Alaska Workers' Compensation Appeals Commission

Steve Schoppenhorst, Appellant, vs. Property Pros, Inc. and Pennsylvania Manufacturers Association, Appellees.	Final Decision Decision No. 306 August 14, 2024 AWCAC Appeal No. 24-001 AWCB Decision No. 23-0076 AWCB Case No. 202105734

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 23-0076, issued at Fairbanks, Alaska, on December 8, 2023, by northern panel members Robert Vollmer, Chair; Lake Williams, Member for Labor; and Robert Weel, Member for Industry.

Appearances: Steve Schoppenhorst, self-represented appellant; Colby J. Smith, Griffin & Smith, for appellees, Property Pros, Inc. and Pennsylvania Manufacturers Association.

Commission proceedings: Appeal filed January 4, 2024; briefing completed June 21, 2024; oral argument held July 31, 2024.

Commissioners: Nancy Shaw, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Appellant, Steve Schoppenhorst, injured his low back at some point while lifting a heavy dental chair, and then on April 7, 2021, he reported further injury while lifting heavy equipment and shoveling heavy snow for his employer, Property Pros, Inc., insured by Pennsylvania Manufacturers Association (Property Pros).[1]

[1] *See*, R.00017: Report of Injury by Mr. Schoppenhorst dated April 16, 2021, and R. 00028-29, Claim of Workers' Compensation Benefits, received September 29, 2021.

The Alaska Workers' Compensation Board (Board) issued a decision denying Mr. Schoppenhorst's claim for workers' compensation benefits,[2] and Mr. Schoppenhorst timely filed a notice of appeal with the Alaska Workers' Compensation Appeals Commission (Commission) on January 4, 2024. Oral argument was held on July 31, 2024, via Zoom and in person. Just prior to the oral argument, Mr. Schoppenhorst emailed to the Commission and Property Pros' attorney an 11-page statement with attachments. Since briefing had been completed per the Commission's regulations, the Commission declined to accept or review the newly filed materials.

2. *Factual background and proceedings.*[3]

Mr. Schoppenhorst has a lengthy preexisting history of low back pain dating to 2010, which he attributed to lifting items around the house and sneezing.[4] A magnetic resonance imaging (MRI) study at that time showed a large central and left-sided disc herniation that was flattening the left S1 nerve root.[5]

On July 24, 2013, Mr. Schoppenhorst injured his back while working for a former employer.[6] When giving his medical history, Mr. Schoppenhorst subsequently reported the 2013 work injury occurred in 2010.[7] A lumbar spine MRI on August 14, 2013, showed a moderate central/left paracentral disc extrusion at L5-S1 with mass effect upon the left S1 nerve root.[8]

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[2] *Schoppenhorst v. Property Pros, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 23-0076 (Dec. 8, 2023)(*Schoppenhorst*).

[3] 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.

[4] R. 1490.

[5] R. 1491-92.

[6] R. 1392.

[7] R. 1099-109, 2293-367; Steven Schoppenhorst Dep., Dec. 21, 2021, at 32:18-22.

[8] R. 2489-90.

On November 1, 2013, Kim B. Wright, M.D., noting the updated MRI showed "a rather large disc herniation to the left at L5-S1," offered Mr. Schoppenhorst microdiscectomy surgery.[9] Mr. Schoppenhorst never had the surgery. He subsequently settled his case with that employer, closing out his entitlement to medical benefits.[10] Mr. Schoppenhorst testified that the $39,000.00 he received from the settlement was insufficient to cover the costs of the surgery.[11]

Mr. Schoppenhorst sought treatment on May 15, 2017, at the Fairbanks Memorial Hospital Emergency Department for severe back pain that was aggravated while driving. A lumbar spine MRI showed a large eccentric posterior disc protrusion compressing the left S1 nerve root. Mr. Schoppenhorst was discharged with a referral to Peter S. Jiang, M.D,[12] who discussed treatment options, including over-the-counter pain medication, physical therapy, injections, and surgery. Mr. Schoppenhorst wanted to "stay as conservative as possible primarily because of financial reasons."[13]

