

Alaska Workers' Compensation Appeals Commission

Noelle L. McCullough,
Appellant,

vs.

Job Ready, Inc. and North American
Specialty Insurance Company,
Appellees.

Final Decision

Decision No. 209 February 10, 2015

AWCAC Appeal No. 13-025
AWCB Decision No. 13-0126
AWCB Case No. 200206898

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order on Modification No. 13-0126, issued at Anchorage, Alaska, on October 11, 2013, by southcentral panel members William Soule, Chair, Mark Talbert, Member for Labor, and Ronald Nalikak, Member for Industry.

Appearances: Noelle L. McCullough, self-represented appellant; Randall J. Weddle, Holmes Weddle & Barcott, P.C., for appellees, Job Ready, Inc. and North American Specialty Insurance Company.

Commission proceedings: Appeal filed December 9, 2013; briefing completed January 15, 2015; oral argument was not requested.

Commissioners: James N. Rhodes, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction and procedural history.

The parties, appellant, Noelle L. McCullough (McCullough), and appellees, Job Ready, Inc. and North American Specialty Insurance Company (collectively Job Ready), are before the Workers' Compensation Appeals Commission (commission) a second time. In April 2002, McCullough was working for Job Ready as an activity therapist for the nine-year-old non-verbal autistic daughter of Richard Haynes (Haynes) and Amy Dimmick (Dimmick). She claimed injury as a result of Haynes approaching her from

behind and striking her on the back.¹ However, according to Haynes, he gave McCullough an “at-a-boy” pat on the shoulder.² Initially, the board denied McCullough’s claim for workers’ compensation benefits, on the grounds that she had not suffered any work-related injury.³ Shortly thereafter, on April 4, 2008, McCullough filed with the board a petition to modify *McCullough Bd. I*, however, the board did not rule on the petition at that time.

McCullough timely appealed *McCullough Bd. I* to the commission. We affirmed the board’s decision.⁴ McCullough then appealed *McCullough Comm’n I* to the Alaska Supreme Court (supreme court).⁵ Apparently, in connection with that appeal, at McCullough’s request, the supreme court stayed the appeal and remanded the matter to the board so that it could rule on McCullough’s April 4, 2008, petition to modify.⁶ On remand, the board issued another decision in which it declined to modify *McCullough Bd. I*.⁷

¹ See *Noelle L. McCullough v. Job Ready, Inc. and North American Specialty Ins. Co.*, Alaska Workers’ Comp. Bd. Dec. No. 08-0056 at 2 (Mar. 24, 2008) (*McCullough Bd. I*).

² See *McCullough Bd. I* at 10.

³ See *id.* at 75.

⁴ See *Noelle L. McCullough v. Job Ready, Inc. and North American Specialty Ins. Co.*, Alaska Workers’ Comp. App. Comm’n Dec. No. 151 at 10 (April 12, 2011)(*McCullough Comm’n I*).

⁵ The supreme court assigned Supreme Court No. S-14302 to the appeal.

⁶ According to the board, McCullough wanted to reopen the hearing record, obtain a new hearing, and seek a modification of *McCullough Bd. I*. See *Noelle L. McCullough v. Job Ready, Inc. and North American Specialty Ins. Co.*, Alaska Workers’ Comp. Bd. Dec. No. 12-0110 (June 26, 2012).

⁷ See *Noelle L. McCullough v. Job Ready, Inc. and North American Specialty Ins. Co.*, Alaska Workers’ Comp. Bd. Dec. No. 13-0126 (Oct. 11, 2013)(*McCullough Bd. II*).

Subsequently, in response to a request from Job Ready to lift the stay, in an order dated October 28, 2013,⁸ the supreme court decided to leave the stay in place, pending the outcome of any further proceedings before the board or the commission. Furthermore, the order stated in relevant part:

It is the intent of this order that if [McCullough] appeals the Board's October 11, 2013[,] order to the Commission and then either party appeals the Commission's decision to this court, that appeal will be consolidated with this appeal for briefing and decision; if there is no appeal from the Board's October 11, 2013, decision, then this appeal should no longer be stayed.⁹

On December 9, 2013, McCullough appealed *McCullough Bd. II* to the commission. We affirm the board's denial of benefits in that decision.

2. *Factual background.*

In *McCullough Bd. II*, the board set forth its factual findings.¹⁰ After initially summarizing the factual findings in *McCullough Bd. I*,¹¹ the board then recited in detail McCullough's evidentiary assertions¹² that form the basis of her contention that the board "relied on false or misleading evidence including medical opinions"¹³ in deciding *McCullough Bd. I*. The board painstakingly addressed each assertion.¹⁴ It then made further factual findings and observations based on all the evidence.¹⁵ Given the board's extensive factual findings, the commission will limit its recitation of the factual

⁸ The second page of this order bears a different supreme court appeal number, No. S-14917, and a different issuance date for the order, October 12, 2012, which predates the board's decision in *McCullough Bd. II*. The commission assumes that this information was a clerical formatting error.

⁹ Order of October 28, 2013, in No. S-14302.

¹⁰ *See McCullough Bd. II* at 3-28.

¹¹ *See id.* at 3-12.

¹² *See id.* at 12-26.

¹³ *Id.* at 1.

¹⁴ *See id.* at 12-26.

¹⁵ *See id.* at 26-28.

background in this matter to those findings, starting with the board's description of the incident at issue.

On April 8, 2002, [McCullough] was working as an activity therapist in a child's home. [McCullough] was caregiver for the non-verbal, autistic daughter of Richard Haynes and Amy Dimmick. [McCullough] reported "I was seated at a table with my back to the entrance to the room. A person (client's father) entered and slapped me on the back on 4/8. It is still uncomfortable as of 4/10, especially when driving."

