

# Alaska Workers' Compensation Appeals Commission

Raymond Pitka,  
Appellant,

vs.

City of Fairbanks and Alaska Municipal  
League Joint Insurance Association,  
Appellees.

## Final Decision

Decision No. 308                      October 30, 2024

AWCAC Appeal No. 24-006  
AWCB Decision No. 24-0010  
AWCB Case No. 200411938

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 24-0010, issued at Fairbanks, Alaska, on February 26, 2024, by northern panel members Robert Vollmer, Chair, and John Dartt, Member for Industry.

Appearances: Raymond Pitka, self-represented appellant; Colby J. Smith, Griffin & Smith, for appellees, City of Fairbanks and Alaska Municipal League Joint Insurance Association.

Commission proceedings: Appeal filed March 18, 2024; briefing completed July 10, 2024; oral argument held on August 16, 2024.

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

By: Deirdre D. Ford, Chair.

### *1. Introduction.*

Appellant, Raymond Pitka, was injured on July 7, 2004, while he was exiting a garbage packer truck at the Fairbanks North Star Borough's landfill while working for the City of Fairbanks, insured by the Alaska Municipal League Joint Insurance Association (City of Fairbanks). Mr. Pitka was injured when a compaction loader ran into his truck as he was exiting it. The parties entered into a Compromise and Release (C&R) settling the parties' disputes, which the Board approved on April 19, 2007.

Subsequently, Mr. Pitka filed two claims with the Alaska Workers' Compensation Board (Board). He first filed a claim for permanent partial impairment (PPI) benefits on October 27, 2022, and then filed a claim for re-issuance of a check for settlement proceeds on July 28, 2023. On February 26, 2024, the Board issued its decision denying

both of Mr. Pitka's claims.<sup>1</sup> Mr. Pitka then filed a timely appeal with the Alaska Workers' Compensation Appeals Commission (Commission) on March 18, 2024.

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

Mr. Pitka had back problems prior to the 2004 work injuries. On March 18, 2002, and July 24, 2002, he suffered prior back injuries that resulted in a 20% PPI rating.<sup>3</sup> On January 14, 2004, Mr. Pitka reported his back pain was worsening.<sup>4</sup> Then on July 7, 2004, Mr. Pitka was exiting a garbage packer truck at the Fairbanks North Star Borough's landfill when a compaction loader ran into his truck. The impact jolted Mr. Pitka's whole body and he reported a sore back.<sup>5</sup> Mr. Pitka was initially taken off work by his chiropractor and the City of Fairbanks began making benefit payments.<sup>6</sup> Mr. Pitka underwent medical treatment, including chiropractic, physical therapy, massage therapy, medication therapy, steroid injections, facet injections, and radiofrequency ablation.<sup>7</sup>

On an unknown date, Mr. Pitka initiated a personal injury lawsuit against third parties for injuries he sustained on July 7, 2004, in *Pitka v. Fairbanks North Star Borough*, Case No. 4FA-05-1414 CI.<sup>8</sup>

James F. Green, M.D., on March 17, 2005, performed an employer's medical evaluation (EME) and opined Mr. Pitka was not medically stable without surgical decompression and possible fusion of his lower back. He provided a 20% whole person

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<sup>1</sup> *Pitka v. City of Fairbanks*, Alaska Workers' Comp. Bd. Dec. No. 24-0010 (Feb. 26, 2024) (*Pitka*).

<sup>2</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>3</sup> R. 0464-66.

<sup>4</sup> R. 0060-72.

<sup>5</sup> R. 0009.

<sup>6</sup> R. 0060-72, 0012.

<sup>7</sup> R. 0060-72.

<sup>8</sup> R. 0330-35.