On April 7, 2021, Mr. Schoppenhorst reported injuring his low back when he lifted a heavy dental chair and from shoveling heavy snow the previous day.[14] On April 10, 2021, Mr. Schoppenhorst sought treatment at the Tanana Valley Clinic (TVC) for lower back pain from a work injury. Peter J. Dillon, M.D., prescribed medications and physical therapy and instructed Mr. Schoppenhorst to follow-up with his primary provider. He released Mr. Schoppenhorst to work without restrictions.[15]

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9 R. 1282-85.

10 Hr'g Tr. at 25:12-19, June 22, 2203.

11 Hr'g Tr. at 26:2-13 (Board stated amount as $49,000.00 but the transcript states the amount as $39,000.00).

12 R. 2188-225, 2206-07.

13 R. 2182-83, 2175.

14 R. 0001, 00017, 0028-29. (The Board seems to have combined an earlier injury while lifting a dental chair with the April 7, 2021, injury shoveling snow and lifting heavy equipment).

15 R. 1020-24.

On August 27, 2021, Mr. Schoppenhorst presented at TVC for bilateral lower hamstring and calf cramping, which he related to the April 6, 2021, work injury, and stated "I need a get out of work note." John T. Walters, PA-C, noted Mr. Schoppenhorst had been released to work on April 10, 2021, and referred Mr. Schoppenhorst for an occupational medicine evaluation.[16]

Mr. Schoppenhorst again, on October 6, 2021, presented at TVC to ascertain whether he could return to work. He also complained of calf cramping. Corrine Leistikow, M.D., reminded Mr. Schoppenhorst he had been released to work in April and explained calf cramping is a common problem. She opined she saw nothing on her physical exam that would keep Mr. Schoppenhorst from working construction and offered him a note clearing him to go back to work. Dr. Leistikow was also concerned Mr. Schoppenhorst "may have some mental health reasons that might keep him from working but he did not want to address those and got mad when I brought them up." She also recorded that Mr. Schoppenhorst was very unhappy with his visit, swore at her, told her she was useless, and told her "to go F myself." Dr. Leistikow wrote that she was not willing to see Mr. Schoppenhorst again.[17]

Mr. Schoppenhorst returned to TVC on October 7, 2021, because he was having trouble maintaining employment. During the visit, Mr. Schoppenhorst alternatively related his back pain to lifting an exam table and picking up a snow blower. Herbert Day, D.O., ordered an MRI and planned to refer Mr. Schoppenhorst to a spinal surgeon. He released Mr. Schoppenhorst to work with no restrictions.[18]

On November 12, 2021, R. David Bauer, M.D., performed an employer's medical evaluation (EME). He asked Mr. Schoppenhorst if he had made a complete recovery following the 2010 [sic] work injury and Mr. Schoppenhorst replied, "There is always pain, you know." Dr. Bauer diagnosed a back strain injury based solely on Mr. Schoppenhorst's history and the medical records. He opined the work injury was not the substantial cause

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16 R. 1084-87.

17 R. 3457-60.

18 R. 1013-18.

of Mr. Schoppenhorst's current back pain and explained if Mr. Schoppenhorst overexerted himself on the date of injury, Mr. Schoppenhorst's pain would have persisted for no more than 60 days. Instead, Dr. Bauer thought Mr. Schoppenhorst's current back pain was caused by degenerative changes in his lower back. He stated Mr. Schoppenhorst was medically stable on August 27, 2021, and thought Mr. Schoppenhorst had not incurred a permanent physical impairment because of the work injury. Dr. Bauer opined no further medical treatment was reasonable or necessary as a result of the April 2021 injury, and stated Mr. Schoppenhorst could return to full duty work without restrictions.[19]