The force of Haynes' contact to [McCullough's] body and exactly where on her body the contact occurred is uncertain because [McCullough's] descriptions change and vary and she is either unable or unwilling to clarify these points.

On April 8, 2002, Haynes' hand contacted [McCullough's] body somewhere in the right upper quarter of her back.

[McCullough] later testified the blow was painful, pushed her over "into her lap" and left a mark visible for several hours.

[McCullough] produced a witness who, an hour or so later when [McCullough] went to the swimming pool saw a "mark" around the area where Haynes had "hit" [McCullough].

At the time of injury, [McCullough] was about 6' 1" tall and weighed about 200 pounds. [McCullough] was and is not overweight, is relatively large of stature and appears to be in good overall physical condition.

Haynes later testified he gave [McCullough] an "at-a-boy" type "friendly clasp on the shoulder," and said "I love a pushy broad," in admiration for what he thought [McCullough] might do as an advocate when Haynes requested additional services for his daughter. Haynes did not notice [McCullough's] body move forward when he clasped her shoulder; she "simply looked up from the book and said words to the effect, 'we do what we can.'" Following this, [McCullough] appeared "normal." There was no "exclamation" and no reaction other than [McCullough's] aforementioned comment. Haynes noted no indication whatsoever [McCullough] was in any type of distress. Later the same evening, [McCullough] called Haynes and wanted to meet with him and his wife. They met that evening, and [McCullough] was angry about the incident. Haynes explained to [McCullough] he intended his remarks and his "at-a-boy" pat on the back to be a compliment. [McCullough] mentioned she was not the type of person to "carry a grudge" and Haynes believed the issue was resolved.

On April 10, 2002, [McCullough] saw physician assistant Lori Landstrom who documented [McCullough] was slapped in the mid-back on April 8,

2002, and had "a quite significant startling slap." On this visit two days following the incident, PA Landstrom's physical examination revealed no acute distress, no deformity, bruising or swelling, no significant tenderness to palpation and full range of motion. [McCullough] demonstrated only a "little bit of tenderness" in the "lower right scapula border." [McCullough] had full sensation and strength bilaterally in her upper extremities and an "essentially normal right shoulder exam."¹⁶

When PA Lori Landstrom saw McCullough on April 10, 2002, she took her off work.¹⁷ McCullough filed a report of injury dated April 16, 2002.¹⁸ On June 18, 2002, McCullough saw Byron McCord, M.D., who planned to release McCullough for full work that month.¹⁹

On July 26, 2002, McCullough saw Scot Fechtel, D.C., M.D., for an employer's medical evaluation (EME). Dr. Fechtel diagnosed a lower thoracic spine contusion "by history," resolved but with "chronic pain." He noted McCullough's subjective complaints were not supported by objective findings. Dr. Fechtel stated the chronic pain syndrome is "subjective only." He concluded McCullough was medically stable and there was no objective evidence upon which he could base an impairment rating.²⁰

On December 7, 2002, Dr. Fechtel saw McCullough again. He diagnosed a lower thoracic spine contusion "by history" that related to the April 8, 2002, incident at work, which had resolved. Dr. Fechtel noted minimal, underlying spine curvature and "hypersensitivity" to normal motion without "objective pathology." Her physical examination was entirely normal. Nevertheless, in Dr. Fechtel's opinion, McCullough had a five percent whole person permanent partial impairment rating based on subjective range of motion loss, and vague, non-verifiable sensory loss.²¹

¹⁶ See *McCullough Bd. II* at 3-4.

¹⁷ See *id.* at 4.

¹⁸ Appellees' Exc. 002, *McCullough Comm'n I*.

¹⁹ See *McCullough Bd. II* at 6. McCord report, June 18, 2002.

²⁰ See *McCullough Bd. II* at 6. Fechtel report, July 26, 2002.

²¹ See *McCullough Bd. II* at 6-7. Fechtel report, December 7, 2002.

Job Ready paid McCullough just over 26 weeks temporary total disability (TTD) benefits from April 9, 2002, through October 10, 2002, and paid her permanent partial impairment (PPI) benefits based on a five percent whole person PPI rating.²² She was also paid medical benefits through August 2004.

On October 17, 2003, McCullough began seeing Johnna Kohl, M.D. According to Dr. Kohl, McCullough told her she was healthy until two years earlier when, while working as a home care provider for a developmentally disabled child she was struck in the back by the “daughter of a client and fell to the ground.”²³

On January 13, 2004, Dr. Fechtel reviewed his prior reports, and selected, subsequent records through 2003. In his opinion McCullough had been evaluated for chronic thoracic spine pain and paresthesias complaints from “every medically reasonable point of view.” He noted there was never any objective evidence of the injury and her “intractable pain” was unresponsive to any therapeutic attempt. Dr. Fechtel concluded it was time for McCullough to “regain her life” in spite of ongoing pain complaints.²⁴

McCullough saw David Glass, M.D., for an EME on May 27, 2004. After she described to him the incident of April 8, 2002, Dr. Glass concluded that McCullough suffered from a pain disorder associated with psychological factors, because her subjective pain complaints were not in keeping with objective physical findings. He also said McCullough may have a somatoform disorder and likely a personality disorder. In Dr. Glass’s opinion, the April 8, 2002, incident did not aggravate, accelerate, or combine with any underlying psychological condition to produce McCullough’s then-current condition or need for psychiatric or medical care. In his view, the April 8, 2002, incident was not a substantial factor in McCullough’s then-present physical or

²² Appellees’ Exc. 032, *McCullough Comm’n I*.