PPI “due to [Employee’s] multiple degenerative discs, his spinal stenosis, and his Grade II spondylolisthesis.”<sup>9</sup>

On September 29, 2005, Dr. Green performed a follow-up EME, and opined Mr. Pitka was medically stable on an objective basis because his condition had not changed since his last evaluation. He again opined Mr. Pitka had a 20% whole person PPI rating and clarified the rating was based on findings that preexisted the work injury.<sup>10</sup>

Mr. Pitka underwent bilateral hemilaminectomy and foraminotomy surgeries on May 4, 2006, which did not include fusion because of his chronic renal disease.<sup>11</sup>

On August 24, 2006, one of Mr. Pitka’s treating physicians, Nancy A. Cross, M.D., indicated her intention to refer him to Francine M. Pulver, M.D., for a PPI rating the following month.<sup>12</sup> Dr. Pulver provided a 10% whole person PPI rating on September 7, 2006.<sup>13</sup>

On September 15, 2006, Richard H. Cobden, M.D., evaluated Mr. Pitka at the behest of his third-party personal injury attorney, Ted Hoppner. He opined that Mr. Pitka’s PPI had increased “approximately 8% above the pre-existing 20% overall.”<sup>14</sup>

Disputes arose between the parties concerning medical stability, PPI benefit payments, Mr. Pitka’s entitlement to chiropractic care, and his participation in a reemployment plan.<sup>15</sup> The City of Fairbanks specifically contended: “The employee’s attending physician, Dr. Pulver, has rated him with a 10% permanent partial impairment rating. In excess of 19% PPI has been paid, and there may be an overpayment of PPI benefits.”<sup>16</sup>

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<sup>9</sup> R. 0553-63.

<sup>10</sup> R. 0528-34.

<sup>11</sup> R. 0464-66.

<sup>12</sup> R. 0575-77.

<sup>13</sup> R. 0568-72.

<sup>14</sup> R. 0464-66.

<sup>15</sup> R. 0045-46, 0049-50, 0074-75.

<sup>16</sup> R. 0074-75.

The City of Fairbanks' attorney requested Mr. Pitka's workers' compensation attorney, John Franich, advise her of the status of a C&R on February 13, 2007.<sup>17</sup> The following day, Mr. Franich replied that Mr. Pitka had given him a few minor changes to make, and he would try to get an edited draft back to the City of Fairbanks' attorney later that day or the next day.<sup>18</sup>

On April 19, 2007, the parties submitted a C&R settling the parties' disputes. It provided payment to Mr. Pitka of \$37,500.00 "in compromise of . . . all benefits for past, present and future disability or impairment, temporary or permanent. . . ." The settlement amount was allocated \$5,000.00 to the release of temporary total disability benefits, \$5,000.00 to the release of PPI benefits, \$10,000.00 to the release of reemployment benefits, and \$17,500.00 to the partial release of certain medical benefits, including narcotic medications, emergency room visits, and chiropractic care. The agreement also provided for a payment of \$3,900.00 to Mr. Franich. The Board approved the C&R that same day, finding it was in Mr. Pitka's best interests.<sup>19</sup>

The April 19, 2007, C&R stated Mr. Pitka's reasons for settlement: He had retired from his job and was receiving substantial retirement income from his union pension plan based on his years of service with the City of Fairbanks; he did not wish to be obligated to return to employment at that time or participate in the reemployment benefits process; and he was pursuing his third-party personal injury litigation and wished to pay litigation costs in that action. The C&R also included Drs. Green's, Pulver's, and Cobden's PPI ratings, as well as the total amount of the City of Fairbanks' previous PPI benefit payments. Mr. Pitka initialed numerous individual paragraphs, and each page of the C&R. Immediately above his signature to the agreement, it stated:

**I INTEND TO DISCHARGE THE EMPLOYER AND COMPENSATION CARRIER'S LIABILITY AND TRULY INTEND TO RELEASE THEM COMPLETELY AS SET FORTH ABOVE.** (Emphasis in original.)

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<sup>17</sup> R. 0343.

<sup>18</sup> R. 0343.

<sup>19</sup> R. 0060-72.

Mr. Pitka further attested he had carefully read the C&R, was aware of its contents, and had freely signed it.<sup>20</sup>

On April 26, 2007, the City of Fairbanks issued a check to Mr. Pitka for payment of settlement proceeds and transmitted it via certified mail, return receipt requested.<sup>21</sup> It also prepared a compensation report showing it had already paid Mr. Pitka amounts including \$22,544.44 in PPI benefits, and was paying him another \$5,000.00 in PPI benefits per the April 19, 2007, settlement agreement.<sup>22</sup>

On April 28, 2007, the balance on Mr. Pitka's account at Alaska USA Federal Credit Union (Alaska USA FCU) was \$586.43.<sup>23</sup> April 29, 2007, was a Sunday.<sup>24</sup>