The lumbar spine MRI on November 19, 2021, showed severe disc height loss and desiccation at L5-S1, as well as a moderate diffuse disc bulge with superimposed central/left paracentral protrusion. It was further noted that this study, like one performed on August 14, 2013, showed compression and posterior deviation of the left S1 nerve root in the lateral recess.[20] On December 18, 2021, Dr. Day reviewed Mr. Schoppenhorst's November 19, 2021, MRI and referred him to a neurosurgeon.[21]

On January 18, 2022, Angel Britt, PA-C, evaluated Mr. Schoppenhorst, who complained of left leg quadricep and calf cramping. After performing a physical examination and reviewing the November 19, 2021, MRI, she discussed conservative treatment options with Mr. Schoppenhorst, as well as more invasive treatment options such as transforaminal epidural steroid injections and microdiscectomy with fusion surgery. PA-C Britt noted, although Mr. Schoppenhorst described his symptoms differently that day, historically his symptoms corresponded with the MRI findings.[22]

G. Charles Roland, M.D., performed a second independent medical evaluation (SIME) on November 11, 2022. Mr. Schoppenhorst reported he continued to remain symptomatic after the 2010 [sic] work injury but thought some of his lumbar and bilateral leg symptoms arose out of the 2021 injury. He also reported previous nonindustrial

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19 R. 1099-109.

20 R. 2122.

21 R. 2103-07.

22 R. 2118-20.

lumbar injuries in 2016 or 2018 but said those injuries resolved. Dr. Roland thought the April 6, 2021, work injury aggravated Mr. Schoppenhorst's preexisting advanced lumbar spine pathology to cause his need for medical treatment. He opined Mr. Schoppenhorst was restricted from lifting over 10 pounds, and from repetitive bending, turning, or twisting at the torso. Dr. Roland thought Mr. Schoppenhorst was medically stable when he was declared "permanent and stationary" by his primary treating physician, but also opined Mr. Schoppenhorst was a surgical candidate based on his abnormal diagnostic studies and his examination. He concluded Mr. Schoppenhorst had incurred a 9% whole person impairment from his lumbar spine injury.[23]

Property Pros deposed Dr. Roland,[24] who acknowledged Mr. Schoppenhorst had previously complained of bilateral leg cramps and cramping leg pain in 2013, 2017, and 2019.[25] He clarified that in his opinion the April 6, 2021, work injury was a "temporary component" of Mr. Schoppenhorst's back problems, since Mr. Schoppenhorst had "significant pathology" prior to that date, and the temporary aggravation resolved by August 27, 2021.[26] Since Mr. Schoppenhorst had been given a 12% whole person impairment rating in 2014, the April 6, 2021, work injury was not the substantial cause of the 9% whole person impairment rating he previously provided.[27] He also changed his opinion on medical treatment and did not think the April 6, 2021, work injury was the substantial cause of Mr. Schoppenhorst's need for medical treatment because surgery had been recommended since 2013.[28] Dr. Roland explained he changed his conclusions from his SIME report when he reviewed all the information again and now decided the

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23 R. 2293-367.

24 G. Charles Roland, M.D., Dep., Mar. 14, 2023.

25 *Id*. at 9:14 – 11:21.

26 *Id*. at 18:8 – 19:4.

27 *Id*. at 19:5 – 20:5.

28 *Id*. at 20:6-24.

April 6, 2021, work injury "by far is the minority factor" in his assessment because Mr. Schoppenhorst had so much prior pathology.[29]

At the hearing on June 22, 2023, Mr. Schoppenhorst testified regarding his inability to find employment or an attorney to represent him in these proceedings. Regarding his 2013 low back work injury with a former employer, he said, "There's always been an injury there, I'm not denying that, but now my symptoms are more consistent." Mr. Schoppenhorst was experiencing more leg cramping than before the instant work injury. Since moving back to Wisconsin, he had been working because he needed an income of some sort. "I can work," Mr. Schoppenhorst said.[30]

The Board found that Mr. Schoppenhorst did not file any medical evidence showing he suffered a permanent partial impairment because of the 2021 work injury or showing a PPI rating.[31]

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.[32] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[33] "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."[34] The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is

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[29] Roland Dep. at 20:25 – 22:3.

