

# Alaska Workers' Compensation Appeals Commission

Richard Randolph Sierer,  
Appellant,

vs.

Tri Star, Inc. and Umialik Insurance  
Company,  
Appellees.

## Final Decision

Decision No. 307                      October 7, 2024

AWCAC Appeal No. 23-003  
AWCB Decision No. 23-0063  
AWCB Case No. 202000418

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 23-0063, issued at Fairbanks, Alaska, on November 6, 2023, by northern panel members Robert Vollmer, Chair; Lake Williams, Member for Labor; and Sarah Lefebvre, Member for Industry.

Appearances: Robert J. Bredesen, Hillside Law Office, LLC, for appellant, Richard Randolph Sierer; Michael A. Budzinski, Meshke Paddock & Budzinski, PC, for appellees, Tri Star, Inc. and Umialik Insurance Company.

Commission proceedings: Appeal filed December 6, 2023; briefing completed June 3, 2024; oral argument held on July 15, 2024.

Commissioners: James N. Rhodes, Amy M. Steele, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

### *1. Introduction.*

Appellant, Richard Randolph Sierer, injured a left rib, his left leg, left upper arm, left elbow, and left lower back on November 17, 2019, when he fell from a ladder while working for Tri Star, Inc., which is insured by Umialik Insurance Company (Tri Star).

On November 6, 2023, the Alaska Workers' Compensation Board (Board) granted Mr. Sierer's January 2, 2020, claims for past medical costs for treatment of his rib and lower back injuries, plus interest; eight weeks of multidisciplinary pain management treatment; temporary total disability (TTD) benefits from March 10, 2020, until November 19, 2020, plus interest; a 7% whole person permanent partial impairment

(PPI) benefit for his lower back, plus interest; medical costs for his left elbow, plus interest; and left ulnar nerve release surgery. The Board also granted Mr. Sierer's September 1, 2022, petition to modify the Rehabilitation Benefits Administrator (RBA) Designee's August 5, 2020, determination that Mr. Sierer was not eligible for reemployment benefits by referring the determination to the RBA for consideration of Bruce M. McCormack, M.D.'s medical opinions.<sup>1</sup> The Board further ordered that if Mr. Sierer were found eligible for reemployment benefits, he would be paid 242 days of reemployment stipend, plus interest. Mr. Sierer was also awarded a 20% late reporting penalty on the March 6, 2020, TTD benefit, medical and related transportation costs, attorney fees and costs, and statutory minimum attorney fees on future reemployment benefits and benefits related to Mr. Sierer's ulnar neuropathy.

The Board denied Mr. Sierer's January 2, 2020, claim seeking an order on the compensability of his rib, low back, and left elbow injuries, and late payment penalties, and Mr. Sierer's September 6, 2022, petition seeking a referral to the Division of Insurance. Mr. Sierer was ordered, upon receipt of the TTD benefits, to repay the State of Alaska, Department of Labor and Workforce Development, Unemployment Insurance, the benefits he received for the weeks ending June 6, 2020, and June 13, 2020.<sup>2</sup>

Mr. Sierer timely filed an appeal of some of the orders in the Board's decision to the Alaska Workers' Compensation Appeals Commission (Commission). The Commission now addresses the issues appealed.

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<sup>1</sup> The Commission notes the Board refers to Dr. McCormick, but the correct spelling of his name is McCormack.

<sup>2</sup> *Sierer v. Tri Star, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 23-0063 (Nov. 6, 2023) (*Sierer*). According to one document in the record, Mr. Sierer was paid \$2,156.00 in unemployment benefits, the maximum allowable (\$98.00 per week for 22 weeks). R. 0525.

*2. Factual background and proceedings.*<sup>3</sup>

Mr. Sierer's work history has primarily involved laborer and construction work, as well as some restaurant work. Occasionally, he worked undocumented jobs on a "cash basis," such as his instant job with Tri Star. Tri Star is the business name of the former restaurant "The Diner" on Illinois Street in Fairbanks, Alaska, owned by George Stone.<sup>4</sup>

On November 17, 2019, Mr. Sierer was performing handyman work, installing lights outside The Diner. He was standing on a ladder, about 20 feet off the ground, drilling through the wall, when the ladder collapsed. Mr. Sierer fell, landing on his left side.<sup>5</sup> Mr. Stone was inside and learned of the incident immediately.<sup>6</sup> At the hospital, Mr. Sierer complained of left rib and left leg pain. Emergency Department records noted a "right" upper extremity contusion and swelling and "right" elbow swelling.<sup>7</sup> He was diagnosed with an acute left rib fracture, and an acute left femur contusion. He was prescribed Percocet and Flexeril and discharged.<sup>8</sup>

Mr. Sierer followed-up at the Tanana Valley Clinic (TVC) on November 23, 2019, where x-rays confirmed a minimally displaced fracture of the 11th rib. Mr. Sierer's complaints also included left lower back pain, left upper thigh numbness, headache, dizziness, nausea, and vomiting.<sup>9</sup>

On December 12, 2019, Mr. Sierer completed an injury report.<sup>10</sup> Then, on January 2, 2020, Mr. Sierer claimed TTD and temporary partial disability (TPD) benefits,

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<sup>3</sup> 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.

<sup>4</sup> R. 0890-918, 1000-26, 0768-867.

<sup>5</sup> R. 0022, 1760-96.

<sup>6</sup> Hr'g Tr. at 84:9-18, Mar. 2, 2023.

<sup>7</sup> R. 1773, 1776.

<sup>8</sup> R. 1772.

<sup>9</sup> R. 1806-12.