The Board found that on April 30, 2007, Mr. Pitka signed for receipt of the City of Fairbanks' settlement check.<sup>25</sup> That same day, he endorsed the City of Fairbanks' check and received \$200.00 cash back at Alaska USA FCU.<sup>26</sup> The Board stated that notations were made under Mr. Pitka's signature on the back of the check, including his driver's license number and account number.<sup>27</sup> The account number notation on the back of the check corresponded to the account number on Mr. Pitka's account statement.<sup>28</sup> An "Alaska USA FCU" cancellation stamp, dated April 30, 2007, also appears on the back of the check.<sup>29</sup> Mr. Pitka's account activity on April 30, 2007, includes a \$34,800.00 deposit to his checking account and a \$2,500.00 deposit to his savings account.<sup>30</sup> Both deposits

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<sup>20</sup> R. 0060-72.

<sup>21</sup> R. 0106, 0244.

<sup>22</sup> R. 0104-05.

<sup>23</sup> R. 0192-94.

<sup>24</sup> *Pitka* at 5, No. 19.

<sup>25</sup> R. 0217.

<sup>26</sup> R. 0106.

<sup>27</sup> R. 0106.

<sup>28</sup> R. 0106, 0192-94.

<sup>29</sup> R. 0106.

<sup>30</sup> R. 0192-94.

were noted as "deposit check."<sup>31</sup> Other account activity occurring on April 30, 2007, included a \$25,002.00 check withdrawal and a \$2,500.00 telephone transfer from Mr. Pitka's checking account to his savings account.<sup>32</sup> On May 1, 2007, Mr. Pitka's \$2,232.48 pension check from the Laborer's Union was deposited to his checking account. The balance on his checking account was \$6,420.25.<sup>33</sup>

On an unknown date, Mr. Pitka entered into a tentative settlement agreement in his third-party personal injury lawsuit for \$25,000.00.<sup>34</sup> Disputes had arisen between the parties over the amount of the City of Fairbanks' lien and the nature and extent of its remaining liability for workers' compensation benefits.<sup>35</sup> On July 27, 2007, the Board approved this second settlement agreement in which Mr. Pitka waived his entitlement to remaining medical benefits and the City of Fairbanks waived a \$235,130.72 lien for benefits previously paid on Mr. Pitka's behalf. Mr. Pitka was represented by his third-party personal injury attorney, Mr. Hoppner.<sup>36</sup>

The Board found that the agency record was silent on case activity involving Mr. Pitka from 2007 until December 29, 2014, when he requested a copy of his workers' compensation case file.<sup>37</sup> Two months later, Mr. Pitka called the Workers' Compensation Division (Division) to report that the compensation reports from his case and actual benefit payments "don't line up."<sup>38</sup> Two weeks after that, another case note indicated Mr. Pitka reported a "stolen check" to the Fairbanks Police Department.<sup>39</sup>

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31 R. 0192-94.

32 R. 0192-94.

33 R. 0192-94.

34 R. 0329-35.

35 R. 0329-35.

36 R. 0329-35.

37 *Pitka* at 6, No. 25.

38 *Id.*

39 *Id.*

The Board found the agency record was again silent on case activity involving Mr. Pitka until June 26, 2017, when he called the Division and reported he never received the check for settlement proceeds.<sup>40</sup> The agency record was silent on activity involving Mr. Pitka until January 20, 2022, when he called the Division to inquire about his settlement proceeds.<sup>41</sup>

On February 17, 2022, Mr. Pitka saw Dr. Cobden for an Independent Medical Examination. Dr. Cobden's report summarizes Mr. Pitka's work injury and subsequent treatment and includes a physical examination. He concluded his report by referencing his September 15, 2006, report, which stated that Mr. Pitka had a 28% whole person impairment. Dr. Cobden's report did not specify the amount of physical impairment attributable to the July 7, 2004, work injury or to previous injuries.<sup>42</sup>

On October 27, 2022, Mr. Pitka filed a claim seeking PPI benefits.<sup>43</sup>

On November 15, 2022, the City of Fairbanks denied Mr. Pitka's October 27, 2022, claim on the basis he had waived PPI under the terms of the parties' April 19, 2007, C&R and because his claim was time-barred under AS 23.30.105(a).<sup>44</sup> The City of Fairbanks, on January 27, 2023, amended its answer to Mr. Pitka's October 27, 2022, claim, further contending the claim was barred by the doctrine of laches. In addition, the City of Fairbanks stated that to the extent that Mr. Pitka was seeking modifications of awards in prior settlement agreements, his claim was time barred by AS 23.30.130.<sup>45</sup>

On March 29, 2023, the City of Fairbanks deposed Mr. Pitka, who testified Mr. Franich represented him in his workers' compensation case, and Mr. Hoppner represented him in the civil lawsuit.<sup>46</sup> The signature on the April 19, 2007, C&R looked

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<sup>40</sup> *Pitka* at 6, No. 26.