[30] Hr'g Tr. at 16:15-19, 18:16-19, 19:3-24, 32:18 – 33:22, 34:3 – 35:13.

[31] *Schoppenhorst* at 7, No. 26.

[32] AS 23.30.128(b).

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

[34] *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007)(*McGahuey*) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984).

true even if the evidence is conflicting or susceptible to contrary conclusions.[35] 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.[36]

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.[37] Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.[38]

4. Discussion.

Mr. Schoppenhorst, in his Notice of Appeal, stated he wished to have the Board's decision reconsidered, asserting the SIME was denied in a timely manner and that his employer fired him after he filed a workers' compensation claim. He also questioned how the pre-existing injury precluded a finding that he seriously aggravated that condition by the current injury. The Commission interprets this Notice of Appeal to mean that Mr. Schoppenhorst believes the entire Board decision was in error and not supported by substantial evidence in the whole record. Further, in his appellant's brief he raises several questions that were either not raised to the Board or not addressed by the Board. The Commission considers four issues that will be addressed below under the substantial evidence test. These are the Board's denial of disability (temporary total disability (TTD) and temporary partial disability (TPD)) benefits, ongoing medical benefits, permanent partial impairment (PPI) benefits, and reemployment benefits.

However, some questions Mr. Schoppenhorst raised are not properly before the Commission on appeal, which will be briefly examined in order to provide Mr. Schoppenhorst with the rationale for the Commission not being able to address them fully. For example, Mr. Schoppenhorst contends his rights have been violated under the

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35 AS 23.30.122.

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

37 AS 23.30.128(b).

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

Universal Declaration of Human Rights (UDHR). This Commission is not the forum in which to raise this issue as the UDHR is a United Nations document and not explicitly part of the Alaska Workers' Compensation Act (Act).

The Act controls workers' compensation benefits in Alaska. Workers' compensation benefits in the United States are individual to each state and are administered in each state according to that state's laws. In Alaska, workers' compensation rights are governed by the Act which was enacted by the Alaska Legislature and signed by the Alaska Governor.

Other issues Mr. Schoppenhorst raises include his questions regarding selection of a primary or treating doctor, why no lawyer was willing to assist him in his claim, whether the name change of Property Pros to become a limited liability corporation affected his claim for benefits, and why employers discriminated against him for his work injuries.[39] None of these issues were addressed by the Board and, therefore, cannot be considered in this appeal of the Board decision.

Mr. Schoppenhorst also asks why workers' compensation is the exclusive remedy for an injured worker. Rules governing benefits to an injured worker in Alaska were law since before Alaska was admitted as a state in 1959. When Alaska was still a territory, a federal judge, referring to workers' compensation benefits, stated, "the chief purpose of this law is to do away with the old, disputed questions of negligence, assumption of risk, etc., as well as to remove the uncertainty of juries' findings as to the amount of damages recoverable, and provides that employees injured shall have a specific recovery for specific injuries. . . ."[40]

The Alaska Supreme Court (Court), in *Searfus v. Northern Gas Company*, added that one idea behind workers' compensation legislation is that the consumers of a product

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[39] AS 23.30.247 states "an employer may not discriminate in hiring, promotion, or retention . . . against an employee who has in good faith filed a claim for . . . benefits. . . ." The remedy if this happens is an action in civil court.

