Alaska Workers' Compensation Appeals Commission

Catrin McKinley, Appellant, vs. Kenai Peninsula Borough and School District and Alaska Municipal League Joint Insurance, Appellees.	Final Decision Decision No. 294 January 28, 2022 AWCAC Appeal No. 21-007 AWCB Decision Nos. 20-0066, 21-0016, and 21-0038 AWCB Case No. 201012918

Final decision on appeal from Alaska Workers' Compensation Board Interlocutory Decision and Order No. 20-0066, issued at Anchorage, Alaska, on July 28, 2020, by southcentral panel members Cassandra Tilly, Chair, and Sara Faulkner, Member for Industry; Final Decision and Order No. 21-0016, issued at Anchorage, Alaska, on February 25, 2021, by southcentral panel members Judith A. DeMarsh, Chair, Justin Mack, Member for Labor, and Sara Faulkner, Member for Industry; and Final Decision and Order on Reconsideration No. 21-0038, issued at Anchorage, Alaska, on May 3, 2021, by southcentral panel members Judith A. DeMarsh, Chair, Justin Mack, Member for Labor, and Sara Faulkner, Member for Industry.

Appearances: J. C. Croft, The Croft Law Office, for appellant, Catrin McKinley; Colby J. Smith, Griffin & Smith, for appellees, Kenai Peninsula Borough and School District and Alaska Municipal League Joint Insurance.

Commission proceedings: Appeal filed June 2, 2021; briefing completed September 27, 2021; oral argument held on October 28, 2021.

Commissioners: Michael J. Notar, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Catrin McKinley asserted a claim for hearing loss arising out of her employment with the Kenai Peninsula Borough (KPB). There have been four decisions issued in

Ms. McKinley's Alaska Workers' Compensation Board (Board) case.[1] The decisions involved in this appeal to the Alaska Workers' Compensation Appeals Commission (Commission) are *McKinley I*, *McKinley II*, and *McKinley IV*. The Board, in *McKinley I*, dismissed her 2017 claim for past medical benefits, penalty, interest, and attorney fees and costs, and her petition for a Second Independent Medical Evaluation (SIME) as barred by AS 23.30.110(c) because she failed to timely request a hearing. In *McKinley II*, the Board held that her 2020 claim for medical benefits and an SIME was barred by the doctrine of *res judicata*, because the Board, in *McKinley I*, had dismissed portions of her 2017 claim. The Board, on reconsideration in *McKinley IV*, held her 2020 claim for a compensability determination was also barred by the doctrine of *res judicata*. Oral argument before the Commission was held on October 28, 2021. The Commission now affirms the Board in part, but remands for consideration of the issue of compensability.

2. Factual background and proceedings.[2]

Ms. McKinley was employed as an emergency/911 dispatcher for the Kenai Peninsula Borough from April 2008 through February 2012.[3] In the report of injury filed on September 22, 2010, by KPB,[4] she alleged bilateral hearing damage from constant phone usage as well as background noise in the 911 center.[5]

The Board received on January 24, 2014, an undated note from Dr. Thomas A. McCarty, Jr., an audiologist, briefly discussing Ms. McKinley's prior testing and hearing

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[1] *McKinley v. Kenai Peninsula Borough*, Alaska Workers' Comp. Bd. Dec. No. 20-0066 (July 28, 2020) (*McKinley I*); *McKinley v. Kenai Peninsula Borough and School District*, Alaska Workers' Comp. Bd. Dec. No. 21-0016 (Feb. 25, 2021) (*McKinley II*); *McKinley v. Kenai Peninsula Borough and School District*, Alaska Workers' Comp. Bd. Dec. No. 21-0027 (Mar. 24, 2021) (*McKinley III*); and *McKinley v. Kenai Peninsula Borough – WC*, Alaska Workers' Comp. Bd. Dec. No. 21-0038 (May 3, 2021) (*McKinley IV*).

[2] We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

[3] *McKinley I* at 3, No. 1; Hr'g Tr. at 13:19-25, Jan. 13, 2021.

[4] R. 0001; 0696.

[5] R. 0001.

loss, and finding hearing aids medically necessary. Dr. McCarty found the substantial cause of Ms. McKinley's hearing loss to be "workplace noise induced exposure."[6]

Ms. McKinley did not attend an Employer's Independent Medical Examination (EIME) scheduled on April 7, 2014, so Richard A. Hodgson, M.D., otolaryngologist, conducted a records review. He diagnosed bilateral high-frequency sensorineural hearing loss, and prior initial otitis externa, resolved. He noted the high-frequency hearing loss above speaking frequencies in both ears "is more probably than not due to age-related causes, but may also be from early viral infections or possibly an earlier middle ear infection that was not caused by her occupational exposure." He found the substantial cause of the high-frequency hearing loss was presbycusis (gradual age-related hearing loss), with the pattern not being consistent with a noise causation. He found the "high-frequency hearing loss more probably than not was present prior to the ear infection and has persisted to the present time and is due to causes other than occupational exposure."[7]

The issue before the Board in *McKinley I* was whether Ms. McKinley's workers' compensation claim was time-barred under AS 23.30.110(c) because she did not timely request a hearing. Thus, the facts of when the claim was filed, when KPB controverted the claim, and when a hearing was requested are important and are detailed below.

On May 5, 2014, KPB controverted all benefits based on the April 7, 2014, EIME.[8] This controversion, however, was a pre-claim controversion. On May 7, 2014, KPB filed the April 7, 2014, EIME report by Dr. Hodgson, which provided a summary of the records reviewed by date and provider.[9]

The Croft Law Office filed an Entry of Appearance as attorneys for Ms. McKinley on August 23, 2017.[10] Ms. McKinley filed a claim for medical costs, penalty, interest, and

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6 R. 0073.