<sup>10</sup> R. 0022.

medical and related transportation costs, penalty for late paid compensation, penalty for late injury reporting, interest, and attorney fees and costs.<sup>11</sup>

On January 10, 2020, Tri Star filed an electronic injury report.<sup>12</sup> Tri Star answered Mr. Sierer's January 2, 2020, claim on January 28, 2020, denying liability for TTD benefits on the basis it had not been presented with any evidence Mr. Sierer was disabled from work.<sup>13</sup>

TVC referred Mr. Sierer, on February 7, 2020, to David Witham, M.D., for evaluation and treatment of Mr. Sierer's chronic left-sided low back pain.<sup>14</sup> That same day, a lumbar spine magnetic resonance imaging (MRI) showed L4-5 left extraforaminal disc protrusion and an annular fissure with possible L4 nerve impingement.<sup>15</sup> While attending physical therapy, Mr. Sierer reported that his left elbow was "really painful."<sup>16</sup>

On March 10, 2020, Mr. Sierer followed up with Dr. Witham, and reported his back, left thigh, and left hip pain had markedly improved since the epidural steroid injection with Peter S. Jiang, M.D. Dr. Witham wrote, "With current symptoms he believes he can return to his work as a cement installer. Typically, his work begins in April or May of the year."<sup>17</sup> That same day, Tri Star filed another electronic injury report.<sup>18</sup>

On March 9, 2020, Tri Star filed a statement with the RBA agreeing Mr. Sierer had been out of work for 90 days.<sup>19</sup> On March 11, 2020, the RBA Designee found Mr. Sierer met the criteria for a reemployment benefits eligibility evaluation and assigned a

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11 R. 0059.

12 R. 0001.

13 R. 0067-68.

14 R. 1829-30.

15 R. 1832-33.

16 R. 1968.

17 R. 1842.

18 R. 0002.

19 R. 2969.

rehabilitation specialist to conduct the evaluation.<sup>20</sup> On April 15, 2020, Mr. Sierer's rehabilitation specialist, Daniel A. LaBrosse, M.A., CRC, identified job titles according to Mr. Sierer's 10-year work history, including Construction Worker I, Cement Mason, Roofer, Construction Worker II, and a combination job at Friar Tuck's Hoagie House that included work as a Manager, Cook, and Cleaner.<sup>21</sup>

On April 17, 2020, Mr. Sierer returned to TVC complaining of continuing back pain. A physical examination was completed, and his left elbow range of motion was normal.<sup>22</sup> On April 23, 2020, Mr. Sierer's attorney wrote to Mr. Sierer's rehabilitation specialist, questioning the selection of the Roofer job description, which is listed as a medium duty job and requiring lifting of no more than 50 pounds. Instead, he urged the rehabilitation specialist to adopt the Roofer Helper job description instead because shingles can weigh up to 80 pounds.<sup>23</sup>

On April 27, 2020, Eric L. Schneider, M.D., predicted Mr. Sierer would incur a ratable impairment greater than 0% because of the work injury. He also predicted Mr. Sierer would not have the permanent physical capacities to return to work at previously held jobs, including Construction Worker I, Cook, Roofer, Construction Worker II, Industrial Cleaner, and Cement Mason.<sup>24</sup>

On May 7, 2020, Dr. Jiang administered another epidural steroid injection. He also completed a physical examination and stated Mr. Sierer's upper extremity reflexes and strength were normal.<sup>25</sup> Mr. Sierer completed a pain diagram and indicated symptoms in his left lumbar spine, left leg, and from his left elbow down into his left hand.<sup>26</sup>

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<sup>20</sup> R. 2973-76.

<sup>21</sup> R. 2978-84.

<sup>22</sup> R. 1849-51.

<sup>23</sup> R. 3006.

<sup>24</sup> R. 1859-65.

<sup>25</sup> R. 1895-911.

<sup>26</sup> R. 1907.

On May 13, 2020, the RBA Designee wrote to Mr. Sierer's rehabilitation specialist, and asked him to ascertain whether Mr. Sierer's designated physician was Dr. Schneider or Dr. Witham.<sup>27</sup> On May 15, 2020, in response to Tri Star's questions referencing his March 10, 2020, and April 23, 2020, chart notes, Dr. Witham clarified Mr. Sierer was physically able to work as a cement installer as of March 10, 2020, and was released to work based on his April 23, 2020, examination findings.<sup>28</sup>

Mr. Sierer returned to TVC on June 23, 2020, with complaints of bilateral low back pain, sciatica, and elbow pain with numbness and tingling into his medial forearm and his fifth finger. An MRI was ordered to evaluate his elbow pain. The TVC report stated that the tenderness in the left lumbar region was out of proportion for what Mr. Sierer's provider would have expected and Mr. Sierer had some pain related anxiety.<sup>29</sup>

On June 29, 2020, Mr. Sierer's rehabilitation specialist completed his eligibility evaluation and changed the selected job descriptions for Mr. Sierer's combination job at Friar Tuck's Hoagie House to include Short Order Cook and Kitchen Helper, as the RBA Designee had urged him to consider. He recommended Mr. Sierer be found eligible based on Dr. Schneider's April 27, 2020, predictions.<sup>30</sup>

On July 8, 2020, Jared Kirkham, M.D., a physiatrist, evaluated Mr. Sierer on Tri Star's behalf (an Employer's Medical Evaluation or EME). Dr. Kirkham diagnosed: 1) lumbar sprain/strain injury with non-verifiable radicular complaints in the left leg, substantially caused by the November 17, 2019, work injury; 2) left 11th rib fracture, substantially caused by the work injury; 3) left thigh contusion, substantially caused by the work injury; 4) left elbow contusion, substantially related to the work injury; 5) possible left ulnar neuropathy based on left medial forearm and left fifth finger numbness, not substantially caused by the work injury because of the delay in symptom onset; 6) history of opioid dependence in remission, unrelated to the work injury; and

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<sup>27</sup> R. 3007-10.

<sup>28</sup> R. 1847-48.

<sup>29</sup> R. 1952-55.

<sup>30</sup> R. 3214-21.