²³ See *McCullough Bd. II*. at 7. Kohl chart note, October 17, 2003. However, McCullough contends this report is in error and she did not tell Dr. Kohl she was struck by the daughter of a client and fell to the ground.

²⁴ See *McCullough Bd. II*. at 7. Fechtel report, January 13, 2004.

psychiatric condition, symptoms, or diagnosis. She had not demonstrated a psychiatric disability or impairment because of the work incident.²⁵

On May 27, 2004, McCullough also saw Stephen Fuller, M.D., and Lynne Adams Bell, M.D., for an EME. Drs. Fuller and Bell deemed the incident of April 8, 2002, a “negligible blow,” which did not even leave “a bruise or mark.” They noted that when McCullough first sought medical attention from PA Landstrom two days following the incident, there was no bruise or mark on her back. Drs. Fuller and Bell concluded that McCullough had no objective pathology upon which to base a valid diagnosis attributable to the April 8, 2002, work incident.²⁶

Drs. Fuller and Bell thought McCullough had no organic musculoskeletal pathology to support her subjective pain complaints. The April 8, 2002, work incident did not aggravate, accelerate, or combine with any underlying physical condition to produce her then-current condition and need for medical care. In their opinion, McCullough would have recovered from this event within two weeks, or by April 22, 2002. The incident was not a substantial factor in bringing about her then-present physical condition because her physical condition was objectively normal. In their view, McCullough never had any objective organic pathology directly resulting from the April 8, 2002, incident. Since October 10, 2002, she was not disabled and had been capable of performing her regular work at any and all times since the incident. As far as Drs. Fuller and Bell were concerned, McCullough had been medically stable since April 8, 2002, with no permanent partial impairment and no need for any further medical treatment.²⁷

On June 23, 2004, Job Ready’s counsel sent Dr. Kohl a questionnaire. Dr. Kohl stated she agreed with the EME reports that indicated McCullough had a “somatic disorder.” However, Dr. Kohl said she did not know McCullough prior to her injury so

²⁵ See *McCullough Bd. II.* at 8. Glass report, May 27, 2004.

²⁶ See *McCullough Bd. II.* at 8-9.

²⁷ See *id.* at 9.

she could not comment on prior psychiatric functioning or whether the accident “was or was not” a cause of her current symptoms.²⁸

McCullough saw Thomas Idhe-Scholl, M.D., psychiatrist, on August 2, 2004. Dr. Idhe-Scholl accepted the history provided by McCullough as accurate. In his opinion, McCullough perceived the incident of April 8, 2002, as an “attack” which resulted in a loss of her “sense of control” and integrity as a person. Dr. Scholl stated that McCullough became dependent on medical care providers with the need to constantly obsess over her care and share medical minutia with others.²⁹

On September 10, 2004, McCullough saw Joella Beard, M.D. Dr. Beard agreed there was “considerable subjective overlay” to her functional loss. She submitted it was “highly unlikely” the incident of April 8, 2002, precipitated sufficient trauma to “cascade this degree of dysfunction.”³⁰

McCullough began to see Eileen Ha, M.D. in November 2004. As reiterated in a letter authored by Dr. Ha dated August 7, 2007, she diagnosed McCullough as suffering from a Depressive Disorder Not Otherwise Specified (NOS) and chronic pain disorder.³¹

Ronald Turco, M.D., psychiatrist, performed a second independent medical evaluation (SIME) of McCullough on December 21, 2006. Dr. Turco noted she presented as a rather immature, naïve individual. He said McCullough failed to answer numerous questions on the MMPI test administered in May 2004, nevertheless, this test produced a profile indicative of hysterical magnification. There was an absence of any clinical pathology such as depression or anxiety. Only one scale was elevated; the scale representing hysterical magnification of symptoms. In Dr. Turco’s opinion, the results would be consistent with a diagnosis of somatoform pain disorder. He said McCullough had no psychiatric diagnosis, however, it was possible she had a pain disorder in which she expresses pain complaints without objective findings. Dr. Turco stated there were

²⁸ See *McCullough Bd. II.* at 9.

²⁹ See *id.* at 7-8. Idhe-Scholl report, August 2, 2004.

³⁰ See *McCullough Bd. II.* at 10. Beard report, September 10, 2004.

³¹ See Appellees’ Exc. 181, *McCullough Comm. I.*

no objective findings to support McCullough's chronic pain complaints. In his opinion, the April 8, 2002, work injury was not a substantial factor in bringing about McCullough's then-present condition or complaints. In his view, McCullough developed a degree of "infantilism" and maintains physical symptoms as a way of dealing with personal issues either consciously or unconsciously. Dr. Turco does not believe the April 8, 2002, incident was a substantial factor in either temporarily or permanently affecting McCullough, specifically in respect of any disability. There is no indication any treatments had been helpful. He strongly encouraged discontinuing passive modalities. Within two weeks of the April 8, 2002, incident, McCullough was medically stable, in Dr. Turco's opinion. He maintained she was and is able to work as a teacher in elementary school or as a rehabilitation specialist. According to Dr. Turco, McCullough suffered no work-related permanent partial impairment.³²

A prior panel of the board heard McCullough's claim on December 4, 5, 18, and 19, 2007.³³ On January 30, 2008, McCullough filed additional pleadings and attached additional evidence, stating: "I wanted to make sure that the Board had copies of items I read or showed as exhibits at hearing."³⁴

The board issued its decision on March 24, 2008, in which it denied McCullough's claim.³⁵ On April 4, 2008, she filed, among other things, a petition for modification.³⁶

In connection with McCullough's second hearing before the board occasioned by the supreme court's remand, on September 3, 2013, she filed a 241-page hearing brief. In it McCullough maintained that key evidence, purportedly not available until that time, as well as evidence available during the December 2007 hearings, was not considered in *McCullough Bd. I*. She contended *McCullough Bd. I* made findings of fact which were

³² See *McCullough Bd. II* at 10-11. Turco report, December 24, 2006, at 8-12.