7 R. 0524-41.

8 R. 0078.

9 R. 0523-41.

10 R. 0111-12.

attorney fees and costs on the same day.[11] The specific benefits sought were the following:

1. A Board order that hearing loss and related treatment is compensable regardless of Medicare coverage.
2. Payment of hearing aid and related treatment.
3. Penalty, interest.
4. Attorney fees and costs.[12]

KPB filed a post-claim controversion on September 13, 2017. The Board found the certificate of service stated the controversion was mailed to Ms. McKinley and served by email on the Board and The Croft Law Office at their addresses of record. The controversion was issued on the Board's prescribed controversion form, which contained the following language:

> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.
>
> IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING, CONTACT THE NEAREST AWCB OFFICE.[13] (Emphasis in original.)

Ms. McKinley's attorney confirmed that the controversion was properly served via email.[14]

Attorneys for Ms. McKinley attended an October 17, 2017, prehearing conference, and the Prehearing Conference Summary (PHCS) contained a listing of pleadings filed including "9/23/17 Controversion – All benefits." The PHCS contained a notice to claimant indicating the two-year time limit to request a hearing following a post-claim controversion, either by filing an Affidavit of Readiness for Hearing (ARH) or written notice

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[11] R. 0116.

[12] R. 0116.

[13] R. 0084-85.

[14] *McKinley I* at 4, No. 12; R. 0184-85.

where an ARH cannot be filed. The PHCS was served by mail on October 19, 2017, to The Croft Law Office, 738 H Street, Anchorage, AK 99501.[15]

Ms. McKinley's agency case file was requested by The Croft Law Office on November 2, 2017. On November 14, 2017, a copy of the agency file was mailed to The Croft Law Office.[16]

The Board found that the Board's records contained no evidence of any activity on this case between November 14, 2017, and August 6, 2019.[17]

On August 15, 2019, Dr. McCarty provided an update to his opinion regarding Ms. McKinley's bilateral hearing loss in response to a written inquiry from Ms. McKinley's attorney. In response to the question, "Is it still your opinion that Ms. McKinley's work as a 911 dispatcher for the Kenai Peninsula Borough is the substantial cause of her bilateral hearing loss?" Dr. McCarthy checked, "YES, work is the substantial cause."[18] Ms. McKinley received Dr. McCarty's August 15, 2019, opinion on September 25, 2019.[19]

The Board found that the two-year timeframe in which to request a hearing after KPB's September 13, 2017, post-claim controversion expired on September 13, 2019.[20] The Board also found that the Board's records contained no evidence of any activity in this case between August 7, 2019, and October 3, 2019.[21]

On October 3, 2019, Ms. McKinley petitioned for an SIME.[22] She submitted an unsigned SIME form that noted a medical dispute regarding causation: Dr. McCarty finding work as the substantial cause on August 15, 2019, and Dr. Hodgson finding

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15 R. 0760-62.

16 *McKinley I* at 5, Nos. 17-18.

17 *Id.*, No. 19.

18 R. 0661.

19 *McKinley I* at 5, No. 22; R. 0190.

20 *McKinley I* at 5, No. 23.

21 *Id.* at 6, No. 24.

22 R. 0334.

Ms. McKinley's high-frequency hearing loss was due to non-occupational reasons on April 7, 2014.[23]

On October 15, 2019, KPB answered the petition for an SIME admitting the medical dispute, contending the appropriate physician to conduct the SIME is an ear, nose, and throat specialist/otolaryngologist, and noting that KPB had no records of medical treatment for Ms. McKinley from September 30, 2017, to August 15, 2019. KPB asserted updated medical records were needed prior to proceeding to an SIME, and releases had been forwarded to Ms. McKinley and her attorney. KPB reserved the right to add additional defenses.[24]

On December 3, 2019, Ms. McKinley filed an ARH on her August 23, 2017, claim.[25] She also filed an ARH on her October 3, 2019, petition for SIME.[26]

On December 11, 2019, KPB filed its petition to dismiss Ms. McKinley's claim pursuant to AS 23.30.110(c).[27] KPB also filed a controversion of all benefits pursuant to AS 23.30.110(c),[28] along with an amended answer asserting a defense under AS 23.30.110(c).[29] On February 12, 2020, KPB filed an ARH regarding its December 11, 2019, petition to dismiss.[30]

A prehearing conference was held on April 8, 2020, setting Ms. McKinley's October 3, 2019, petition for an SIME and KPB's December 11, 2019, petition to dismiss

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23 R. 0335-36.

24 R. 0139-41.

25 R. 0142.

26 R. 0143A.

27 R. 0150.

28 R. 0086-87.

29 R. 0144-46.

30 R. 0151.

as the only issues for the June 18, 2020, written record hearing.[31] On April 23, 2020, Ms. McKinley filed an additional claim for workers' compensation benefits.[32]

The Board found that Ms. McKinley had received treatment from Dr. McCarty; however, she also asserted Dr. McCarty had not been paid.[33] The Board found that Dr. McCarty had not filed a claim for unpaid medical billings.[34] The Board further found that Ms. McKinley had not requested an extension of time nor any other accommodation to prevent the running of the two-year limit to request a hearing under AS 23.30.110(c) prior to the September 13, 2019, deadline.[35] The Board order in *McKinley I* denied Ms. McKinley's August 23, 2017, "claim for medical costs, penalty, interest, and attorney's fees and cost" because she had not requested a hearing as required by AS 23.30.110(c).[36] The Board also denied the petition for an SIME as barred by AS 23.30.110(c). The Board specifically, in its conclusions of law, stated Ms. McKinley might be entitled to an SIME for her April 23, 2020, claim. The Board did not otherwise explicitly address the issue of compensability, i.e., whether her hearing loss arose in the course and scope of her employment with KPB, thus implying that this issue remained open. The Board designated this decision and order as an "Interlocutory" Decision and Order.[37]

Ms. McKinley filed a claim for benefits on April 23, 2020, seeking the following:

1. For a Board determination that employee's hearing loss occurred in the course and scope of her employment.
2. Payment of hearing aid related treatment.
3. Penalty and interest.

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31 R. 0792-95.

32 *McKinley I* at 7, No. 37.