[40] *Johnson v. Ellamar Mining Co.*, 5 Alaska 740, 741 (1917).

should bear the costs of work-related injuries.[41] The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide. . . ."[42] The Court, in *Gordon v. Burgess Construction Company*, added that "the remedies provided by a [workers'] compensation act are intended to be in lieu of all rights and remedies as to a particular injury whether at common law or otherwise."[43]

The legislature has stated the law in Alaska shall be "interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. . . ."[44] The Board is assigned the task of resolving disputes over just what benefits a particular injured worker may be entitled to receive, which is what has happened in Mr. Schoppenhorst's claim. The Commission is charged with review of the Board's actions to determine if the Board's decision is supported by substantial evidence.[45]

Mr. Schoppenhorst has asserted the Board erred in not recognizing an earlier injury while lifting a dental chair, which he states was not reported at the request of his employer.[46] At page 4, Finding of Fact No. 8, of its decision, the Board combined the lifting of the dental chair with the snow shoveling incident.[47] In deposition, he stated he did not know the date of this injury, but it was prior to the snow shoveling incident.[48]

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41 *Searfus v. Northern Gas Co.*, 472 P.2d 966, 969 (Alaska 1970).

42 *Id.* at 969, quoting 1A A. Larson, The Law of Workman's Compensation, Section 43.51, at 633 (1967).

43 *Gordon v. Burgess Constr. Co.*, 425 P.2d 602, 605 (Alaska 1967).

44 AS 23.30.001.

45 *See*, AS 23.30.005; AS 23.30.007.

46 R. 00017, 00028-29.

47 *Schoppenhorst* I at 4, No. 8.

48 Schoppenhorst Dep. at 26:5-17.

The Commission, as is discussed below, finds this confusing of two injuries into one to be harmless error.

a. Presumption of compensability.

Under the Act, a claim for benefits is presumed to be compensable unless there is substantial evidence showing that some or all of the benefits requested are not related to or necessitated by the work injury.[49] This is commonly known as the presumption of compensability. The presumption is raised with the filing of a claim for benefits. The injured worker is required to establish a preliminary link between the work injury and the benefits sought.[50] Unless the matter is a complex medical issue, minimal evidence is needed and frequently lay testimony, including that of the injured worker, is sufficient to make the connection.[51] Credibility is not weighed at this step.[52] Once the worker has established the presumption, the employer may rebut the presumption with substantial evidence that the work injury is not responsible for the benefits sought.[53] The employer must provide evidence that something other than work is responsible or that work did not and could not have caused the need for benefits.[54] Again, the credibility of the evidence is not weighed at this step.[55]

Once the employer has provided substantial evidence that work is not the substantial cause of the need for benefits, the burden shifts to the injured worker to prove the claim by a preponderance of the evidence in the record as a whole.[56] It is at

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49 AS 23.30.120.

50 *See e.g., McGahuey*.

51 *See, e.g., VECO Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985).

52 *Resler v. Univ. Servs., Inc.*, 778 P.2d 1146, 1148-1149 (Alaska 1989).

53 *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016)(*Huit*).

54 *Id.*

55 *See, e.g., Norcon, Inc*.

56 *See, e.g., Huit*, 372 P.3d 904.

this step that the Board weighs the credibility of the evidence presented. The injured worker must induce a belief that the facts asserted are probably true.[57]

b. Disability benefits, including temporary total disability and temporary partial disability benefits.

Mr. Schoppenhorst asked the Board for disability benefits because he could not get or keep work, and he said this was related to his back injuries. The Commission interprets his request to mean he was seeking TTD or TPD. If an injured worked is temporarily and totally disabled from work due to a work-related injury, the worker is entitled to time loss benefits during the continuation of the temporary disability (TTD).[58] However, once a worker reaches medical stability the worker is no longer entitled to TTD benefits.[59] If an injured worker is only able to work part time due to the work injury, the worker may be entitled to TPD.[60] However, like TTD, this benefit ceases with medical stability.[61] Medical stability is defined as "the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care. . . ."[62]

The presumption of compensability analysis applies to this claim which, as stated above, is a three-part test, which the Board properly applied. First, Mr. Schoppenhorst had to raise the presumption that he was entitled to disability benefits.[63] The Board found that Mr. Schoppenhorst was able to raise the presumption, in part based on his own testimony and in part because the SIME physician, in his initial report, opined that Mr. Schoppenhorst had aggravated his pre-existing back condition by the 2021 work