³³ See *McCullough Bd. II* at 12.

³⁴ See *id.*

³⁵ See *McCullough Bd. I* at 75 and *McCullough Bd. II* at 12.

³⁶ See *McCullough Bd. II* at 12. Request for Reconsideration/Modification, April 4, 2008.

improperly weighed, or which were incorrect, or in some instances factual findings should have been made, which were not. The bullet points are McCullough's assertions of error, as distinguished from the check-marks, which reflect the board's factual findings addressing each point McCullough raised.

- Ronald Turco, M.D., who performed an SIME on [McCullough] on December 21, 2006, was not credible and his findings therefore should be given minimal consideration.

- ✓ Dr. Turco's report is credible because it is supported by the medical and other evidence.

- Dr. Turco attributed statements to [McCullough] during the SIME which [McCullough] did not actually make.

- ✓ Dr. Turco's report is a compilation of [McCullough's] statements and conclusions drawn by Dr. Turco from her statements. It is generally consistent with [McCullough's] unofficial transcript of her visit with Dr. Turco.

- Amy Dimmick and Richard Haynes, parents of the child with whom [McCullough] was working at the time of the claimed injury, denied a history of domestic violence. However, new evidence shows this couple has a pattern or history of domestic violence.

- ✓ It is unclear to what domestic violence [McCullough] refers. Nevertheless, assuming [McCullough] has evidence Haynes and Dimmick were involved in domestic violence, there is no evidence [McCullough] knew about such violence on April 8, 2002, and no medical evidence her later-obtained knowledge could retroactively affect her mental or physical reaction to Haynes' pat on the shoulder in 2002.

- *McCullough [Bd.] I* misquotes [McCullough] as saying the insult (being called a "pushy broad" by Haynes) which accompanied her back-slapping injury was more upsetting to [McCullough] than his slap on her back.

- ✓ *McCullough [Bd.] I* is corrected to reflect [McCullough's] view that the pat on the shoulder (which [McCullough] characterizes as something more forceful) was more upsetting to her than the "pushy broad" comment.

- *McCullough [Bd.] I* should consider new evidence of statements allegedly attributable to former hearing officer Darryl Jacquot, designated chair during the *McCullough [Bd.] I* proceedings, made to [McCullough] during a chance encounter at an airport, that the decision in *McCullough [Bd.] I* was "flawed." This demonstrates the decision was wrong and should be modified.

- ✓ Darryl Jacquot is deceased. Even if his statements are not considered hearsay because he is no longer available, they shed little light on this case because it is unknowable what former hearing officer Jacquot meant when he allegedly said his decision was "flawed."

- *McCullough [Bd.]* I overlooked, did not consider or did not properly weigh evidence of red marks on [McCullough's] back several hours after the alleged injury.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence.
- *McCullough [Bd.]* I erroneously found Dr. Turco said [McCullough] was malingering, when in fact he said she was not malingering.
- ✓ Dr. Turco did not state [McCullough] was malingering.
- *McCullough [Bd.]* I mistakenly found [McCullough] had a history of over-utilizing medical care.
- ✓ [McCullough] did not have a pre-injury history of over-utilizing medical care.
- *McCullough [Bd.]* I failed to properly consider why she did not go to the police immediately following the injury.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence.
- *McCullough [Bd.]* I should consider statements allegedly attributable to former hearing officer Janel Wright, now Chief of Adjudications who unsuccessfully mediated the parties' disputes in 2007, to [McCullough] that the board would never decide in [McCullough's] favor, notwithstanding the evidence.
- ✓ [McCullough's] statements attributable to Janel Wright are hearsay. Furthermore, any such statements, if made at all, were made in the context of a confidential mediation and cannot be considered in this decision because doing so would have a chilling effect on mediation.
- *McCullough [Bd.]* I gave too much weight to Officer Johnson's testimony, which [McCullough] claims later evidence proves lacked credibility in part due to alleged "substandard" performance by Johnson in conducting the initial assault investigation in a related criminal complaint.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I did not consider evidence which [McCullough] claims shows Officer Johnson was "stalking" [McCullough].
- ✓ Officer Johnson was not stalking [McCullough].
- *McCullough [Bd.]* I was based, in part, on false statements made in [Job Ready's] hearing brief.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider only admissible evidence and independently weigh it.
- *McCullough [Bd.]* I should not have accepted Dr. Turco's testimony because of alleged *ex parte* communications between Dr. Turco and the insurance adjuster.