33 *Id.*, No. 39.

34 *Id.*, No. 40.

35 *Id.*, No. 41.

36 *Id.* at 18, No. 1.

37 *Id.* at 1. The Commission takes judicial notice that interlocutory orders are not appealable as a matter of right, but review may be requested by a petition for review.

4. Attorney fees and costs.[38]

On September 25, 2020, she also filed a petition for an SIME.[39]

On October 12, 2020, KPB asserted it was inappropriate to proceed with an SIME as Ms. McKinley's claim had been dismissed as time barred in *McKinley I*, and, thus, the September 25, 2020, claim and petition were also barred by *res judicata*.[40] On October 21, 2020, KPB filed a petition to dismiss Ms. McKinley's April 23, 2020, claim for workers' compensation benefits and her September 25, 2020, SIME petition contending both were barred by *res judicata*.[41]

On November 19, 2020, Ms. McKinley amended her April 23, 2020, claim asking for future medical costs, but not past medical costs.[42]

The Board heard Ms. McKinley's 2020 claim on January 13, 2021, and both she and Dr. McCarty testified telephonically.[43] She testified that she had worked for Northwest Airlines from December 1995 to June 2001, and she had yearly hearing tests as part of her job. She recalled those tests showed she had not suffered any hearing loss at that time.[44]

Ms. McKinley began working for KPB in April or May of 2008. Her position was a 911 dispatcher,[45] for which she wore headsets that plugged into the console used to answer the phone and talk with anyone within the 911 system. She also recorded calls.[46] She believes she suffered hearing loss as a result of her work as a dispatcher. After about a month working as a dispatcher, she started losing hearing in one of her ears,

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38 R. 0153-54.

39 R. 0305.

40 R. 0306-08.

41 R. 0309.

42 R. 0868-72.

43 *McKinley II* at 1-2.

44 *McKinley II* at 4, No. 13; Hr'g Tr. at 12:11 – 13:3.

45 *McKinley II* at 4, No. 14; Hr'g Tr. at 13:19-25.

46 *McKinley II* at 4, No. 15; Hr'g Tr. at 14:1-22.

then in her other ear. She went to several doctors who were unable to determine what the problem was. She had a hearing test at that time and was then referred to a specialist who diagnosed ear infections and attributed the infections to the type of "inside-the-ear" headsets she was using. Her ear infections were treated with antibiotics and cleared up.[47]

After two years working as a dispatcher, Ms. McKinley felt she needed a hearing test as she was experiencing tinnitus. She saw Dr. McCarty, who diagnosed hearing loss and prescribed hearing aids. Ms. McKinley purchased and started wearing hearing aids shortly after they were prescribed.[48] Her hearing aids were replaced in 2013, but she has not replaced them since that time. She did not recall if she had had any other treatment for her hearing loss after 2013.[49]

Ms. McKinley requested to have her hearing checked again as her tinnitus had worsened. She saw a doctor within the last couple months as her ears started to be "impacted" again.[50] Her ears were flushed and she was given medication, which she said it turned out she did not need.[51] She asked for treatment in the future in the form of a hearing test, for the blockage she experiences in her ears, and for new hearing aids.[52] Ms. McKinley had not treated with Dr. McCarty after she left Alaska in June 2018. She had no unpaid medical bills from Dr. McCarty. She had no unpaid medical bills concerning hearing treatment since July 2020.[53]

Currently, Ms. McKinley testified she uses her hearing aids periodically, although she does not wear them at work when she must wear a face mask. When she does not

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47 *McKinley II* at 4, No. 16; Hr'g Tr. at 14:23 – 15:16.

48 *McKinley II* at 4, No. 17; Hr'g Tr. at 15:17 – 16:25.

49 *McKinley II* at 4, No. 18; Hr'g Tr. at 17:7-14.

50 However, the medical records for this visit were apparently not filed with the Board. *See* Hr'g Tr. at 17:19-24.

51 *McKinley II* at 5, No. 19; Hr'g Tr. at 17:24 – 18:2.

52 *McKinley II* at 5, No. 20; Hr'g Tr. at 22:23 – 23:11.

53 *McKinley II* at 5, No. 21; Hr'g Tr. at 26:25 – 27:15.

wear her hearing aids, she must turn the volume up high on the television. She also cannot hear all the conversations at her table at a restaurant without hearing aids.[54] Ms. McKinley stated she was still using the same hearing aids prescribed by Dr. McCarty, which she obtained in 2013. She has not treated with Dr. McCarty since she left Alaska in 2018. No other doctor has told her she needs hearing aids.[55]

The Board found Ms. McKinley did not present any new medical evidence to support her need for current or future treatment for her hearing loss.[56]

Dr. McCarty testified about his credentials, stating he has a Ph.D. in audiology from the University of Florida. Obtaining his audiology degrees required study of patient diagnostic evaluations, electrophysiological examinations, calculation of percentage of hearing loss for workers' compensation cases, noise studies, and more.[57] Dr. McCarty is licensed as an audiologist in Alaska. He is board certified by the American Academy of Audiology and he is a member of the Academy of Doctors of Audiology. His practice is the only certified practice of audiology in Alaska.[58]

Dr. McCarty described audiology as the science of hearing which involves the diagnostic evaluation and medical treatment of hearing loss using hearing instruments. According to him, otolaryngologists, or Ear, Nose, and Throat (ENT) physicians are medical doctors and surgeons who specialize in treating with surgery and prescription medication. ENT physicians and audiologists are both trained in diagnosing and treating hearing loss. He also asserted ENT physicians rely on testing performed by audiologists to diagnose and treat patients.[59]

Dr. McCarty explained that the examination of a patient for hearing loss includes taking a history and examining the ears' external components. There is also electronic

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54 *McKinley II* at 5, No. 22; Hr'g Tr. at 29:7 – 30:20.

55 *McKinley II* at 5, No. 24; Hr'g Tr. at 32:3 – 33:3.

56 *McKinley II* at 5, No. 24.