<sup>41</sup> *Id.*, No. 27.

<sup>42</sup> R. 0519-21.

<sup>43</sup> R. 0079.

<sup>44</sup> R. 0090-93, 0042.

<sup>45</sup> R. 0137-39.

<sup>46</sup> Raymond Pitka Dep., Mar. 29, 2023, at 11:15-18, 12:3-6.

like his signature, but he did not remember signing it.<sup>47</sup> Mr. Pitka said he never received a check for the proceeds from the April 19, 2007, C&R.<sup>48</sup> “Franich kept the check,” according to Mr. Pitka.<sup>49</sup> Mr. Pitka “went after Franich because he took that money.”<sup>50</sup> He further testified, “But like I told you, Franich kept the money.”<sup>51</sup> Mr. Pitka thought he was paid a 10% PPI benefit.<sup>52</sup> He repeatedly testified he never saw Dr. Pulver.<sup>53</sup> Dr. Pulver is a “fake name” that Mr. Franich put in the C&R.<sup>54</sup> Mr. Pitka thought he should have been paid “somewhere in between” Dr. Green’s 20% rating and Dr. Cobden’s 28% rating.<sup>55</sup> He repeatedly testified he did not have an account at Alaska USA FCU at the time of the settlement because he closed his Alaska USA FCU account when he opened an account with Denali Federal Credit Union (Denali FCU) on February 2, 2002.<sup>56</sup> The endorsement on the back of the City of Fairbanks’ check looked like his signature, but it was not.<sup>57</sup> The signature was “forged.”<sup>58</sup> Mr. Pitka never received \$200.00 cash back from the check when it was deposited.<sup>59</sup> “I never got anything,” he testified.<sup>60</sup> He never received the City of Fairbanks’ check.<sup>61</sup> Mr. Pitka never deposited the City of Fairbanks’

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<sup>47</sup> Pitka Dep. at 13:17 – 14:12; 14:18-20; 15:12-14.

<sup>48</sup> *Id.* at 17:8-10.

<sup>49</sup> *Id.* at 17:8-10.

<sup>50</sup> *Id.* at 17:25 – 18:1.

<sup>51</sup> *Id.* at 22:15-18.

<sup>52</sup> *Id.* at 16:22-24; 19:11-15; 20:1-4; 20:22 – 22:5; 24:1-14; 25:21-25; 41:12-14, 43:10-25, 51:7-13.

<sup>53</sup> *Id.* at 17:1-5, 18:21 – 19:2, 20:13, 20:22 – 21:2, 41:22-24.

<sup>54</sup> *Id.* at 20:9-13.

<sup>55</sup> *Id.* at 17:15-19, 20:1-4, 45:7-11.

<sup>56</sup> *Id.* at 20:18-20, 33:3-8, 33:16-21, 34:3-8, 35:4-5.

<sup>57</sup> *Id.* at 33:15-16.

<sup>58</sup> *Id.* at 33:9-14, 37:16-22.

<sup>59</sup> *Id.* at 34:3-4.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 17:8-9, 32:16-20, 34:9-12, 36:1-4, 49:9-24.