- ✓ [McCullough] has not demonstrated *ex parte* communications between Dr. Turco and the insurance adjuster.
- *McCullough [Bd.]* I assigned too much weight to the Minnesota Multiphasic Personality Inventory (MMPI) in determining how and the extent to which [McCullough] experienced chronic pain.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I did not give enough weight to Internet medical evidence [McCullough] presented.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- Former workers' compensation technician Patricia Graham received emails from [McCullough] containing "evidence," which were never given to the *McCullough [Bd.]* I panel, and thus were overlooked.
- ✓ Patricia Graham is no longer employed by the board. This allegation could not be independently verified. E-mail filing is not an appropriate way to file evidence with the board.
- *McCullough [Bd.]* I overlooked the word "hit" in the injury report and instead focused on the word "slapped."
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough* I improperly found [McCullough] both "consistent" and "inconsistent" in her testimony.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider [McCullough's] consistency and credibility and independently weigh it.
- [McCullough] has newly-discovered evidence concerning a fence on the Dimmick and Haynes property.
- ✓ Pictures of the fence on the Dimmick and Haynes property could have been obtained prior to the *McCullough [Bd.]* I hearing, and are not newly-discovered evidence.
- *McCullough [Bd.]* I erred in finding Dimmick never spoke to [McCullough] after an incident at the library, where [McCullough] alleges Dimmick "stalked" her and approached her in a threatening manner.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I erred in finding Dimmick said she saw [McCullough] carrying materials when Dimmick later said she had not.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.] I* found Dimmick said [McCullough] never told Dimmick she was injured, but Dimmick admitted [McCullough] had told her [she] was injured.

✓ This is [McCullough's] bare allegation of a factual error. [McCullough] misconstrues this finding from *McCullough [Bd.] I*. [McCullough] never told Dimmick she was injured at the time she was allegedly injured, even though Dimmick was in the adjacent room at the time the incident took place; she only told Dimmick she was injured after returning from the swimming pool later in the evening. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.] I* found Haynes said [McCullough] never told him she was injured, but Haynes admitted [McCullough] had told him [she] was injured.

✓ This is [McCullough's] bare allegation of a factual error. [McCullough] misconstrues this finding from *McCullough I*. [McCullough] never told Haynes she was injured at the time she was allegedly injured, even though Haynes was necessarily present at the time the incident took place; she only told Haynes she was injured after returning from the swimming pool later in the evening. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- [Job Ready's] brief said [McCullough] never stated she was injured or required treatment; [McCullough] asserts this was actually the topic of the "family meeting" with Haynes and Dimmick later on the injury date.

✓ This is [McCullough's] bare allegation of a factual error. [McCullough] misconstrues this finding from *McCullough [Bd.] I*. [McCullough] never told Dimmick and Haynes she was injured at the time she was allegedly injured, even though both were present when the incident took place; she only told them she was injured after returning from the swimming pool later in the evening. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.] I* should have given greater weight to Sabrina Johnson's affidavit, because she saw red marks on [McCullough's] back at the swimming pool shortly after the injury.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- A March 12, 2003 medical record was authored by advanced nurse practitioner Wilson, rather than by Michael James, M.D., as *McCullough [Bd.] I* found.

✓ *McCullough [Bd.] I* is corrected to show nurse practitioner Wilson authored the report, not Dr. James.

- *McCullough [Bd.] I* did not consider physician assistant Landstrom's affidavit.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I attributed facts and opinions to Dr. James which were actually those of attorney Weddle, counsel for [Job Ready].
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider Dr. James' opinions and independently weigh them.
- *McCullough [Bd.]* I should not have relied upon Dr. James for psychiatric opinions.
- ✓ This is McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will rely on Dr. Turco's psychiatric opinions and independently weigh them.
- *McCullough [Bd.]* I should not have relied upon Stephen Fuller, M.D., for psychiatric opinions.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I should have considered the DSM-IV for definitions of relevant disorders and compared those definitions to definitions from medical experts upon which it relied.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will rely upon Dr. Turco's opinions and independently weigh them.
- *McCullough [Bd.]* I misunderstood testimony from Johnna Kohl, M.D., and cited the wrong points from her opinion.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider Dr. Kohl's opinions and independently weigh them.
- *McCullough [Bd.]* I relied incorrectly on findings from Lynne Adams Bell, M.D., that the incident left no mark on [McCullough's] back, when [McCullough] states it did.
- ✓ This is [McCullough's] bare allegation of a factual error. The evidence shows the incident left no mark or bruise on [McCullough's] back ever observed by a medical professional even only two days post-injury. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I erred by relying on Dr. Bell who said there were no objective findings pertaining to [McCullough's] injury, when there were.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I ignored photographic evidence of objective findings consistent with reflex sympathetic dystrophy (RSD).
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I overlooked the fact there was no evidence of ongoing medical problems before the work injury.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I gave too much weight to opinions from David Glass, M.D., because Dr. Glass was confused.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* Its typographical errors, such as "paid disorder" rather than "pain disorder" shows the panel did a poor job reviewing the evidence, as does Dr. Fuller's confusion over left versus right shoulders.
- ✓ This is [McCullough's] bare allegation of a factual error. Hearing officers do their best to minimize typographical errors in decisions. Nevertheless, the instant decision will consider relevant evidence and independently weigh it.
- *McCullough [Bd.]* I improperly relied on a chart dated July 26, 2004, finding it was a "pain chart" when it was really a chart used by a chiropractor to demonstrate how chiropractic treatments work.
- ✓ Chiropractors do not demonstrate on pain drawings how chiropractic treatments work. They used pain drawings to record where a patient says he or she feels symptoms.
- *McCullough [Bd.]* I improperly relied on Dr. Fuller, who also improperly relied on this chart, which was not completed by [McCullough].
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider relevant evidence and independently weigh it.
- *McCullough [Bd.]* I made improper inferences when it decided there needed to be objective evidence of [McCullough's] diagnoses.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider relevant evidence and independently weigh it.
- Dr. Fuller's malingering diagnosis is subjective and not supported by any other evidence.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- Dr. Fuller's suggestion [McCullough's] pain migrated from the right to the left shoulder is based on his own error and his refusal to accept a chart correction.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I should not have relied on a doctor who misunderstood an idiomatic expression stating "thinking about something" making it hurt.
- ✓ This is [McCullough's] bare allegation of a factual error. [McCullough] should not have used an idiomatic expression in a medical examination in a workers' compensation

case. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- Dr. Fuller's referral to "Dr. McGuire" in his report, in spite of the fact [McCullough] never saw a Dr. McGuire, demonstrates Dr. Fuller confused [McCullough] with another patient.