57 *McKinley II* at 5, No. 25; Hr'g Tr. at 42:17-19; 42:22 – 43:1.

58 *McKinley II* at 6, No. 27; Hr'g Tr. at 45:9-20.

59 *McKinley II* at 5, No. 26; Hr'g Tr. at 43:2 – 44:19.

diagnostic testing of the hearing. There are tests for the eardrum function and the middle ear and a separate test for the auditory nerve and the cochlea or inner ear. In a workers' compensation case, his office does a comprehensive examination, which typically starts with the objective measures, testing the eardrum and the auditory nerve. The responses are automatic and cannot be controlled by the patient being tested.[60]

Dr. McCarty first treated Ms. McKinley in 2010 or 2011. He found bilateral nerve-type hearing loss in the inner ear or cochlea. The high frequency hearing loss was in the 40 to 45 decibel range. The eardrum tests were normal and the otoacoustic emissions showed abnormal response. All the tests were consistent with a cochlear or inner ear hearing loss.[61] Dr. McCarty, based on the testing results, diagnosed Ms. McKinley with bilateral cochlear sensorineural hearing loss, which is a permanent, progressive disorder. Patients with this type of hearing disorder are not candidates for surgery or medication. They are candidates for hearing instruments. He opined Ms. McKinley's hearing loss was caused by the headsets she was using while working as a 911 dispatcher for KPB. He had seen this injury in many people who use headsets due to exposure to loud tones intermittently presented to their ears.[62]

Dr. McCarty last saw Ms. McKinley in 2017. He recommended routine replacement of hearing aids for patients with the type of hearing loss suffered by Ms. McKinley both because the technology improves and because the hearing loss is progressive. The hearing aids are routinely replaced based on the amount of hearing loss and the amount of difficulty they are reporting. Ms. McKinley did return about three years after her first set of hearing aids as she was noticing more difficulty hearing and the advances in technology addressed the screeching noise she was reporting.[63] Dr. McCarty said Ms. McKinley will need her hearing monitored and her hearing aids replaced periodically.

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60 *McKinley II* at 6, No. 29; Hr'g Tr. at 47:12 – 48:25.

61 *McKinley II* at 6, No. 30; Hr'g Tr. at 50:24 – 51:19.

62 *McKinley II* at 6, No. 32; Hr'g Tr. at 52:24 – 54:1.

63 *McKinley II* at 6, No. 33; Hr'g Tr. at 68:7-9; 68:18 – 19:16.

Dr. McCarty stated there is a Johns Hopkins study which shows there is a correlation of cognitive decline with hearing loss, even with slight hearing loss.[64]

Dr. McCarty had reviewed Dr. Hodgson's April 7, 2014, EIME report and stated he did not agree with Dr. Hodgson's conclusion that Ms. McKinley did not need hearing aids, which is totally at odds with generally accepted audiological practice, especially with the amount of hearing loss Ms. McKinley was experiencing. Dr. Hodgson noted Ms. McKinley had good hearing in the speech frequencies, but he ignored the hearing loss in the high frequencies, which is the hearing loss Dr. McCarty treated.[65]

Dr. Hodgson's April 7, 2014, EIME report referenced testing done in September 2010 by Dennis Tidwell, a safety inspector with KPB, on the headsets used by Ms. McKinley. Dr. McCarty questioned whether the September 2010 testing was done when the loud noises were coming through the headsets. Furthermore, the EIME report stated the equipment used to do the testing was not calibrated, so the results could not be relied upon.[66] Dr. McCarty opined the charts attached to Dr. Hodgson's April 7, 2014, EIME report, showing a difference in the pattern of hearing loss between noise-induced hearing loss and age-related hearing loss, were inaccurate.[67]

Ms. McKinley's hearing loss when Dr. McCarty first saw her was greater than he would have expected for someone in her early fifties. He said age-related hearing loss occurs in the same frequency range, but it typically starts in the sixties. Also, noise-related hearing loss is typically sudden, whereas age-related hearing loss is more gradual. Dr. McCarty concluded Ms. McKinley's hearing loss was more sudden.[68]

Dr. McCarty testified he could state with certainty Ms. McKinley needs new hearing aids now as she is using the same hearing aids she obtained in 2013. This is because hearing aid technology continually improves and because the nature of Ms. McKinley's

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64 *McKinley II* at 7, No. 34; Hr'g Tr. at 69:17 – 70:4.

65 *McKinley II* at 7, No. 35; Hr'g Tr. at 56:12-24.

66 *McKinley II* at 7, No. 36; Hr'g Tr. at 57:8 – 58:19.

67 *McKinley II* at 7, No. 37; Hr'g Tr. at 60:5-9.

68 *McKinley II* at 7, No. 38; Hr'g Tr. at 59:21 – 61:12.

hearing loss is progressive. He also stated the current workers' compensation schedule allows for hearing aid replacement every four years, based on medical necessity. However, hearing aids are not replaced without testing an individual. He said if Ms. McKinley were tested now and hearing aid replacement was not necessary, it would not be done.[69] Dr. McCarty did not know if he had any outstanding medical bills related to his treatment of Ms. McKinley.[70] Ms. McKinley's diagnosis is bilateral sensorineural work-related progressive degenerative disorder. It will progress during her lifetime, but at different rates over time. The progress can also plateau, but in general it will become worse with time.[71]

The Board, in *McKinley II*, determined that Ms. McKinley's 2020 claim was not barred by *res judicata*, because *McKinley I* only addressed the 2017 claim and not the 2020 claim, which was for future medical benefits.[72] The Board held that *McKinley I* was a final judgment, even though it was designated to be an interlocutory decision and order on the merits of the 2017 claim and is now "law of the case" as to the 2017 claim. The Board then stated the 2017 and 2020 claims were not identical as she sought future benefits in the 2020 claim. The 2020 claim was not barred by *res judicata*. However, the request for medical benefits in the 2020 claim had to be supported by new medical evidence and Ms. McKinley did not present any new evidence to support this claim.[73] She was advised that since she lived in Tennessee, she was entitled to a new treating physician in Tennessee or she could obtain treatment from Dr. McCarty, but travel to see him was not reimbursable.[74] Her claim for an SIME was also denied.