7) chronic pain syndrome with hyperalgesia, disability behavior, and pain catastrophizing, caused by psychosocial factors and not substantially caused by the work injury. He opined Mr. Sierer's lumbar spine injury had reached medical stability by March 10, 2020, when Mr. Sierer reported to Dr. Witham that he was markedly improved and able to return to work as a cement installer. Dr. Kirkham further explained that Mr. Sierer's lumbar spine symptoms were much more diffuse than what he would expect from a disc protrusion affecting a single nerve root, and there were no neurological deficits on examination that clearly correlated with the MRI findings. Instead, he thought "a significant component of chronic pain syndrome" was exacerbating and perpetuating Mr. Sierer's pain symptomology and disability. Dr. Kirkham opined Mr. Sierer had not incurred any lumbar spine PPI, and he also thought Mr. Sierer's rib fracture, thigh contusion, and elbow contusion were all medically stable with no residual PPI. He opined a left elbow MRI would be reasonable to assess the integrity of the left triceps tendon and to provide Mr. Sierer reassurance and reduce his anxiety. He also recommended electromyography studies to evaluate Mr. Sierer's possible left ulnar neuropathy. He opined Mr. Sierer was physically capable of returning to his previously held occupations, including heavy manual labor jobs, and wrote: "[Mr. Sierer] is limited by subjective pain as well as multiple psychosocial factors, including anxiety and fear of reinjury. However, these factors are related to tolerance and not physical capacity."<sup>31</sup>

On August 5, 2020, the RBA Designee found Mr. Sierer not eligible for reemployment benefits based on Dr. Kirkham's July 8, 2020, opinions.<sup>32</sup> Mr. Sierer did not appeal this decision, pending the Second Independent Medical Evaluation (SIME).

After several delays, the SIME was scheduled with Dr. McCormack.<sup>33</sup>

On March 24, 2022, Tri Star deposed Mr. Sierer, who described his fall from the ladder. He stated Mr. Stone had agreed to hold the bottom of the ladder, but then went

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<sup>31</sup> R. 1990 – 2005.

<sup>32</sup> R. 3298-301.

<sup>33</sup> R. 2809-10.

inside The Diner at some point prior to Mr. Sierer falling. Subsequently, Mr. Stone texted and called Mr. Sierer. Mr. Sierer described Mr. Stone's texts:

I was, like - - I broke my ribs, so I was, like, in bed and stuff, but he kept sending me texts saying he was going to give me money to take care of it. . . . He said he was going to give me money to take of all my bills and stuff. But he sent me texts like that afterwards.

Mr. Sierer saw Mr. Stone at the grocery store, and they discussed the \$1,600.00 in wages that Mr. Stone still owed him. Mr. Stone sent Mr. Sierer \$400.00 via Western Union, but never paid Mr. Sierer his wages. Mr. Sierer thought he collected unemployment benefits during the summer of 2020, but could not remember for how long. Medicaid paid for some of his prescription costs. Mr. Sierer identified Dr. Schneider at TVC as his "main" doctor, whom he had been seeing for 10-11 years.<sup>34</sup>

On March 28, 2022, Dr. McCormack performed the SIME. He diagnosed 1) left T11 rib fracture due to the fall at work; 2) lumbar contusion and aggravation of lumbar disc disease with axial low back pain and no radiculopathy due to the fall at work; 3) ulnar neuropathy, possibly, but not probably, related to the fall at work due to a six-month delay in symptom onset and the lack of contemporaneous documentation of an elbow injury; and 4) preexisting chronic pain and narcotic dependence. Dr. McCormack opined Mr. Sierer likely had preexisting degenerative changes in his lower back and the fall at work caused a permanent aggravation of those changes. He thought Mr. Sierer was still disabled from heavy labor and was limited to medium and light duty work. Dr. McCormack observed Mr. Sierer was on 68 morphine mg equivalents, which was contributing to Mr. Sierer being "non-workable," and recommended Mr. Sierer wean off narcotics. He opined Mr. Sierer could do many, if not the majority, of handyman tasks, and could work as a Kitchen Helper when off narcotics. Dr. McCormack later commented, "[Mr. Sierer] moves well on examination and his pain and disability far exceed the objective findings of injury on [the] MRI," and remarked, "There are disc protrusions[,] but they are not severe and commonly seen in middle aged adults capable of doing labor."

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<sup>34</sup> Richard Sierer Dep., Mar. 24, 2022, at 40:15 – 41:13; 59:10-17; 77:23 – 78:7; 78:18-23; 79:1-15; 80:1-17; 81:22 – 82:6; 82:14-24.



He also thought psychosocial factors may be impeding Mr. Sierer's recovery and pointed out, "His daughter has cancer[,] and his wife has been away [for] 9 months." Dr. McCormack concluded Mr. Sierer was medically stable in November 2020 because that is the length of time to heal a disc protrusion not treated with surgery, and Mr. Sierer could have resumed moderate labor by January 2021. Mr. Sierer also incurred a 7% whole person PPI with aggravation of his lumbar disc disease, according to Dr. McCormack. Regarding treatment recommendations for any diagnosed condition, his sole recommendation was, "Stop the narcotics." Dr. McCormack opined all medical treatment for Mr. Sierer's injuries had been reasonable and necessary except for the use of narcotics.<sup>35</sup>

Mr. Sierer deposed Dr. McCormack, who changed his left elbow causation opinion when he was shown the February 7, 2020, physical therapy notes, which documented Mr. Sierer complaining of a "really painful" elbow. He stated, "I would accept the left-elbow injury as part of it" because the notes put Mr. Sierer's elbow complaints closer in time to the injury. Treatment options included ulnar nerve decompression surgery. Because Mr. Sierer's ulnar neuropathy was not getting any worse, and because Mr. Sierer already had atrophy in the ulnar nerve distribution, Dr. McCormack thought Mr. Sierer had "plateaued" from the work injury and stated, "I'm not so sure surgery would help [Mr. Sierer] in any way." Possible treatment for Mr. Sierer's back could include a six-to-eight-week "functional restoration program." The low back injury is what caused Mr. Sierer to end up on narcotics. "The functional restoration program is to get him off narcotics and, you know, improve his function. [Mr. Sierer will] probably always have back pain, but he could be more – a more functional individual." Dr. McCormack opined Mr. Sierer's narcotics use suppressed his ability to work and Mr. Sierer was totally disabled for that reason. Dr. McCormack thought Mr. Sierer's ability to perform medium duty work was "questionable" due to strength level classifications and lifting requirements for jobs Mr. Sierer previously held. He did think Mr. Sierer could probably perform his job at Friar Tuck's Hoagie House, which involved 20% Restaurant Manager work, 40% Short Order

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<sup>35</sup> R. 2119-36.