- ✓ Dr. Fuller's referral to Dr. McGuire was a simple dictation error because he had just previously referred to Dr. McCord, who has a similar name.

- Dr. Fuller misunderstood a report from Scot Fechtel, DC, about sensory loss on the right side versus sensory loss on the left side of [McCullough's] back. Dr. Fuller misquoted Dr. Fechtel's medical record.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I erred by relying on Dr. Fuller's opinions because Dr. Fuller exaggerated and misrepresented the true facts.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I overlooked that tonsillitis and gastroesophageal reflux disease (GERD) are objective evidence related to [McCullough's] injury.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- Dr. Glass refuted the wrong diagnosis and therefore *McCullough [Bd.]* I should not have relied upon him.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I gave too much weight to Dr. Turco who admitted he was unfamiliar with PTSD-associated features.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- Dr. Glass lacked adequate knowledge of the underlying facts, so *McCullough [Bd.]* I should not have relied upon his opinions; specifically, he did not understand [McCullough] was upset, shaken and angry because of the hitting incident.

- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- Layne Vickers' post-hearing letter proved [McCullough] had no PTSD or histrionic traits prior to the injury.

- ✓ This letter was not newly discovered evidence, as [McCullough] could have procured it prior to the *McCullough [Bd.]* I hearing.

- *McCullough [Bd.]* I overlooked evidence of sweating specific to a particular bodily area found by Joella Beard, M.D.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: Dr. Beard does not make a causal connection between these findings and [McCullough's] work injury.
- *McCullough [Bd.]* I overlooked findings from Gregory Polston, M.D., who found [McCullough's] right arm to be cooler than her left.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: Dr. Polston does not make a causal connection between these findings and [McCullough's] work injury.
- *McCullough [Bd.]* I overlooked findings from Dr. Kohl, who recorded [McCullough] had tachycardia as did a doctor in a Virginia clinic.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: No physician made a causal connection between these findings and [McCullough's] work injury.
- *McCullough [Bd.]* I overlooked [McCullough's] apparent panic at the hearing when discussing the above subjects.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this demeanor evidence and independently weigh it.
- *McCullough [Bd.]* I overlooked the testimony of lay witnesses who saw [McCullough] on the evening of the injury event.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough* I overlooked the fact [McCullough] woke up in the middle of the night with panic attacks, which she compares to "nightmares," although [McCullough] does not recall specific bad dreams.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.
- *McCullough [Bd.]* I improperly considered numerous experts' statements suggesting [McCullough] told Dr. Turco [McCullough] had no trouble sleeping, when in fact this is inaccurate. A recording of Dr. Turco's evaluation would demonstrate this.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: [McCullough's] unofficial transcript of her visit with Dr. Turco is somewhat vague on this point. In any event, it does not appear "loss of sleep" or "lack of loss of sleep" figure prominently into Dr. Turco's opinions.

- The instant decision should consider an email from Suzanne Fidler to the claimant, which was apparently sent to the board post-hearing but before the record in *McCullough [Bd.] I* closed.
- ✓ This e-mail is not newly discovered evidence as [McCullough] could have procured it prior to the *McCullough [Bd.] I* hearing.
- The instant decision should consider new evidence in the form of a letter from [McCullough's] former co-worker, which describes [McCullough's] "calm nature" prior to the work injury.
- ✓ This letter is not newly discovered evidence as [McCullough] could have procured it prior to the *McCullough [Bd.] I* hearing.
- *McCullough [Bd.] I* erred by failing to find what [McCullough] was like pre-injury, based on posthearing evidence.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: Based on the evidence prior to hearing, there is no evidence [McCullough] had any significant mental health issues, PTSD, or significant health problems. Post-hearing evidence demonstrating this point is not newly discovered as [McCullough] could have procured it prior to the *McCullough [Bd.] I* hearing.
- *McCullough [Bd.] I* says [McCullough] may have some sort of "insect without a common name," but the insect has no bearing on this case.
- ✓ The panel has no idea to what [McCullough] refers. If this language appeared in *McCullough [Bd.] I*, it was an obvious typographical error.
- *McCullough [Bd.] I* erred by relying on medical opinions stating [McCullough] had "somatization disorder" because she was over 30 years of age when the incident occurred, implying it is not possible to have this condition begin at her age.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: More weight is given to Dr. Turco's expert, psychiatric opinions about mental-health diagnoses than to [McCullough's] lay opinions or interpretations.
- *McCullough [Bd.] I* should have relied more on reports from [McCullough's] psychiatrist, Eileen Ha, M.D., who had a better factual understanding.
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: More weight is given to Dr. Turco's expert, psychiatric opinions than to Dr. Ha's, because he was the board's examiner and not an advocate for either party.
- *McCullough [Bd.] I* found [McCullough] was inconsistent in reporting her symptoms over the years, when it was the doctors who were inconsistent over the years, making it appear [McCullough] was inconsistent.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: [McCullough's] medical records are considered more accurate than [McCullough's] recollections of what she told her physicians.