The Board's order denied Ms. McKinley's petition for an SIME and granted KPB's petition to dismiss Ms. McKinley's 2020 claim for hearing aids and related treatment,

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69 *McKinley II* at 7, No. 39; Hr'g Tr. at 68:18 – 70:4; 71:20 – 73:1; 75:7-13.

70 *McKinley II* at 8, No. 40; Hr'g Tr. at 76:6 – 77:20.

71 *McKinley II* at 8, No. 41; Hr'g Tr. at 85:23 – 86:15.

72 *McKinley II* at 12.

73 *Id.* at 12-13.

74 *Id.* at 13-14.

penalty, interest, and attorney fees and costs. The Board also granted KPB's petition to dismiss the petition for an SIME. The Board did not address the course and scope issue.[75]

McKinley III addressed the petition for reconsideration filed on March 12, 2021, by Ms. McKinley.[76] The Board granted reconsideration to allow KPB to file its response.

McKinley IV addressed Ms. McKinley's petition for reconsideration of *McKinley II*. The Board again reviewed the sequence of events detailed in *McKinley I*, noting that on September 15, 2010, Ms. McKinley reported injury to both ears from "continuous use of hearing device and the change of frequency / sounds / in both ears."[77] The Board also noted that on September 22, 2010, KPB filed Ms. McKinley's injury report and a letter that provided notice it disputed Ms. McKinley's injury arose out of and in the course of her employment.

The Board stated that on August 9, 2013, KPB denied Audiology Associates' bills totaling $12,243.45 received on July 9, 2013, for hearing aids provided to Ms. McKinley on June 24, 2013. Neither a physician's report nor a legible chart note accompanied the bills indicating a need for "replacement" hearing aids. The "illegible" chart notes did not provide information regarding "the relationship of the services provided to the 9/14/2010 on-the-job injury." The controversion notice stated, "Until such time as this information is received, pursuant to 8 AAC 45.082 and 8 AAC 45.086, medical benefits are not payable for these charges."[78]

On October 8, 2013, in response to the controversion notice, Dr. McCarty sent a note to KPB, stating Ms. McKinley, a teacher, reported difficulty understanding speech when there was noise in her classroom. Prior hearing instruments were fitted on September 14, 2010, and the substantial cause of Ms. McKinley's hearing loss was the workplace exposure "reported previously which caused the permanent bilateral sensori

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75 *McKinley II* at 14.

76 R. 0435-43.

77 R. 0696.

78 R. 0043-44.

[sic] hearing loss." The new hearing instruments he provided Ms. McKinley were "significantly superior" to the "old set" and "can be considered medically necessary."[79]

On May 5, 2014, KPB denied all benefits in reliance on the EIME opinion of Dr. Hodgson. Dr. Hodgson had conducted a records review and opined Ms. McKinley had bilateral high-frequency sensorineural hearing loss that preexisted her "on-the-job injury" and did not have a "noise-induced type pattern." Instead, he found Ms. McKinley's hearing loss was age-related and may have been caused by early viral infections or an earlier middle ear infection, but was not caused by occupational exposure.[80]

The Board again reviewed the timeline involving Ms. McKinley's August 23, 2017, claim and noted she sought "a Board order that hearing loss and related treatment is compensable regardless of Medicare coverage." She also sought payment of hearing aid related treatment, penalty, interest, and attorney fees and costs. Medical costs were "TBD."[81] As previously noted, KPB, on September 13, 2017, denied all benefits and relied upon Dr. Hodgson's April 7, 2014, opinion.

The Board, in *McKinley IV*, found that KPB never accepted Ms. McKinley's reported injury as compensable and never paid any benefits for her claimed work-related hearing loss.[82] Moreover, the Board found that Ms. McKinley's August 23, 2017, claim for future medical benefits and a determination her hearing impairment was compensable were both denied under AS 23.30.110(c).[83] The Board did not address the fact that the Board, in *McKinley I*, had not specifically ruled on whether her hearing loss was attributable to her work with KPB and had left open her right to seek an SIME on the 2020 claim.

The Board then stated that Ms. McKinley's opportunity to prove her hearing impairment arose out of and in the course of her employment with KPB was denied in

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79 R. 0073.

80 R. 0078-79.

81 R. 0110.

82 *McKinley II* at 5, No. 14.

83 *McKinley I*; R. 0110.

McKinley I.[84] In referring to the designation that *McKinley I* was an interlocutory decision and order, the Board did note that decisions and orders granting claim denial under AS 23.30.110(c) are routinely titled final decisions and orders, and then decided that *McKinley I* should be considered to be a final decision and order, even though it was designated an interlocutory decision and did not address all of her issues.[85]

3. Standard of review.

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in light of the record as a whole.[86] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[87] "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."[88] The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.[89] The Board's conclusions with regard to credibility are binding on the Commission since the Board has the sole power to determine credibility of witnesses.[90]

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.[91] Abuse of discretion occurs when

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[84] *McKinley IV* at 13.

[85] *McKinley IV* at 5, No. 19.

[86] AS 23.30.128(b).

[87] *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

[88] *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, 1188-1189 (Alaska 1984).

[89] AS 23.30.122.

