellogg, Carter, and Brigham, were found by the board to have credible opinions based on their thorough analyses of Parsons' medical records, and presented strong and persuasive evidence that her ongoing complaints and symptoms did not arise out of and in the course of Parsons' employment with CCSD.[122]

The preponderance of evidence demonstrated that Parsons' 2001 work injury resolved by August 23, 2001, when Dr. Aaron treated her for body pain and reported no bruising, swelling, discoloration or visible deformities and no palpable areas of tenderness. Parsons' 2001 work injury was not a substantial factor in her past and current need for medical treatment for her ongoing complaints and symptoms. Accordingly, we concur

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117 R. 0911-12.

118 R. 1105.

119 *Id.*

120 *See Parsons*, Bd. Dec. No. 11-0140 at 20.

121 *See id*.

122 *See Parsons*, Bd. Dec. No. 11-0140 at 20.

with the board that her claims for past and ongoing benefits related to these complaints and symptoms ought to be denied.

5. Conclusion.

The board's order denying CCSD's petition to dismiss under AS 23.30.110(c) is REVERSED; the board's order denying Parsons benefits is AFFIRMED.

Date: *30 August 2012* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
James N. Rhodes, Appeals Commissioner

Signed
Philip E. Ulmer, Appeals Commissioner

Signed
Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission reverses the board and affirms the board, as set forth above. The commission's decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[123] For the date of distribution, see the box below.

[123] A party has 30 days after the distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was distributed by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

Effective, November 7, 2005, proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[124] 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. *See* AS 23.30.129(a). The appeals commission is not a party.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

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

More information is available on the Alaska Court System's website:
http://www.courts.alaska.gov/

RECONSIDERATION

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this final decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of a change made in the Notice of Correction of Decision issued September 4, 2012, this is a full and correct copy of the Final Decision No. 168 issued in the matter of *Terry M. Parsons v. Craig City School District and Alaska Municipal League Joint Insurance Association*, AWCAC Appeal No. 11-019, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 30, 2012.

Date: *September 4, 2012*

Signed
K. Morrison, Deputy Commission Clerk

[124] *Id.*