- *McCullough [Bd.]* I lacked adequate analysis of lay testimony involved in [McCullough's] claim, proving it did not consider this testimony.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I misstated Dr. Kohl's opinion, particularly a July 24, 2007 letter.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I ignored issues [McCullough] raised about Dr. Turco's credibility.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it, as follows: Dr. Turco's opinions are credible because they are supported by the medical evidence in this case.

- *McCullough [Bd.]* I should have discussed Dr. Turco's credibility because [Job Ready] paid him in excess of his charges for her SIME, which \$1,200 he has kept to this day.

✓ [McCullough's] contention lacks adequate evidence to support it. Even were these allegations true, they do not necessarily indicate bias on Dr. Turco's part.

- *McCullough [Bd.]* I made a false finding when it says Dr. Kohl stated [McCullough] has a disorder not related to work.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I erroneously found Drs. James, Beard, and Kohl said [McCullough] has a disorder exaggerated by malingering, which they did not say.

✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider this evidence and independently weigh it.

- *McCullough [Bd.]* I erred by finding [McCullough's] "own doctor" was Dr. James when [McCullough] asserts Dr. James was picked by [Job Ready].

✓ The instant decision will independently consider Dr. James' opinions regardless of who selected him.

- Dr. Turco misled [McCullough] about the board's actions and requests in respect to the SIME.

- ✓ It is unclear to what Dr. Turco referred. Dr. Turco performed the psychiatric examination he felt necessary under the circumstances and this decision will not second[-]guess his expertise.
- Dr. Turco improperly administered the MMPI test.
- ✓ This is [McCullough's] bare allegation of a factual error. It is not supported by any expert medical evidence.
- *McCullough [Bd.]* I mistook Amy Dimmick's thoughts, feelings, and words for [McCullough's].
- ✓ This is [McCullough's] bare allegation of a factual error. Nevertheless, the instant decision will consider [McCullough's] and Dimmick's testimony and independently weigh it.
- Dr. Turco inappropriately "cut her off" and did not allow [McCullough] to answer his questions during her SIME.
- ✓ This allegation is not supported by [McCullough's] unofficial transcript of her visit with Dr. Turco.
- Dr. Turco referenced a police report he never had, and said the board stated [McCullough] had "marital problems," which [McCullough] says the board would never have said.
- ✓ The record is not clear on this point.
- Dr. Turco said [McCullough] told him she had a boyfriend commit suicide in college, which is not true.
- ✓ According to [McCullough's] unofficial transcript of her visit with Dr. Turco, her statements could be interpreted to say her "friend," who was a "boy," committed suicide either while she was still in college perhaps doing student teaching, or immediately after college in her first year of teaching. Her history to Dr. Turco was not clear. Dr. Turco made a factual conclusion from what [McCullough] said, just as the fact-finders in this decision did.
- *McCullough [Bd.]* I should not have relied on EME Drs. Bell, Glass[,]*McCullough Bd. II* at 3-4. and Fuller because they said they were all present during her examination, when in reality they were not.
- ✓ The instant decision relies on Dr. Turco.
- Contrary to *McCullough [Bd.]* Is finding, Dr. Beard did not agree with Dr. Glass' opinion.
- ✓ The instant decision relies on Dr. Turco.
- *McCullough [Bd.]* I should have weighed Dr. Campbell's testimony more heavily because he had better credentials and more experience than Dr. Turco.
- ✓ Board hearing panels have the right to rely on whomever they choose.

- Dimmick was untruthful or inaccurate about a chain used as a gate across her driveway when there was no such chain present at the time of [McCullough's] injury.
- ✓ Either Haynes or Dimmick appeared to have been inaccurate about the gate across her driveway at the time of [McCullough's] alleged injury.
- [McCullough] has a photograph of the "gate," which she recently acquired, which shows Dimmick was wrong about the chain versus a different kind of gate.
- ✓ The Haynes and Dimmick depositions demonstrate the inaccuracy. The photographs were not newly-discovered evidence as [McCullough] could have procured this well before the *McCullough [Bd.] I* hearing.
- *McCullough [Bd.] I* should not have found it took [McCullough] "a week" to report the alleged assault to police as it was really only four to five days.
- ✓ It took a week.
- *McCullough [Bd.] I* erred by not listening to a tape recording of a conversation [McCullough] had with Capt. Bowman.
- ✓ This is [McCullough's] bare allegation of a factual error. The instant decision will not listen to Capt. Bowman's recorded telephone conference.
- [McCullough's] new evidence includes an assault that occurred after the hearing was over and before *McCullough [Bd.] I* was issued.
- ✓ If [McCullough] is referring to Dimmick speaking to her at the public library, the instant decision does not consider this an "assault."
- *McCullough [Bd.] I* inappropriately relied upon Dr. Turco's SIME report, because he allegedly did not respond "equally" to questions from [Job Ready] and [McCullough] demonstrating his bias against [McCullough].
- ✓ If [McCullough] was dissatisfied with Dr. Turco's responses, she could have taken his deposition.

Having addressed McCullough's assertions, contentions, and specifications of error, the board went on to make additional findings of fact and observations, in the process summarizing the parties' arguments with respect to the evidence.³⁷ Edited, the commission notes the following findings of fact by the board.