Cook work, and 40% Kitchen Helper work.<sup>36</sup> On August 22, 2022, Dr. McCormack issued an addendum SIME report that assigned Mr. Sierer a 3% whole person impairment for his ulnar neuropathy.<sup>37</sup>

On September 1, 2022, Mr. Sierer sought modification of the RBA Designee's determination that he was not eligible for reemployment benefits.<sup>38</sup>

On September 20, 2022, after reviewing additional medical records, including Mr. Sierer's left elbow MRI and electrodiagnostic findings, Dr. Kirkham issued an addendum EME report. References to left elbow pain in the February 7, 2020, physical therapy notes did not cause him to change his previous opinion on left elbow causation because he would expect mention of elbow pain and left ulnar paresthesia "sometime before the three-month mark post injury." Citing medical literature, he opined the causes of Mr. Sierer's ulnar neuropathy was probably a combination of age and idiopathic factors.<sup>39</sup>

On October 25, 2022, after reviewing updated medical records, Dr. Kirkham again evaluated Mr. Sierer on Tri Star's behalf. Mr. Sierer's current complaints included ongoing left posterior elbow pain. He also reported left medial forearm paresthesia and left small finger numbness, as well as a "sharp, shooting pain" at his posterior elbow when he rests his left elbow on a hard surface. Mr. Sierer described left-sided low back pain but denied any radicular complaints. Overall, Mr. Sierer thought his left elbow pain and his left forearm and hand paresthesia were worsening over time. He also reported no improvement in his low back pain since the November 17, 2019, work injury. Dr. Kirkham opined Mr. Sierer's left L4-5 foraminal disc protrusion had resolved because Mr. Sierer no longer had any radicular complaints in his left leg. He pointed out Mr. Sierer never had consistent radicular complaints in an L4 distribution and there were no neurological

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<sup>36</sup> Bruce McCormack, M.D., Dep., Aug. 1, 2022, at 12:13-20; 14:1-20; 15:6-18; 18:8 – 23:19; 24:1-12; 25:6-9; 26:3-13; 29:6 – 30:25.

<sup>37</sup> R. 2139.

<sup>38</sup> R. 0233-34.

<sup>39</sup> R. 2146-48.

defects on exam in the medical records or during either of his evaluations. Instead, since Mr. Sierer's chronic low back pain was "out of proportion to objective findings," Dr. Kirkham opined Mr. Sierer's chronic low back pain complaints were substantially caused by psychosocial factors. If Mr. Sierer had injured his ulnar nerve, he would have expected the symptoms to manifest "nearly immediately after the injury and certainly no greater than several days after the injury." Dr. Kirkham explained the cause of ulnar neuropathy is typically idiopathic, meaning its exact cause is unknown, and according to medical literature, the risk increases with age, so the cause of Mr. Sierer's ulnar neuropathy is a combination of age and idiopathic factors.<sup>40</sup>

At hearing, Dr. Kirkham testified, on a more probable than not basis, Mr. Sierer strained his low back. Mr. Sierer did have a small disc protrusion that he was not sure whether it was related to the injury, but since Mr. Sierer's leg pain resolved, he thinks the low back protrusion was related to the injury and has resolved. Mr. Sierer also had a left 11th rib fracture from the fall, which healed, and a left thigh contusion, which healed. Dr. Kirkham's causation opinion on Mr. Sierer's ulnar neuropathy remained unchanged from his prior reports. He opined there was no objective evidence that Mr. Sierer should be restricted from work activities due to a left elbow injury, but rather Mr. Sierer was limited by his subjective tolerance. Psychosocial factors are the overwhelming cause of Mr. Sierer's pain and disability. Mr. Sierer's past use of opioids suggested he has a history of chronic pain. He explained, given this and all the other psychosocial factors that are present, and causation requires there be no confounding factors between the injury and the pain, but in Mr. Sierer's case, there are so many other confounding factors, such as his history of chronic pain and the psychosocial factors, that the link between Mr. Sierer's injury and his back pain is very weak.<sup>41</sup>

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<sup>40</sup> R. 2151-74.

<sup>41</sup> Hr'g Tr. at 22:1-17; 32:6 – 34:13; 41:17-21; 54:4-7; 54:19 – 55:13. The Commission notes that Dr. Kirkham apparently was not asked about whether the fall exacerbated these factors.

At hearing, Mr. Sierer testified he had known Mr. Stone, the owner of Tri Star, for 10 or 11 years. He did a lot of work for Mr. Stone during the winter months, such as remodeling Mr. Stone's duplexes. Mr. Sierer described his work activities on the day he was injured, as well as his fall. Another worker took him to the hospital. Mr. Stone texted Mr. Sierer after the injury and stated he wanted to pay Mr. Sierer for his injuries and wanted to work things out between the two of them. Mr. Stone encouraged Mr. Sierer to not report the injury because he did not want his insurance rates to go up and he did not want to pay for a lawyer. Mr. Sierer stated he could not work for three or four weeks afterwards; he could not even get out of bed.<sup>42</sup> He first noticed elbow pain one or two weeks afterwards. His ribs bothered him the most and he just thought he had a bad bruise on his elbow. His elbow felt like he hit his funny bone. Mr. Sierer's plan was always to go back to work, but his back started hurting again after the injection and by then his elbow was hurting too. The pain would not go away. Mr. Sierer signed up for unemployment when Tri Star stopped paying him. He collected unemployment "for a little while," and although he does not have money to pay back unemployment benefits now, he would pay back the benefits he collected if he was awarded TTD. He first noticed finger numbness about a month after the fall. No physician referred Mr. Sierer to see Raymond E. Andreassen, D.O. Mr. Sierer tried to be seen at TVC and was told it is not a walk-in clinic, and Dr. Schneider told him he needed to get a primary care physician, but TVC was not accepting new patients, so he saw Dr. Andreassen. Mr. Sierer could not recall specific times during which he received unemployment benefits. He was interested in undergoing surgery on his left elbow. Mr. Sierer stated Mr. Stone gave him \$500.00 one time and \$200.00 another time, but he never paid Mr. Sierer's bills, which is why Mr. Sierer filed a workers' compensation claim.<sup>43</sup>

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<sup>42</sup> The Commission notes that Mr. Stone did not testify nor was he deposed. Mr. Sierer's testimony on these points was not contradicted.