[90] AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

[91] AS 23.30.128(b).

a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.[92]

4. Discussion.

Ms. McKinley, on appeal, asserts the Board erred in *McKinley I* by dismissing her 2017 claim pursuant to AS 23.30.110(c) in a decision and order labeled "Interlocutory Decision and Order," and contends this designation meant it was not a final decision and could be appealed at a later date. She further asserts that the Board, in *McKinley II*, erred in finding *McKinley I* was in reality a final judgment on the merits for purposes of *res judicata*, and by doing so, violated her right to due process. Ms. McKinley further contends the Board, in *McKinley IV*, erred when it affirmed that *McKinley I* was indeed a final judgment on the merits, in spite of it being designated an interlocutory decision and order, and dismissed her 2020 claim as barred by *res judicata.*

Ms. McKinley contends that the Board, in *McKinley I*, incorrectly dismissed her claim for medical benefits, penalty, interest, and attorney fees and costs under AS 23.30.110(c) because she was diligently pursuing her claim, and only a short period of time elapsed between the tolling of the AS 23.30.110(c) statute of limitations and her request for a hearing on the merits of her 2017 claim. She asserts the doctrine of equitable estoppel should have been applied to extend the deadline for filing the ARH, in large measure, because she was seeking an SIME and because KPB agreed that an SIME was warranted. She further states the doctrine of *res judicata* should not be used to bar her 2020 claim because this claim covered different periods of time from the 2017 claim.

The Board, in *McKinley II*, addressed Ms. McKinley's second petition for an SIME and requested future medical benefits. Dr. McCarty, who originally prescribed her hearing aids, testified at hearing about her hearing loss, its relationship to (caused by) her employment at KPB, and her ongoing need for updated hearing aids.

On the other hand, KPB contends Ms. McKinley's claims were properly dismissed in *McKinley I* because she untimely filed her request for a hearing, and, at all times, she was represented by competent legal counsel. KPB further states that equitable estoppel,

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[92] *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985) (*Sheehan*).

even if possibly proper here, should not be used to excuse an attorney who does not heed the statutes of limitations found in the Alaska Workers' Compensation Act. KPB further contends Ms. McKinley, in *McKinley I*, had a full and fair opportunity to present her claim that her hearing loss was work-related, before a tribunal legally entitled to render a decision on her claim, and the parties in both hearings were the same and utilized the same set of facts and evidence. KPB states that the fact the Board erroneously labeled *McKinley I* an interlocutory decision and order should not alter the fact that the hearing was a full and fair hearing on the merits of her claim and, thus, an appropriate basis for applying the doctrine of *res judicata*.

a. Did the Board properly find the statute of limitations in AS 23.30.110(c) barred the claims for medical benefits in the 2017 claim?

The first issue is whether the Board, in *McKinley I*, correctly applied the time requirements for requesting a hearing under AS 23.30.110(c). The Board, in *McKinley I*, denied Ms. McKinley's 2017 claim for medical benefits, penalty, interest, and attorney fees and costs because she failed to timely request a hearing. Ms. McKinley contends that the Board should have exercised its discretion to waive implementation of the time limitation for pursuing her claim because she filed her petition for an SIME a mere twenty days after the date by which it was due. In the meantime, she was pursuing her claim. She contends KPB should be equitably estopped from arguing the time bar in AS 23.30.110(c) because the parties were first involved in a discovery dispute, and then KPB agreed in its answer that there was a medical dispute warranting an SIME, but KPB needed more discovery. Since additional discovery was warranted as stated by KPB, Ms. McKinley could not legitimately file an ARH, asserting discovery was complete.[93] Ms. McKinley further adds that agreeing to the SIME in its answer should bar KPB from asserting this defense.

KPB, on the other hand, contends that Ms. McKinley did nothing between November 14, 2017, and August 6, 2019, to move her claim forward. At all times

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[93] AS 23.30.110(c).

pertinent to this matter, Ms. McKinley was represented by counsel from an established practice with a long history of practice before the Board. Ms. McKinley had until September 13, 2019, to file her ARH which she did not file until December 3, 2019.

AS 23.30.110(c) states in pertinent part:

> (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 the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

The Commission and the Alaska Supreme Court (Court) have addressed the ramifications of this statute several times. In *Pan Alaska Trucking, Inc. v. Crouch*, the Court held that a claimant has an affirmative duty to pay attention to this requirement for requesting a hearing.[94] The Court stated, while the statute is a procedural rule, some action by an employee must be taken to move the case forward. In *Crouch*, the claim "faltered on the two-year limit not because it was a significant obstacle, but because Crouch failed to pay it any heed."[95]

In *Kim v. Alyeska Seafoods, Inc.*, the Court held that an employee must do something to stop the time, but a request for an extension of time, either implicitly or explicitly, is enough.[96] The Board must act on such a request and the Board may not place "form over substance."[97] The Court further noted the Commission's decisions in *Tonoian v. Pinkerton Security* and *Omar v. Unisea*, *Inc*. in which the Commission stated the Board "is not without power to excuse failure to file a request for hearing on time."[98] In *Tonoian*, the Commission suggested several "legal reasons" why delay by a pro se

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94 *Pan Alaska Trucking, Inc. v. Crouch*, 773 P.2d 947 (Alaska 1989).

95 *Id.* at 949.

96 *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193 (Alaska 2008) (*Kim*).

97 *Id.* at 199.

98 *Id.* at 197.

claimant might be excused.[99] In *Omar*, the Commission remanded the matter to the Board to consider whether the "circumstances as a whole constitute compliance with the requirements of [AS] 23.30.110(c) sufficient to excuse any failures."[100]

Here, the Board chose not to extend the time for filing a request for hearing on the 2017 claim, and chose not to extend the time limitation. This decision is reviewed by looking at the abuse of discretion standard which occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.[101] Therefore, the decision not to extend the time for filing a request for hearing on the 2017 claim must be affirmed. That is, there is no evidence the Board acted in an arbitrary, capricious, or manifestly unreasonable manner or from an improper motive.

In *Summers v. Korobkin Construction*, the Court held that an employee who has received medical treatment has a right to a determination on the right to receive future treatment.[102] "Moreover, we believe that an injured worker who has been receiving medical treatment should have the right to a prospective determination of compensability".[103] This is true even if the employer has paid all the medical bills to date and the employee has incurred no unpaid bills. Here, there is no evidence KPB has paid any medical bills at all, yet Ms. McKinley has the right to know if her future medical treatment would be compensable. Moreover, the request for a hearing on her 2020 claim was timely.