check.<sup>62</sup> The signature on the April 30, 2007, return receipt looked like his signature, but it was not.<sup>63</sup> The signature was a “forgery” and a “fake.”<sup>64</sup> He asserted his workers’ compensation attorney forged his signature on the return receipt.<sup>65</sup> The address on the return receipt was Mr. Pitka’s correct address at the time.<sup>66</sup> Mr. Pitka claimed he had never seen the City of Fairbanks’ April 26, 2007, settlement check before.<sup>67</sup> Mr. Franich forged his signature on the check.<sup>68</sup> When asked if he pursued a claim for settlement proceeds in 2007, Mr. Pitka answered, “Yes. But the attorneys I went after, they wouldn’t go after Franich.”<sup>69</sup> Mr. Pitka did not file a claim for settlement proceeds in 2007.<sup>70</sup> In 2007, his dad was dying and in 2010 his brother died. In 2011, Mr. Pitka had a “gallbladder thing” and had to be rushed to the hospital and his sister took his home away from him.<sup>71</sup> He forgot about not receiving a check until 2012, when he thought, “God, I never got the check.”<sup>72</sup> Mr. Pitka did not file a claim for settlement proceeds in 2012.<sup>73</sup> He agreed that Mr. Franich did not coerce him or threaten him to sign the April 19, 2007, C&R.<sup>74</sup>

Mr. Pitka was asked at his deposition if he was trying to overturn the April 19, 2007, settlement. He replied, “If that’s what it takes, yeah. I’m just trying to get – if I

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<sup>62</sup> Pitka Dep. at 34:9-12.

<sup>63</sup> *Id.* at 35:60-12.

<sup>64</sup> *Id.* at 35:13-18; 36:20-22.

<sup>65</sup> *Id.* at 35:13-21.

<sup>66</sup> *Id.* at 35:22 – 36:4.

<sup>67</sup> *Id.* at 37:13-15.

<sup>68</sup> *Id.* at 37:18-22.

<sup>69</sup> *Id.* at 38:3-6.

<sup>70</sup> *Id.* 38:11-12

<sup>71</sup> *Id.* at 38:24 – 39:3.

<sup>72</sup> *Id.* at 39:4-6.

<sup>73</sup> *Id.* at 39:7-11.

<sup>74</sup> *Id.* at 40:23 – 41:4.

– if I have more money coming, that’s what I’m trying to get.”<sup>75</sup> He was also asked if he was trying to overturn the July 27, 2007, C&R so the City of Fairbanks could regain its \$235,130.72 lien against him. He answered, “Forget it. No.”<sup>76</sup>

The Board found that the signatures that appear for Mr. Pitka on the April 19, 2007, C&R, the April 30, 2007, return receipt, and the April 26, 2007, cancelled check, resembled his signatures on his October 27, 2022, and July 28, 2023, workers’ compensation claim forms, as well as other documents in the case file, such as the July 8, 2004, injury report and a July 27, 2005, medical release.<sup>77</sup>

On June 16, 2023, Mr. Pitka filed a “Good Standing Letter” from Denali FCU as evidence. The letter stated he established a Basic Savings and Free Checking account on February 2, 2004.<sup>78</sup>

On July 28, 2023, the parties met to discuss hearing issues. Mr. Pitka wanted his claim for PPI benefits addressed as well as his request for re-issuance of a check for settlement proceeds. The City of Fairbanks pointed out that Mr. Pitka had never filed a claim seeking re-issuance of the settlement check. Mr. Pitka expressed frustration because he thought he had completed the necessary paperwork to seek re-issuance of a check.<sup>79</sup> That same day, he filed a claim seeking re-issuance of a check for settlement proceeds.<sup>80</sup>

At hearing on February 1, 2024, Mr. Pitka testified he did not receive the City of Fairbanks’ check, did not sign the return receipt for the check, and did not endorse the check. Instead, his signature on the return receipt and the endorsement on the check were “forged” by Mr. Franich. Mr. Pitka never signed the April 19, 2007, C&R. It is a

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<sup>75</sup> Pitka Dep. at 24:19-22.

<sup>76</sup> *Id.* at 28:23 – 29:14.

<sup>77</sup> *Pitka* at 8, No. 35.

<sup>78</sup> R. 0189 (the Commission notes the Board decision at 8, No. 36 states the account was opened on February 2, 2022, but the letter actually states the account was opened on February 2, 2004).

<sup>79</sup> R. 0607-09.