<sup>43</sup> Hr'g Tr. at 79:20-25; 80:3-9; 80:16 – 82:19; 83:19 – 84:18; 84:24 – 87:2; 88:11 – 89:23; 90:4-24; 117:4-10; 128:12-15; 128:23 – 129:11; 136:22 – 137:12; 141:10 – 13; 147:2-19.

The Board found Mr. Sierer was credible because of his sincere and forthright presentation and because his deposition and hearing testimony were consistent with the other portions of the record.<sup>44</sup>

*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.<sup>45</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>46</sup> "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."<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

On questions of law and procedure, the Commission does not defer to the Board's conclusions but exercises its independent judgment.<sup>50</sup> Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.<sup>51</sup>

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<sup>44</sup> *Sierer* at 29, No. 94.

<sup>45</sup> AS 23.30.128(b).

<sup>46</sup> *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>47</sup> *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)).

<sup>48</sup> AS 23.30.122.

<sup>49</sup> AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

<sup>50</sup> AS 23.30.128(b).

<sup>51</sup> *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985).

#### 4. Discussion.

The Board, in its decision, awarded some benefits to Mr. Sierer and denied others. Mr. Sierer appealed the following issues:

1. The Board's limitation of AS 23.30.041(k) stipend benefits (.041(k) stipend benefits) pre-reemployment plan to 242 days;
2. The Board's decision to award 242 days of .041(k) stipend benefits only if the RBA finds Mr. Sierer eligible for reemployment benefits;
3. The Board's denial of a 25% penalty on unpaid .041(k) stipend benefits when Mr. Sierer was being evaluated and not receiving any compensation from Tri Star;
4. The Board's denial of a 25% penalty on TTD initially not paid between date of injury and receipt of medical reports confirming inability to work (November 2019 – March 2020);
5. The Board's denial of his claim for a finding of unfair and frivolous controversion; and
6. The Board's errors in its calculation of attorney fees.

Mr. Sierer contends that the Board's decision should be reversed and remanded for recalculation of penalties, .041(k) stipend benefits, and attorney fees.<sup>52</sup>

Tri Star agrees that the Board incorrectly relied on a reversed Commission decision in setting a limitation of 242 days on .041(k) stipend benefits, but asserts there should be some limitation on such benefits. Tri Star further contends the Board correctly denied the requests for penalties and the claim for a finding of unfair and frivolous controversion.

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<sup>52</sup> The Board also denied Mr. Sierer's request that his back, broken rib, and left elbow injuries be found compensable, but then awarded Mr. Sierer medical benefits related to these injuries along with time loss, PPI, and reemployment reconsideration. This is a confusing and contradictory award. On remand, the Board might want to reconsider its decision finding these injuries were not compensable. The Board agreed these injuries occurred in the course and scope of Mr. Sierer's employment; this finding would appear to mean that these injuries were compensable. The Commission notes Mr. Sierer did not specifically appeal the denial of compensability. However, both parties agreed at oral argument that the decision was confusing and disjointed, and the Commission concurs.

Tri Star implicitly agrees that the attorney fees award will need to be reconsidered if the Commission remands the issue of the proper calculation of .041(k) stipend benefits.

*a. When is an employee entitled to AS 23.30.041(k) stipend benefits and is 242 days a correct limitation?*

AS 23.30.041(c) requires notification to the RBA when an injured worker has been “totally unable to return to the employee’s employment at the time of the injury for 90 consecutive days . . . the administrator shall, without a request, order an eligibility evaluation. . . .”<sup>53</sup> The Board’s regulations require an employer to notify the RBA in writing on the 91<sup>st</sup> day when an injured worker “has been totally unable to return to the employee’s employment at the time of injury for 90 consecutive days. . . .”<sup>54</sup> The notice is to be on a form prescribed by the administrator.

Mr. Sierer contends that when the employer files the form the employer has stipulated that the injured worker is entitled to reemployment benefits. The Board’s regulation at 8 AAC 45.050(f)(1) defines “stipulation” as a something “signed by all parties.” “[S]tipulations between the parties may be made in writing at any time . . . or may be made orally in the course of a hearing or a prehearing.”<sup>55</sup> The form does not meet the requirements for a stipulation because, although it is written, it is not signed by all parties.<sup>56</sup> The form is not a stipulation.

However, the form is an admission by the employer that the employee has been out of work for 90 days due to a work injury and is entitled to an eligibility evaluation. When the employer supplies the RBA with the prescribed form, it admits that the employee has been unable to return to work at the time of injury for 90 days and, by statute, is entitled to an eligibility evaluation. The evaluation is mandatory.

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<sup>53</sup> AS 23.30.041(c).

<sup>54</sup> 8 AAC 45.507.

<sup>55</sup> 8 AAC 45.050(f)(2).

<sup>56</sup> Moreover, *Black’s Law Dictionary*, (11<sup>th</sup> ed. 2019) at 1712, defines stipulation as “a material condition or requirement in an agreement. . . .” There was no agreement between the parties here, just an admission that Mr. Sierer had been off work due to the work injury for 90 days.

Here, Tri Star's adjuster filed the required form on March 9, 2020. On March 11, 2020, the RBA Designee determined that Mr. Sierer was entitled to an eligibility evaluation and assigned a rehabilitation specialist to perform the evaluation. This assessment triggered his entitlement to .041(k) stipend benefits if there were no TTD or PPI benefits available at that time to him. The right to an eligibility evaluation is mandatory once an employee has been out of work for 90 days due to the work injury.

This section of the Alaska Workers' Compensation Act (Act) provides the road map for payment of benefits during the reemployment process:

If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease, and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment process, the employer shall provide compensation equal to 70% of the employee's spendable weekly wages, but not to exceed 105 of the average weekly wage, until the completion or termination of the process. . . . The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

In *Carter v. B & B Construction, Inc.*, the Alaska Supreme Court (Court) agreed that .041(k) stipend benefits could be paid prior to the formation of a reemployment plan "so long as [the employee] has begun the reemployment process." The Court added "reemployment benefits 'are paid contingent on the employee's participation in the development and execution of a reemployment plan.' In other words, employees become eligible for reemployment benefits when they begin participating in the reemployment process."<sup>57</sup>

In determining when and for how long Mr. Sierer was eligible for .041(k) stipend benefits, the Board awarded 242 days, relying on the Commission's decision in *Griffiths v. Andy's Body & Frame, Inc.*<sup>58</sup> The Board's reliance on *Griffiths* was misplaced. The Commission, in *Vandenberg v. State of Alaska*, held that the language in *Griffiths* was

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<sup>57</sup> *Carter v. B & B Constr., Inc.*, 199 P.3d 1150, 1159 (Alaska 2008) (*Carter*).