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

58 AS 23.30.185.

59 *Id.*

60 AS 23.30.200.

61 *Id.*

62 AS 23.30.395(28).

63 AS 23.30.120

injury.[64] The SIME report limited him to lifting no more than ten pounds with no bending or twisting. The aggravation, according to Dr. Roland's report, ended August 27, 2021.[65]

Property Pros rebutted the presumption with Dr. Dillon's release of Mr. Schoppenhorst to return to work without restriction as of April 10. 2021.[66] The Board found this was substantial evidence of medical stability upon which the employer could rely. It was a doctor's opinion, and here it was a treating doctor's opinion. Once Property Pros rebutted the presumption of compensability for disability benefits, the burden shifted to Mr. Schoppenhorst to prove his claim by a preponderance of the evidence.

Mr. Schoppenhorst was injured on April 7, 2021, according to his report of injury which also included information of an earlier injury.[67] He sought and received treatment at TVC on April 10, 2021, from Dr. Dillion. Dr. Dillon prescribed medications and physical therapy. The Board found the most important finding by Dr. Dillon was his release of Mr. Schoppenhorst to his usual work without restrictions.[68] Medical providers on August 27, 2021, October 6, 2021, and October 7, 2021, also found Mr. Schoppenhorst released to return to work as of April 10, 2021, without restrictions.[69] The Board specifically identified the work releases from Dr. Dillon, PA-C Walters, Dr. Leistikow, and Dr. Day as substantial evidence that Mr. Schoppenhorst was medically stable and released to work without restrictions as of April 10, 2021.

As the Board found, Mr. Schoppenhorst's treating doctors all released him to return to work without restrictions as of April 10, 2021. Both the EME and the SIME physicians released him to return to work by August 27, 2021. The Board chose to rely on the date

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64 This is true whether the incident lifting the dental chair is reviewed as part of the April 7, 2021, injury or as a separate unreported injury.

65 *Schoppenhorst* at 12.

66 *Id.*; R. 1020-24.

67 R. 00017.

68 R. 1020-24.

69 R. 1084-87, 3457-60, 1013-18.

of April 10, 2021, as the date of medical stability, stating it relied on the treating doctors because they saw Mr. Schoppenhorst nearest to his injury date and continuing.

Although Mr. Schoppenhorst disagrees with the releases signed by these doctors, the Board chose to rely on their medical records. This is the Board's right.[70] Mr. Schoppenhorst asserts that the doctors overlooked the increase in symptoms following the work injury and should not have continued to ascribe his complaints to a prior work injury in 2013. However, he was unable to point the Board to any evidence to support his position. Dr. Roland, the SIME physician, at first seemed to agree that the 2021 work injury aggravated his condition, at least until August 2021. However, in deposition, Dr. Roland clarified his position that, after reviewing again the medical records, including the various MRIs, the evidence showed that Mr. Schoppenhorst consistently had the same physical complaints after the 2013 injury and prior to the 2021 injury.[71] Mr. Schoppenhorst was unable to prove his claim for TTD or TPD by a preponderance of the evidence.

The Board found the opinions of his treating doctors persuasive regarding the date of medical stability and his ability to return to his work at the time of injury, particularly because these opinions occurred in close proximity to the work injury. The Board has the authority to select which physician reports upon which to rely in reaching its conclusions.[72] Furthermore, the Commission is obligated to uphold the Board's findings of fact if supported by substantial evidence in light of the whole record.[73] The Board's decision that Mr. Schoppenhorst was medically stable as of April 10, 2021, and able to return to his usual and customary work is supported by substantial evidence in the record. The Board's decision that Mr. Schoppenhorst did not prove his claim for TTD or TPD is affirmed as supported by substantial evidence in the light of the whole record.