<sup>80</sup> R. 0220.

forgery. He denied ever seeing Dr. Pulver. He denied having an Alaska USA FCU account because he left Alaska USA FCU and went to Denali FCU on February 2, 2004. Mr. Franich forged the Alaska USA FCU account statement that shows deposit of C&R proceeds. He denied having any back injuries prior to the instant work injury and specifically denied having back injuries on March 18, 2002, and July 24, 2002. Mr. Pitka forgot about not receiving a settlement check until 2012 because his dad was dying, he was going through “this rehab,” his brother was dying, his sister was trying to take his house, he had a gallbladder problem, and his ex’s father was dying. He is paid \$2,500.00 per month for his union retirement, which is \$30,000.00 per year. Although he grosses \$2,500.00 per month, he does not net \$2,500.00 per month, because taxes are taken out; so, when he is paid his retirement benefit, it is less than \$2,500.00.<sup>81</sup>

When Mr. Pitka was asked to provide his driver’s license number at hearing, he recited it from memory,<sup>82</sup> and the number he recited matched the driver’s license number notation on the back of the cancelled settlement check.<sup>83</sup>

The Board found that Mr. Franich is an experienced and competent lawyer who has represented injured workers for decades.<sup>84</sup> The Board denied Mr. Pitka’s claims and he timely appealed to the Commission.

### *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>85</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>86</sup> “The question of whether the quantum of evidence

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<sup>81</sup> Hr’g Tr. at 10:22 – 11:5; 18:3-15; 18:16-24; 25:4-20; 29:23 – 30:1; 20:3-5; 37:6-15; 27:14 – 28:3; 34:17 – 35:2; 60:11-15 (Feb. 1, 2024).

<sup>82</sup> Hr’g Tr. at 44:19-21.

<sup>83</sup> *Pitka* at 10, No. 42.

<sup>84</sup> *Id.* at 5, No. 16.

<sup>85</sup> AS 23.30.128(b).

<sup>86</sup> *See, e.g., Norcon, Inc. v. Alaska Workers’ Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law.”<sup>87</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>88</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>89</sup>

On questions of law and procedure, the Commission does not defer to the Board’s conclusions, but exercises its independent judgment.<sup>90</sup> Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.<sup>91</sup>

#### *4. Discussion.*

The Board found that in 2007, Mr. Pitka settled claims relating to his 2004 work injury. The settlement was signed by both Mr. Pitka and his attorney, Mr. Franich. The C&R, which was approved by the Board on April 19, 2007, was for the City of Fairbanks to pay Mr. Pitka \$37,500.00 for his claims for time loss, PPI, reemployment benefits, and certain medical expenses.<sup>92</sup> He subsequently entered into a second settlement which waived his entitlement to all remaining medical benefits in exchange for the City of Fairbanks’ waiver of its lien in the amount of \$235,130.37 in the third-party litigation for previously paid workers’ compensation benefits.<sup>93</sup> The Board approved this settlement

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<sup>87</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>88</sup> AS 23.30.122.

<sup>89</sup> AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

<sup>90</sup> AS 23.30.128(b).

<sup>91</sup> *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985).

<sup>92</sup> R. 0060-72.

<sup>93</sup> R. 0329-35.

on July 27, 2007.<sup>94</sup> In the third-party litigation, Mr. Pitka was represented by Mr. Hoppner.

Mr. Pitka asserted to the Board and to the Commission that he never received the money promised by the settlement, i.e., the \$37,500.00. He asserts that he met Mr. Franich one time only, at the time of signing the C&R. At the hearing before the Board, he said that while the signatures on the C&R looked like his writing, the signature on the C&R and on the postal return receipt, and the Alaska USA FCU statements were all forgeries, presumably by Mr. Franich. He was firm in his statements that he never received the \$37,500.00 for the April 19, 2007, C&R. He also disputed that he was paid the correct PPI rating.

The Board found that Mr. Pitka was not credible regarding all of his contentions supporting his statement that he never received the settlement check because Mr. Franich received it and kept it. Finding Mr. Pitka not credible, the Board denied his claim for a replacement check. The Board also denied his claim that he was owed additional PPI, finding that he had been paid all the PPI due to him. Mr. Pitka appealed the denials.

*a. Findings of credibility are binding on the Commission.*

The Commission is bound by statute and case law to accept the Board's findings regarding the credibility of a witness. AS 23.30.122 vests in the Board the sole authority for determinations of credibility. The statute provides:

The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

AS 23.30.128 at subsection (b) states:

The commission may review discretionary actions, findings of fact, and conclusions of law by the board in hearing, determining, or otherwise acting on a compensation claim or petition. The board's findings regarding the credibility of testimony of a witness before the board are binding on the commission. The board's findings of fact shall be upheld by the commission

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<sup>94</sup> R. 0329-35.

if supported by substantial evidence in light of the whole record. In reviewing questions of law and procedure, the commission shall exercise its independent judgment.