The Court, in *Bailey v. Texas Instruments, Inc.*, held that while failure to request a hearing within two years after a controversion will support dismissal of claims to which the controversion applied, it does not bar future claims even for the same medical treatment, and future medical benefits.[104] Two of Mr. Bailey's claims were barred by his

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99 *Kim*, 197 P.3d 198.

100 *Id.*

101 *Sheehan*, 700 P.2d 1295.

102 *Summers v. Korobkin Constr.*, 814 P.2d 1369 (Alaska 1991).

103 *Id.* at 1372.

104 *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321, 325 (Alaska 2005).

failure to timely request a hearing, but his request for hearing on his third claim was not barred. That request was timely.

Further, in *Jonathan v. Doyon Drilling, Inc.*, the Court stated that the word "claim" in AS 23.30.110(c) means "a written application for benefits . . . filed with the Board."[105] The requirement to request a hearing within two years after a controversion is only triggered after the injured worker has filed a claim.[106] Here, KPB filed its post-claim controversion on September 13, 2017, meaning a hearing would need to be requested by September 13, 2019, unless something extended this period of time. Ms. McKinley argues that because there was a discovery dispute in 2017 and because KPB agreed in its answer to her 2019 petition for an SIME, she was actively pursuing her claim. She further asserts that her 2019 petition for an SIME implicitly was a request for an extension of time to request a hearing, because it was an explicit admission that discovery was not complete and, therefore, an ARH could not be filed.[107]

However, Ms. McKinley was represented by competent counsel, and yet she failed to take any action to move her claim forward between November 14, 2017, and August 6, 2019, and between August 7, 2019, and October 3, 2019. The ARH was due by September 13, 2019. Although KPB did agree that an SIME dispute existed, a prudent attorney would have confirmed that KPB would agree to an extension of time to file an ARH, or would have asked the Board for an extension of time to file the ARH. Here, nothing happened between August 7, 2019, and October 3, 2019, which was after the time ran for requesting a hearing. Ms. McKinley's ARH was untimely and her counsel did not present a pertinent excuse for the failure to take timely action. As the Court, in *Crouch*, stated, an injured worker may not sleep on her rights, but rather must be taking affirmative action to move the claim forward. The Board, in *McKinley I*, rightly dismissed the 2017 claim for medical benefits, but left open the 2020 claim for medical benefits.

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105 *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121 (Alaska 1995).

106 *Id.* at 1125.

107 AS 23.30.110(c). When filing an ARH, the statute requires the requesting party to affirm that discovery is complete and the party is ready for hearing.

The Board only foreclosed past medical benefits, penalty, interest, and attorney fees, and the question of an SIME in the 2017 claim, thus, leaving open the issue of compensability.

b. Res judicata does not preclude a hearing on the issue of medical benefits in the 2020 claim.

Ms. McKinley asserts she sought medical benefits for different periods of time in her 2017 claim than in her 2020 claim and, therefore, *res judicata* could not and does not apply to her 2020 claim. However, other than having Dr. McCarty testify about the likelihood she would have an ongoing need for hearing aids, Ms. McKinley presented no new medical evidence to support his contention that she needed ongoing treatment. She had not seen Dr. McCarty since 2017 and she presented no other medical evidence to support her need for new hearing aids. Although the Board could have based its decision on a finding that either Dr. McCarty or Dr. Hodgson were credible, or on a finding that it accepted the medical opinion of one doctor over the other, it did not do so. This makes its decision to rely on the doctrine of *res judicata* more difficult to sustain for the 2020 claim.

KPB, on the other hand, asserts the Board, in *McKinley IV*, properly applied *res judicata* to bar all the claims of Ms. McKinley because the issue of compensability, along with medical benefits, was raised in both the 2017 claim and the 2020 claim. KPB states the Board's decision in *McKinley I* was really a final decision on the merits even if it was entitled as an interlocutory decision. KPB claims Ms. McKinley should have understood it to be a final decision because the issues could have been fully argued to the Board. The Board, by dismissing her 2017 claim, implicitly dismissed her claim for a determination of the compensability of her hearing loss and she is, thus, precluded from asking the Board for an explicit determination.

Both or either party could have asked the Board for clarification that *McKinley I* was an interlocutory order. Neither party did so, both relying, it appears, on the Board's designation that *McKinley I* was an interlocutory decision and order.

The Court has defined on several occasions the elements pertaining to the doctrine of *res judicata.* In *McKean v. Municipality of Anchorage*, the Court identified the prerequisites to the proper application of *res judicata* as follows:

1. The plea of collateral estoppel must be asserted against a party . . . in privity with a party to the first action;
2. The issue to be precluded from relitigation by operation of the doctrine must be identical to that decided in the first action;
3. The issue in the first action must have been resolved by a final judgment on the merits."[108]

The Court, in *DeNardo v. Calista Corporation*, reiterated that "*Res judicata* applies if: '(1) a court of competent jurisdiction, (2) has rendered *final* judgment on the merits, and (3) the same cause of action and same parties . . . were involved in both suits.'"[109] The Court has also indicated that the doctrine applies to determinations made by administrative agencies, including decisions of workers' compensation boards.[110] However, the Court noted that the doctrine "is not always applied as rigidly to preclude issues in workers' compensation proceedings as it is in judicial proceedings."[111]

The review of the application of *res judicata* to the facts of *McKinley I*, *II*, and *IV* means the Commission looks at the facts of each decision and whether the above elements of *res judicata* were appropriately applied by the Board. While on the surface it appears that the same facts were involved in each case, as the Board noted, the benefits sought in the 2017 claim differed from the benefits sought in the 2020 claim. Both claims asked for medical benefits. However, the benefits sought in the 2020 claim were for future medical benefits, not the past medical benefits which were dismissed in *McKinley I* because the request for hearing was untimely. Ms. McKinley, as the Board held in *McKinley II*, is foreclosed from seeking payment for past medical benefits including the past issued hearing aids. However, the benefits sought in the 2020 claim were for future benefits and, therefore, the issues in the two cases were not identical.