<sup>58</sup> *Griffiths v. Andy's Body & Frame, Inc.*, Alaska Worker's Comp. App. Comm'n Dec. No. 119 (Oct. 27, 2009) (*Griffiths*).



dictum and not controlling.<sup>59</sup> Although *Vandenberg* was a memorandum decision, the Commission, in *Alaska Asphalt Services, LLC v. Martino*, revisited *Vandenberg* and reaffirmed that payment of .041(k) stipend benefits prior to the development of a reemployment plan are due to an employee actively engaged in the reemployment process, even if there has been no PPI rating done.<sup>60</sup>

The Commission relied on language in *Carter* where the Court stated that .041(k) stipend benefits could be paid for at least two years prior to the start of a reemployment plan.<sup>61</sup> The Court further stated that “we think that the legislature did not intend that there should be a gap between the expiration of PPI benefits and the commencement of reemployment benefits for employees who are vigorously pursuing eligibility evaluations before their PPI benefits expire. We therefore conclude that the reemployment process begins when the employee begins his active pursuit of reemployment benefits.”<sup>62</sup>

Since Mr. Sierer was out of work for 90 days due to the work injury he was entitled to the mandatory evaluation, and he was entitled to .041(k) stipend benefits while he was actively engaged in the evaluation process, if no TTD or PPI benefits were available. The Board’s decision that he was only entitled to 242 days is reversed and the issue is remanded to the Board for reconsideration of the actual amount of .041(k) stipend benefits he is entitled to receive, with interest. Furthermore, the payment of .041(k) stipend benefits during the period of the eligibility evaluation for reemployment benefits is not contingent on a finding of eligibility. An employee is entitled to .041(k) stipend benefits during the evaluation process if no TTD or PPI benefits are available to the employee. This is based on the Court’s decision in *Carter*.

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<sup>59</sup> *Vandenberg v. State of Alaska*, Alaska Workers’ Comp. App. Comm’n Mem. Dec. No. 240 at 12 (Sept. 14, 2017) (*Vandenberg*).

<sup>60</sup> *Alaska Asphalt Servs., LLC v. Martino*, Alaska Workers’ Comp. App. Comm’n Dec. No. 304 (June 22, 2023).

<sup>61</sup> *Carter*, 199 P. 3d 1150, 1160 (Alaska 2008); the Commission notes that two years of stipend benefits would be 730 days.

<sup>62</sup> *Carter*, 199 P.3d at 1160.

*b. Does the presumption of compensability require medical evidence prior to the start of temporary total disability (TTD) benefits?*

Mr. Sierer filed an employee report of injury on December 12, 2019.<sup>63</sup> He stated he “hit head concussion. I was on top a ladder Drilling through wall. Ladder collapsed on me. Fall landed on ladder on left side first. Didn’t get chance Break fall hit head and broke ribs. Had a drill Bit In left pocket landed on it. It went into top leg.”<sup>64</sup> He also stated he broke 2 ribs, had a concussion, injured his left leg, and anticipated future major medical/lost time. Tri Star did not timely file a report of injury. Mr. Sierer asserted that Tri Star should have immediately started paying TTD because he testified his employer, Mr. Stone, knew he was unable to work and that he had not returned to work, and the Board found him to be credible. Mr. Sierer further asserted that to require him to produce evidence other than his own testimony that he was unable to work reverses the presumption and puts an unfair burden on him. This, he asserted, is unfair and illegal. On January 2, 2020, Mr. Sierer claimed TTD and TPD benefits, medical and related transportation costs, penalty for late paid compensation, penalty for late report of injury, and attorney fees and costs.<sup>65</sup>

Tri Star asserted it did not have to pay TTD until Mr. Sierer filed medical evidence supporting his claim that he was totally unable to work from the effects of the fall. Tri Star contended that Mr. Sierer did not raise the presumption of compensability that he suffered time loss from the fall until he filed a medical summary on February 13, 2020, showing his treating doctors had taken him off work. Tri Star asserts there is a difference between the presumption of compensability (i.e. the employee was injured at work) and the presumption of entitlement to time loss benefits. Tri Star avers that it timely issued a TTD check on March 6, 2020. Tri Star contends that the presumption of time loss requires more than the employee’s own statement that he is off work due to the work injury.

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<sup>63</sup> R. 0022.

<sup>64</sup> R. 0022.

<sup>65</sup> R. 0059. He apparently did not file the required medical summary with this claim. See 8 AAC 45.052 “a medical summary . . . must be filed with a claim. . . .”

AS 23.30.120(a) states "In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes within the provisions of this chapter; [and] sufficient notice of the claim has been given. . . ."66 The Act further provides that "Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of disability."<sup>67</sup> The Act also provides that "The first installment of compensation becomes due on the 14<sup>th</sup> day after the employer has knowledge of the injury. . . . On this date all compensation then due shall be paid."<sup>68</sup>

In *Burgess Construction Company v. Smallwood*, the Court reiterated that "before the presumption attaches, some preliminary link must be established between the disability and the employment, and that in claims 'based on highly technical considerations' medical evidence is often necessary in order to make that connection."<sup>69</sup>

Hearsay is evidence of statements by a witness not present, and is offered to prove the truth of the matter asserted.<sup>70</sup> "Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions."<sup>71</sup> Here Mr. Sierer offered his statements that Mr. Stone knew he was injured and had not returned to work as proof Mr. Sierer was unable to return to work by reason of the work injury without needing to provide any medical evidence to support that position. He asserted his statements as to what he said Mr. Stone knew should be the minimal

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<sup>66</sup> AS 23.30.120.