The Alaska Supreme Court (Court), in *Sosa de Rosario v. Chenega Lodging*, held that the Commission must accept the Board's findings on credibility.<sup>95</sup> These statutes and case law are clear and controlling. The Commission must accept the credibility findings made by the Board.

The Board made explicit findings that it did not believe Mr. Pitka's assertions that his signatures and the statements from Alaska USA FCU were forgeries prepared by his former attorney, Mr. Franich. The Board noted that Mr. Pitka admitted the signature on the settlement check and on the postal receipt looked like his signature, but he said they were not his signatures, because he always signs his name Raymond Pitka, Sr. and these signatures lacked the "Sr."<sup>96</sup> Both C&Rs were signed Raymond Pitka, Sr.<sup>97</sup> The Board also compared the signatures to filings Mr. Pitka made to the Board, and the Board found those signatures looked like the signatures on the C&R, the settlement check, and the postal receipt.<sup>98</sup>

The Board also found it incredible, as claimed by Mr. Pitka, that his former attorney, Mr. Franich, not only forged his signature on the settlement check, but had also forged the statements from Alaska USA FCU showing the deposit of the settlement check, and maybe even forged his signatures on the C&R. Mr. Pitka, claiming that the Alaska USA FCU statements were forgeries, pointed to what he claimed were disparities in the amounts. That is, he believed that he never received \$200.00 in cash.<sup>99</sup> He also claimed that the statement dated "From 04-22-07 Through 05-21-07" is phony because it does

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<sup>95</sup> *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

<sup>96</sup> The Commission notes that both the settlement check and the postal receipt were made out to Raymond Pitka, which might explain why the signatures did not include "Sr."

<sup>97</sup> R. 0068, 0334.

<sup>98</sup> *Pitka* at 12.

<sup>99</sup> R. 0106.

not show a deposit of \$37,500.00.<sup>100</sup> However, the statement does show a “deposit ultrabranch-phone transfer from share 70” in the amount of \$2,500.00 and a deposit of \$34,800.00, all occurring on April 30, 2007.<sup>101</sup> Along with the \$200.00 he received according to the endorsed check, these amounts total \$37,500.00, the amount of the settlement.<sup>102</sup> Mr. Pitka has consistently asserted that he had closed the Alaska USA FCU account in 2004 when he opened an account at Denali FCU, and, therefore, the statements had to be forgeries. However, he did not provide any evidence that the account was not viable in 2007.<sup>103</sup>

Further, in support of his claim of forgeries, he pointed to the postal receipt and the date received in Anchorage of May 2, 2007, as evidence he never received the check.<sup>104</sup> However, looking at the date stamps on the receipt, it appears that the item was signed by Mr. Pitka on April 30, 2007, and the receipt returned to the insurer, AML/JIA (Alaska Municipal League Joint Insurance Association), on May 2, 2007, to verify his receipt of the check.<sup>105</sup> In his deposition, Mr. Pitka admitted that his address at that time was the address on the receipt (517 Fulton St., Fairbanks, AK 99701).<sup>106</sup> These various documents support the Board’s findings that Mr. Pitka is not credible. At a minimum, it appears he does not understand the documents he alleges support his claim.

The Commission is bound by the Board’s findings that Mr. Pitka is not credible in his claims that he never received the settlement check and that the evidence of the Alaska USA FCU statements, the signature on the settlement check, the signature on the postal receipt, and the signatures on the C&R were all forgeries. The Board denied his claim for

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<sup>100</sup> R. 0192-94.

<sup>101</sup> R. 0192-94.

<sup>102</sup> R. 0106.

<sup>103</sup> The Commission also takes notice that at oral argument, Mr. Pitka, holding up an envelope, stated that he is still getting statements from Alaska USA FCU which he does not understand since he claims he closed the account in 2004.

<sup>104</sup> R. 0217.

<sup>105</sup> R. 0217.

<sup>106</sup> Pitka dep. at 35:22 – 36:1; R. 0217.

a new settlement check. Because the Commission is bound by the Board's credibility findings, and because the Board's decision is supported by substantial evidence in the record as a whole as detailed above, the Commission affirms the Board's decision.