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[108] *McKean v. Municipality of Anchorage*, 783 P.2d 1169, 1171 (Alaska 1989) (*McKean*).

[109] *DeNardo v. Calista Corp.*, 111 P.3d 326, 331-332 (Alaska 2005) (emphasis added).

[110] *McKean*, 783 P.2d at 1171.

[111] *Id.*

The bigger question is whether *McKinley I*, which was designated as an interlocutory decision and order, was in reality a final decision on the merits. Plainly, the decision was captioned "Interlocutory Decision and Order." By that caption alone it was not a final decision. Moreover, it did not determine all the issues before it, since it did not address the 2020 claim for benefits nor did it address the issue of compensability. An interlocutory decision is one that, by definition, is not a final decision.[112] Thus, *McKinley I* was not a final decision on the merits and *res judicata* cannot be applied because a crucial element is not met.

Moreover, to decide after the fact that *McKinley I* was a final decision is a retroactive application that produces substantial harm to Ms. McKinley. Prudent counsel would rely on the Board's caption that this decision was an interlocutory one. Counsel would know that the decision could not be appealed as a matter of right, but that the decision could be appealed in the future after a final decision was rendered. In *McKinley IV*, the Board stated that Ms. McKinley could have asked for reconsideration or petitioned for review of *McKinley I*, but there is no legal requirement she do so. Moreover, if KPB thought the decision was a final decision it could have asked the Board to recaption the decision and make it clear it intended to rely on *McKinley I* as a final decision on the merits in the future. It did not do so. To now relabel the decision as a final decision on the merits precluded Ms. McKinley from her right of appeal.

Furthermore, the Court has stated that although *res judicata* does apply to Board determinations, it is not to be applied as rigidly as in the courts. Therefore, to call a decision labeled interlocutory to be in reality a final decision is to apply the doctrine even more rigidly than the courts would apply it. *McKinley I* was not a final decision.

Moreover, contrary to the Board's assertions, the issue of compensability was not decided by the Board in *McKinley I*. The Board, in *McKinley I*, expressly dismissed the 2017 claim for medical benefits, penalty, interest, and attorney fees. It expressly left open her 2020 claim and her right to seek an SIME in the 2020 claim. It also did not

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112 *Interlocutory*, Black's Law Dictionary (11th ed. 2019).

speak to the issue of whether her hearing loss arose out of her work with KPB. That issue remains open for a Board determination.

c. Res judicata does not preclude the issue of compensability or course and scope for hearing loss.

The Board did not address the issue of compensability or course and scope in either *McKinley I* or *McKinley II*. This issue is still viable for hearing. In *McKinley I*, the Board ordered that Ms. McKinley's August 23, 2017, claim for "medical costs, penalty, interest, and attorney's fees and cost[s] is dismissed under AS 23.30.110(c)."[113] The Board also dismissed her claim for an SIME "as it relates to [Ms. McKinley's] August 23, 2017 claim."[114] The Board did not address whether her hearing loss was "compensable regardless of Medicare coverage."[115] Since this issue was not addressed in *McKinley I*, it is not barred by *res judicata* or claim/issue preclusion.

McKinley II looked at the issues decided in *McKinley I* and determined that *res judicata* did not bar Ms. McKinley's claim that her hearing loss arose out of her employment with KPB. The Board stated, "*McKinley I* only dismissed [Ms. McKinley's] August 23, 2017 claim for medical costs, penalty, interest and attorney's fees and costs."[116] The Board continued "a request for a board order determining an injury's compensability is not a claim for benefits."[117] As the Board noted, Ms. McKinley has the right to claim future treatment for hearing loss, but to date Ms. McKinley has not submitted any medical reports supporting such a claim. Dr. McCarty speculated she might need new hearing aids, but he had not seen her since 2017. According to the Board, KPB "conceded at hearing, [Ms. McKinley] . . . remains free to claim, and [KPB] remains free

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113 *McKinley I* at 18.

114 *Id.*

115 R. 0110.

116 *McKinley II* at 13.

117 *Id.*

to controvert, compensation for subsequent medical benefits."[118] The compensability of her hearing loss was not directly addressed by the Board and remains to be decided.

In *McKinley IV*, the Board, on reconsideration, decided erroneously that *res judicata* barred her 2020 claim for a determination of compensability finding that the issue could have been decided in *McKinley I*, even though it was not.[119] Ms. McKinley did raise the issue in both her 2017 and 2020 claims, but the Board has never expressly addressed this issue. The Board order in *McKinley I* specifically did not address the compensability issue and left the right to bring the 2020 claim to hearing, and it left open her right to seek medical treatment in Tennessee. In *McKinley II and IV*, the Board decided that the issue of compensability had been dismissed along with the claim for medical benefits in *McKinley I*. This was in error and this issue is remanded to the Board for consideration.

5. Conclusion and order.

McKinley I dismissed past medical benefits, penalty and interest on same, and attorney fees and costs as barred under AS 23.30.110(c). It left open the 2020 claim, along with not rendering a decision on the compensability of Ms. McKinley's hearing loss. The Commission AFFIRMS this decision. *McKinley II* and *McKinley IV* are REVERSED as to the issue of *res judicata* barring a decision on the compensability of her hearing loss and entitlement to future medical treatment for the hearing loss. The matter is REMANDED to the Board for consideration of these issues.

Date: *28 January 2022* Alaska Workers' Compensation Appeals Commission

Signed
Michael J. Notar, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Deirdre D. Ford, Chair

[118] *McKinley II* at 13.

[119] *McKinley IV* at 16.

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

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

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). 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 changes made in formatting for publication, this is a full and correct copy of Final Decision No. 294 issued in the matter of *Catrin McKinley v. Kenai Peninsula Borough and School District and Alaska Municipal League Joint Insurance*, AWCAC Appeal No. 21-007, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on January 28, 2022.

Date: *February 2, 2022*

Signed
K. Morrison, Appeals Commission Clerk