McCullough argued "new information" became available "after-the-fact" and this information, along with numerous errors in *McCullough Bd. I* taken as a whole, could change the way fact-finders look at her case. She objected to Job Ready, physicians,

³⁷ See *McCullough Bd. II* at 26-28

and prior decisions “cutting and pasting” and dropping into documents information she refers to as “false statements.”³⁸

The board found that McCullough’s numerous accounts to physicians as to how her injury occurred varied considerably and were inconsistent. In some instances McCullough said she was sitting on a folding metal chair while in others it was a sofa or couch. In some cases McCullough told physicians she was struck by Haynes’ open hand on her shoulder, where in other instances she said he hit her hard enough to knock her to the floor, while at other times she averred he hit her hard enough to push her down in a forward, seated flexion position. Absent a better description, the board gave very little weight to McCullough’s varied accounts of the event and found she was not credible.³⁹

Specifically, the board found that Haynes’ account of the April 8, 2002, incident was more credible than McCullough’s accounts.⁴⁰ Haynes’ pat on her shoulder did not exert adequate physical force on McCullough to account for 11 years of alleged disability and need for medical care.⁴¹

According to the board, had the current panel heard the same evidence as the original panel heard in December 2007, it would have come to the same legal conclusions and would have also denied McCullough’s claim, as the panel did in *McCullough Bd. I*, notwithstanding McCullough’s allegedly new evidence.⁴²

3. Standard of review.

“The board’s findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record.”⁴³ “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a

³⁸ See *McCullough Bd. II* at 26.

³⁹ See *id.* at 27-28.

⁴⁰ See *id.* at 28.

⁴¹ See *id.*

⁴² See *id.*

⁴³ AS 23.30.128(b).

conclusion.”⁴⁴ “The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law”⁴⁵ and therefore independently reviewed by the commission.⁴⁶ We exercise our independent judgment when reviewing questions of law and procedure.⁴⁷

The board has the sole power to determine the credibility of a witness and a board finding concerning the weight to be accorded a witness’s testimony is conclusive even if conflicting or susceptible to contrary conclusions.⁴⁸ The board’s findings regarding the credibility of witness testimony are binding on the commission.⁴⁹

4. Discussion.

In the commission’s view, this appeal presents only one issue: Are the board’s findings of fact supported by substantial evidence in light of the whole record? The short answer is “yes.”

First, we note that the board found that McCullough was not credible in terms of her description of the incident with Haynes and found that Haynes’ version was credible. Again, the commission is required by law to accept the board’s credibility findings. Moreover, in our view, credibility is critical to the analysis. On the very narrow issue of how much force Haynes exerted when he made contact with McCullough’s back, it was negligible. Further reinforcing the conclusion that the contact was insignificant was the examination performed by PA Landstrom only two days after the incident. She found McCullough had a little tenderness in the right scapula area as a result of the contact, nevertheless, McCullough’s shoulder examination was otherwise

⁴⁴ *Pietro v. Unocal Corp.*, 233 P.3d 604, 610 (Alaska 2010) (quoting *Grove v. Alaska Constr. & Erectors*, 948 P.2d 454, 456 (Alaska 1997)(internal quotation marks omitted).

⁴⁵ *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers’ Comp. App. Comm’n Dec. No. 054 at 6 (Aug. 28, 2007)(citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-89 (Alaska 1984)).

⁴⁶ *See* AS 23.30.128(b).

⁴⁷ *See id.*

⁴⁸ *See* AS 23.30.122.

⁴⁹ *See* AS 23.30.128(b).

normal.⁵⁰ The foregoing evidence alone supports the board's findings that McCullough suffered no appreciable injury and that she has been consistently exaggerating the physical effects of what was otherwise an inconsequential contact from Haynes.

Second, the commission views the medical evidence as overwhelmingly indicative of McCullough having a somatoform or personality disorder which was not work-related. PA Landstrom, who saw McCullough two days after the incident with Haynes, thought her right shoulder was normal. Multiple evaluators, including Drs. Fechtel, James, Fuller, and Bell, were in basic agreement that McCullough had not suffered any kind of physical injury to her back or shoulder as a result of the incident. Instead, the consensus among the psychiatric evaluators, in particular, Drs. Glass and Turco, was that McCullough suffered from a somatoform or personality disorder unrelated to her employment with Job Ready. The board, acting within its authority,⁵¹ gave more weight to the evidence from these doctors, as distinguished from the opinion evidence from Drs. Idhe-Scholl and Ha, which was somewhat vague and equivocal. In particular, the board chose to rely on the evidence provided by Dr. Turco, which the board was entitled to do.

The commission agrees with the board and concludes that substantial evidence supports its holding that McCullough did not suffer any kind of physical injury on April 8, 2002, that would have caused, aggravated, accelerated, or combined with her underlying psychological condition to produce a post-April 8, 2002, condition or need for psychiatric or medical care.

⁵⁰ *See McCullough Bd. II* at 4.

⁵¹ *See AS 23.30.122.*

5. Conclusion.

The commission AFFIRMS the board's decision in *McCullough Bd. II* in all respects.

Date: 10 February 2015 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

James N. Rhodes, Appeals Commissioner

Signed

S. T. Hagedorn, Appeals Commissioner

Signed

Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission affirmed the board's decision denying the employee's claim for benefits. This decision becomes effective when distributed unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).⁵² To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

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 distributed⁵³ and be

⁵² A party has 30 days after the service or distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was served 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.

⁵³ See n.52, above.

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 and the workers' compensation board are not parties.

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

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 distributed⁵⁴ 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 this is a full and correct copy of Final Decision No. 209, issued in the matter of *Noelle L. McCullough vs. Job Ready, Inc. and North American Specialty Insurance Company*, AWCAC Appeal No. 13-025, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on February 10, 2015.

Date: February 12, 2015



Signed

K. Morrison, Appeals Commission Clerk

⁵⁴ See n.52, above.