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[70] *See, Morrison v. Alaska Interstate Constr., Inc.*, 440 P.3d 224, 239 (Alaska 2019)(*Morrison*); *Traugott v. ARCTEC Alaska*, 465 P.3d 499, 514 (Alaska 2020)(*Traugott*).

[71] Roland Dep. at 20:25-22:3.

[72] *See, Morrison*; *Traugott*.

[73] AS 23.30.128(b).

c. Medical Benefits.

Mr. Schoppenhorst also sought ongoing medical benefits, including surgery, claiming that the April 2021 injury permanently aggravated his pre-existing condition by making his leg cramps more frequent and debilitating. The Board found that the presumption of compensability attached to this claim because in the Board's experience the mechanics of lifting a heavy dental chair and shoveling snow are conducive to a low back injury.[74] This was also supported by his report of injury on April 7, 2021.[75]

Property Pros rebutted the presumption through the EME report of Dr. Bauer, who opined that Mr. Schoppenhorst's low back pain and leg cramps were due to degenerative changes.[76] Dr. Bauer noted that Mr. Schoppenhorst acknowledged that he had pain since 2010.[77] Dr. Bauer opined that Mr. Schoppenhorst sustained a back strain in 2021 which should have resolved within 60 days. He found that Mr. Schoppenhorst was medically stable by August 27, 2021, and that any current back pain was due to degenerative changes. He did not recommend any additional treatment as a result of the 2021 injury.[78]

Mr. Schoppenhorst feels that because he had a prior low back injury for which he settled his workers' compensation claim for $39,000.00,[79] he somehow has been discriminated against because none of the doctors found that the 2021 work injury was the substantial cause of his need for surgery or medical treatment. The Act, however, requires the Board to "evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. . . ."[80] Benefits will be awarded only if the employment is the substantial cause of the "disability . . . or the need for medical

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74 *Schoppenhorst* at 13.

75 *Id.*, R. 0017.

76 R. 1099-109.

77 *Id.*

78 *Id.*, *see also*, R.0017.

79 Hr'g Tr. at 26:9-13; *Schoppenhorst* at 3, No. 5 (Mr. Schoppenhorst testified at hearing the amount he received was $39,000.00; however, the Board stated the amount was $49,000.00).

80 AS 23.30.010(a).

treatment . . . in relation to other causes."[81] Therefore, the Board and the SIME doctor were required by law to evaluate all the causes of his current complaints and to find the one that is the substantial cause. The Board reviewed all the MRIs taken of Mr. Schoppenhorst's back from 2013 to 2021 and found these to be the most compelling evidence that the pre-existing degenerative pathology, and not the work injury, was the substantial cause of the need for the long-recommended back surgery. No additional medical treatment was needed for the 2021 work injury.

The Board, the EME doctor, and the SIME physician carefully reviewed Mr. Schoppenhorst's medical records and, in particular, the MRIs, and reached the conclusion the pre-existing degenerative disease was the substantial cause for medical treatment and the 2021 injury was, at most, a temporary aggravation. Mr. Schoppenhorst presented no medical opinion to the contrary. The opinions of the EME and SIME physicians plus the evidence reflected in the MRIs are substantial evidence and is the kind of evidence which reasonable minds can accept as supporting a conclusion.[82] The Board's decision that no further medical treatment is needed for the 2021 injury is supported by substantial evidence and is affirmed.

d. Permanent partial disability benefits.

One of the benefits Mr. Schoppenhorst seeks is PPI, specifically the 9% rating given by Dr. Roland in the SIME report.[83] PPI is awarded for an impairment that is partial in character and permanent, but it does not result in total disability.[84] Moreover, when a person with multiple injuries has multiple PPI ratings, the ratings must be looked at together. "The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury."[85]

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81 AS 23.30.010(a).

82 *See, e.g.*, *Norcon, Inc*.