<sup>67</sup> AS 23.30.150.

<sup>68</sup> AS 23.30.155(b).

<sup>69</sup> *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981) citing *Commercial Union Cos. v. Smallwood*, 550 P.2d 1261, 1267 (Alaska 1976).

<sup>70</sup> *Black's Law Dictionary* (11<sup>th</sup> ed. 2019) at 868.

<sup>71</sup> 8 AAC 45.120(e).

evidence necessary to raise the presumption of entitlement to TTD from the date of injury and ongoing. He did not provide any medical evidence demonstrating he was off work due to the work injury until he filed a medical summary on February 13, 2020.

The Board found the evidence of what Mr. Stone knew to be “ambiguous.” There was no direct evidence as to when Mr. Stone knew, or should have known, Mr. Sierer did not return to work as a result of the work injury or that he was off work for more than three days. The first evidence of actual time loss, as the Board found, is the February 13, 2020, medical summary. The Board held that Mr. Sierer did not “point to any minimal, relevant evidence” that Mr. Stone’s insurer had any evidence linking time loss to the work injury until the February 13, 2020, medical summary. However, “notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer. . . .”<sup>72</sup> The Board found that the evidence that either Mr. Stone or the insurer were aware of actual time loss prior to the February 12, 2020, medical summary was, in the Board’s words, “ambiguous” at best. The Board also stated the evidence was “murky.”<sup>73</sup> Even if Mr. Sierer did not return to work for Mr. Stone there was no evidence presented that the absence from work was the result of the work injury.

Furthermore, the language in the Act supports the need for some medical evidence to support a claim for time loss. TTD is defined as “total in character but temporary in quality. . . . Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.”<sup>74</sup> Disability is further defined as “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. . . .”<sup>75</sup> When TTD is due it is “not allowed for the first three days of the disability . . . if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability.”<sup>76</sup>

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<sup>72</sup> AS 23.30.030(3).

<sup>73</sup> *Sierer I* at 57-58.

<sup>74</sup> AS 23.30.185.

<sup>75</sup> AS 23.30.395(16).

<sup>76</sup> AS 23.30.150.

Although not explicit in the definition of TTD, some evidence, beyond an employee's statement the employee is disabled from working due to the work injury, is necessary to raise the presumption the employee is disabled for more than three days from working due to the work injury. "[S]ome preliminary link must be established between the disability and the employment. . . ."77 As the Court stated in *Resler v. Universal Services, Inc.*, "[m]erely filing a claim for compensation does not give rise to the presumption of coverage. . . ."78 While the employee's statement that an injury occurred at work may be sufficient to raise the presumption of compensability, more is needed to raise the presumption that the worker is off work due to the work injury.

While the Board found Mr. Sierer credible as to what he may have told Mr. Stone, the Board also found that the evidence was ambiguous or murky as to what Mr. Stone knew beyond the fact that Mr. Sierer had fallen and had been taken to the hospital.<sup>79</sup> No evidence was presented to show that Mr. Stone had any knowledge of the nature of any injury or the length of recovery. Mr. Sierer testified he exchanged text messages with Mr. Stone, but these messages were not presented to the Board.<sup>80</sup>

Mr. Sierer attached the presumption of entitlement to TTD when he filed the medical summary taking him off work on February 13, 2020, but not before.<sup>81</sup> The medicals on the medical summary made the connection between the work injury and the disability. Tri Star immediately began payment of TTD upon receipt of the medical summary. Tri Star's initial payment of TTD was not untimely.

*c. Failure to file notice of injury and applicable penalties.*

AS 23.30.070(a) states "[w]ithin 10 days from the date the employer has knowledge of an injury . . . the employer shall file with the division a report. . . ." This is a question of law. This section of the Act makes no mention of the insurer or insurance

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<sup>77</sup> *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981).

<sup>78</sup> *Resler v. Univ. Servs., Inc.*, 778 P.2d 1146, 1148 (Alaska 1989).

<sup>79</sup> *Sierer I* at 57-58.

<sup>80</sup> *Id.*

<sup>81</sup> R. 1759.

carrier's knowledge. It mentions only the employer. Mr. Sierer filed his report of injury on December 12, 2019, and Tri Star, on January 10, 2020, filed its report of injury.<sup>82</sup> Tri Star filed another report of injury on March 10, 2020.<sup>83</sup> According to the uncontradicted testimony of Mr. Sierer, his employer, Mr. Stone, owner of Tri Star, knew of his injury almost immediately.<sup>84</sup> That is, Mr. Stone was holding the ladder Mr. Sierer was standing on when he left it which is when the ladder slipped.<sup>85</sup> When Mr. Sierer fell, Mr. Stone and another employee came outside and discussed the need to take Mr. Sierer to the hospital.<sup>86</sup> Mr. Sierer testified that while he was in the hospital he got a text from Mr. Stone, saying he would take care of everything.<sup>87</sup> The Board found that the employer's knowledge is presumed to be the knowledge of the insurer.<sup>88</sup> Substantial evidence in the record supports the finding the Mr. Stone, the employer, was aware from the beginning that Mr. Sierer was injured and unable to work. The record also shows by substantial evidence that Mr. Stone did not timely report the work injury.

No report of injury was filed until December 12, 2019, when Mr. Sierer completed an injury report.<sup>89</sup> In his report of injury Mr. Sierer stated that "I was on top a ladder drilling through wall. Ladder collapsed on me. Fall landed on ladder on left side first. Didn't get chance break fall. Hit head and broke ribs. Had a drill bit in left pocket landed on it. It went into the leg."<sup>90</sup> Tri Star's insurer, on January 10, 2020, filed a report of injury. This report was untimely based on the uncontradicted testimony of Mr. Sierer

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<sup>82</sup> R. 0022, 0001.

<sup>83</sup> R. 0002.

<sup>84</sup> Hr'g Tr. at 81:23 – 82:19. Mr. Stone was apparently never deposed and did not appear at the hearing.

<sup>85</sup> Hr'g Tr. at 81:2-12.

<sup>86</sup> Hr'g Tr. at 81:23 – 82:19, 83:19 – 84:14.

<sup>87</sup> Hr'g Tr. at 84:23 – 85:6, 85:18-25.