83 Exc. 0060.

84 AS 23.30.190.

85 AS 23.30.190(c).

For the injury in 2013, which Mr. Schoppenhorst settled with a prior employer, he was given a 12% PPI rating.[86] Paul M. Puziss, M.D., performed an SIME for that injury on August 26, 2014, and gave Mr. Schoppenhorst a 12% PPI rating using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 6th Edition, for the rating.[87] Dr. Roland stated, in deposition, that based on Dr. Puziss' 12% PPI in 2014, his own 9% rating was indicative that Mr. Schoppenhorst had no additional PPI from the 2021 injury.[88] Since Mr. Schoppenhorst had a 12% rating in 2014, which is a higher rating than the 9% given on November 11, 2022, Dr. Roland stated that Mr. Schoppenhorst had no additional PPI from the 2021 injury.[89]

The Board initially stated Mr. Schoppenhorst was unable to raise the presumption of entitlement to PPI because he had no medical evidence of PPI related to the 2021 injury. However, the Board then added that if Mr. Schoppenhorst could attach the presumption with his own testimony, the medical evidence provided by Drs. Bauer and Roland that he had no PPI as a result of the 2021 injury, was substantial evidence to rebut the presumption. Having had the presumption rebutted, Mr. Schoppenhorst then had to prove his claim for PPI by a preponderance of the evidence. This he could not do as he was unable to or did not produce any medical evidence of a PPI rating related to the 2021 injury above or in excess of the 12% rating for the 2013 injury.

The Board's determination is supported by substantial evidence in the record as a whole. There is no medical evidence linking any PPI to the 2021 injury. This conclusion by the Board is affirmed.

e. Reemployment benefits.

Mr. Schoppenhorst contends he is unable to return to heavy labor and should be entitled to reemployment benefits. However, an injured worker is not entitled to

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86 Roland dep. at 19:5-20.

87 R. 2643-57.

88 Roland dep. at 19:20

89 Exc. 0060; Roland dep. at 19:20 (the Commission notes that both Dr. Puziss and Dr. Roland used the AMA Guides, 6th Ed. for the PPI ratings – *see*, Exc. 0060 and R. 2655).

retraining, if "at the time of medical stability, no permanent impairment is identified or expected."[90] As stated above, the Board found that Mr. Schoppenhorst had no PPI related to the 2021 work injury. Therefore, as the Board stated, he is not entitled to retraining. The Board further noted his treating doctors, as early as April 2021, released him to usual and customary work without restrictions.[91] Both the EME physician and the SIME physician opined the 2021 work injury did not preclude Mr. Schoppenhorst from his usual work.[92] Moreover, Mr. Schoppenhorst, at hearing, stated he had returned to work.[93] The Board's conclusion that Mr. Schoppenhorst is not entitled to reemployment benefits is supported by substantial evidence that he does not meet the statutory requirements for retraining. He presented no medical evidence that he could not return to his work at the time of injury or that he had a PPI as a result of the work injury in 2021 (whether the prior injury lifting the dental chair is included with the snow shoveling incident). He was unable to attach the presumption or to prove his claim by a preponderance of the evidence. The Board's conclusion is affirmed.

5. Conclusion and order.

For the reasons stated above, the Board's decision is AFFIRMED.

Date: _____*14 August 2024*_____ Alaska Workers' Compensation Appeals Commission

Signed
Nancy Shaw, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Deirdre D. Ford, Chair

90 AS 23.30.041(f)(4).

91 R. 1020-24.

92 R. 1099-109; Roland dep. at 16:19-20.

93 Hr'g Tr. at 33:13-22.

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 not later than 30 days after the date shown in the Commission's Certificate of Distribution 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 not later than 30 days after the date shown in the Commission's Certificate of Distribution below. If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted not later than 30 days after the reconsideration decision is distributed to the parties, or not 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. 306 issued in the matter of *Steve Schoppenhorst v. Property Pros, Inc. and Pennsylvania Manufacturers Association*, AWCAC Appeal No. 24-001, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 14, 2024.

Date: *August 16, 2024*

Signed

K. Morrison, Appeals Commission Clerk