<sup>88</sup> *Sierer* at 57.

<sup>89</sup> R. 0022.

<sup>90</sup> R. 0022.

that Mr. Stone knew of the injury when it occurred and tried to persuade Mr. Sierer not to report it.<sup>91</sup>

The parties agree that Mr. Sierer sustained an injury while working for Mr. Stone. The disputes revolve around what penalties are owed due to the late reporting of the injury, which body parts were injured in the fall, and what benefits are and were owed to Mr. Sierer resulting from the fall.

The Board awarded 20% in additional compensation for late report of injury on the payment on March 6, 2020, for TTD.<sup>92</sup> This was in error as this payment was timely and this award is reversed. As discussed below, .041(k) stipend benefits were not paid timely and so the award of an additional 20% would be appropriate should the Board decide to award such additional compensation.

*d. Is Mr. Sierer entitled to any additional penalties?*

The Act provides two kinds of additional compensation for late payment of benefits. AS 23.30.070 provides additional compensation in situations where the employer fails or refuses to file a report of a work injury. In this situation “if so required by the board . . . an additional award equal to 20 percent of the amounts that were unpaid when due” is to be added to the benefits not paid on time.<sup>93</sup> This award is discretionary by its language “if so required by the board” and is reviewed under the abuse of discretion standard of review. That is, “[a]n abuse of discretion exists when [the Court has] a definite and firm conviction that a mistake has been made.”<sup>94</sup> The Board awarded Mr. Sierer an additional 20% on the initial payment of TTD (March 6, 2020) because it had not timely been paid. The Board stated that “it is hoped Insurer will be encouraged to do a better job of educating its insureds of their injury reporting

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<sup>91</sup> *Sierer I* at 57, 60.

<sup>92</sup> *Sierer I* at 67, No. 10.

<sup>93</sup> AS 23.30.070(f).

<sup>94</sup> *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1089-1090 (Alaska 2008).

obligations under the Act. . . ."<sup>95</sup> However, the above analysis by the Commission shows this additional award was in error because this initial payment was timely. This award is reversed since the Board abused its discretion in making this award due to a mistake in when Tri Star was obligated to begin payment of TTD.

However, the Board did not award additional compensation on the .041(k) stipend benefits Mr. Sierer sought and did not discuss whether an additional 20% should be added. The issue is whether "unpaid when due" applies only to initial benefits not timely paid due to the late reporting of the injury, or whether this language applies to any late paid benefits at any time in the duration of the claim. The Commission finds that the language "an additional award equal to 20 percent of the amounts that were unpaid when due" does not contain any language that would limit the additional award to an initial late payment of benefits when an employer fails or refuses to file a report of a work injury. The language states the additional amount is due "by reason of the employee's injury" to any amounts "unpaid when due."<sup>96</sup> The Commission has found that the .041(k) stipend benefits were not paid when due and that the Board erred in limiting these benefits to 242 days to be paid only if the RBA finds Mr. Sierer eligible for reemployment benefits. The Board's order is reversed. The Commission remands this issue to the Board to correct the amount of .041(k) stipend benefits due to Mr. Sierer, and, at that time, the Board should consider whether he is entitled to an additional 20% compensation.

The second type of additional compensation is found in AS 23.30.155(e) which provides that if any "installment of compensation payable without an award is not paid within seven days after it becomes due . . . an amount equal to 25 percent of the installment" shall be added to the payment of the amount paid at the same time as payment of the installment. This is to be paid automatically. However, here, the Board denied "Employee's January 2, 2020[,] claim seeking late payment penalties."<sup>97</sup>

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<sup>95</sup> *Sierer I* at 60.

<sup>96</sup> AS 23.30.070(f).

<sup>97</sup> *Sierer I* at 67, No. 8.



Mr. Sierer seeks a 25% penalty on the unpaid .041(k) stipend benefits and on the first payment of TTD as the Board denied this penalty.<sup>98</sup> Based on the Commission's above analysis that the initial TTD payments were timely, AS 23.30.155 does not apply to the initial payment of TTD. However, the payment of .041(k) stipend benefits was untimely per this decision and AS 23.30.155(e) penalties do apply.

*e. Did Tri Star file unfair or frivolous controversies?*

Mr. Sierer states that the Board did not address this issue, and asks that the Commission require the Board to address it, if the decision is remanded. However, Mr. Sierer did not adequately brief why the Board should have found any of the controversies to be frivolous or unfair or why Tri Star should have been referred to the Division of Insurance. The Commission may decide not to consider issues inadequately briefed.<sup>99</sup> In *Coppe v. Bleicher*, the Court stated that an issue not adequately briefed is deemed to have been waived.<sup>100</sup> The Commission finds that Mr. Sierer's request to the Commission to order the Board to address whether a controversy is unfair or frivolous is not adequately briefed and is thus waived.

*f. Attorney fees award.*

Since the Commission is remanding this matter to the Board for reconsideration of the amount of .041(k) stipend benefits to which Mr. Sierer is entitled, the issue of the proper award of attorney fees to Mr. Sierer must likewise be remanded.

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<sup>98</sup> *Sierer I* at 67, No. 8.

<sup>99</sup> *AT & T Alascom v. Orchitt*, 161 P.3d 1232, 1247 (Alaska 2007).

<sup>100</sup> *Coppe v. Bleicher*, 318 P.3d 369, 378 (Alaska 2014).

5. *Conclusion and order.*

The decision in *Sierer I* is REMANDED to the Board for reconsideration of payment of AS 23.30.041(k) stipend benefits and other compensation and penalties per the analysis of the law in this decision. *Sierer I* is REVERSED in part and REMANDED in part.

Date: 7 October 2024 Alaska Workers' Compensation Appeals Commission



*Signed*

James N. Rhodes, Appeals Commissioner

*Signed*

Amy M. Steele, Appeals Commissioner

*Signed*

Deirdre D. Ford, Chair

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. 307 issued in the matter of *Richard Randolph Sierer v. Tri Star, Inc. and Umialik Insurance Company*, AWCAC Appeal No. 23-003, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on October 7, 2024.

Date: October 9, 2024



*Signed*

K. Morrison, Appeals Commission Clerk