*b. Should the C&R be set aside?*

Mr. Pitka claims that his signatures on the April 19, 2007, C&R were forged, and this would seem to be an implicit claim to set the C&R aside. While he did not make an explicit claim to set the April 19, 2007, C&R aside, the Board analyzed whether this would have been a valid claim and decided there were no grounds upon which to set the C&R aside.

The City of Fairbanks, in its brief to the Commission, also asserted that no grounds exist for setting aside the April 19, 2007, C&R.

The Court, in *Williams v. Abood*, held that a C&R was a contract and should be interpreted like a contract.<sup>107</sup> The Court has also reviewed various grounds which might justify the setting aside or modification of a Board-approved settlement. In *Seybert v. Cominco Alaska Exploration*, the Court stated that standards of common law contract formation apply to rescission of workers' compensation settlements to the extent that statute does not override these principles.<sup>108</sup> C&Rs may not be set aside for a mistake of fact, but may be set aside for fraud, misrepresentation, or duress where these were perpetrated by the employer.<sup>109</sup> To show fraud or misrepresentation, a party must show "(1) a misrepresentation; (2) which was fraudulent or material; (3) which induced the party to enter into the contract; and (4) upon which the party was justified in relying."<sup>110</sup> To set aside a C&R for duress the party must show (1) the party involuntarily accepted the terms of another; (2) the circumstances permitted no alternative; and (3) the

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<sup>107</sup> *Williams v. Abood*, 53 P.3d 134, 139 (Alaska 2002).

<sup>108</sup> *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1093-94 (Alaska 2008) (*Seybert*).

<sup>109</sup> *Id. See also, Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009) (*Smith*).

<sup>110</sup> *Seybert*, 182 P.3d 1094.



circumstances were the result of coercive acts of the other party.<sup>111</sup> Furthermore, C&Rs may not be set aside for factual mistakes.<sup>112</sup> Moreover, once approved by the Board, C&Rs have the same legal effect as awards, but are harder to change or set aside.<sup>113</sup>

The Board, in reviewing Mr. Pitka's testimony, found no bases for setting aside the C&R for reasons of fraud, misrepresentation, duress, or mistake. Mr. Pitka did not allege any fraudulent or material misrepresentation by the City of Fairbanks nor did he provide any evidence to support such an allegation.<sup>114</sup> Rather, his allegations of misconduct were against his attorney, not the City of Fairbanks, which would not be a basis for setting aside the C&R. Mr. Pitka, while asserting that his attorney received the settlement funds, did not assert that in signing the C&R he had been deceived by the City of Fairbanks.

His claim for additional PPI is based on his misunderstanding of the legal basis for a PPI award and the fact that he had received all the PPI to which he was entitled (as is discussed below). Even if he were originally entitled to more PPI at the time of settlement, this would be a mistake of fact which is not grounds for setting aside a Board-approved C&R. Mr. Pitka, explaining why he had not sought to recover the alleged missing check sooner, spoke of several life traumas which deterred him. These included the death of his father, the death of his brother, gallbladder problems, and the loss of his housing. These stressful events do not constitute duress caused by the City of Fairbanks and so are not grounds for setting aside the C&R. In addition to finding Mr. Pitka not credible, the Board properly found that no grounds existed for setting aside the April 19, 2007, C&R.

*c. Is Mr. Pitka entitled to additional PPI?*

Mr. Pitka seeks additional PPI benefits, claiming he was not paid the full amount owed to him. He stated that he was paid based on a 10% PPI rating and claimed he

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<sup>111</sup> *Seybert*, 182 P.3d 1096.

<sup>112</sup> *Olsen Logging Co. v. Lawson*, 856 P.2d 1155, 1158 (Alaska 1993); *See also, Blanas v. Brower Co.*, 938 P.2d 1056, 1060 (Alaska 1997).

<sup>113</sup> *Id.*

<sup>114</sup> *Pitka* at 14.

should have been paid an amount based on the 20% rating by Dr. Green and the 28% rating by Dr. Cobden.

The City of Fairbanks asserted that Mr. Pitka was not owed any additional PPI because he waived all entitlement to any further PPI in the April 19, 2007, C&R. Furthermore, it averred it had previously paid Mr. Pitka "in excess of 19% PPI."<sup>115</sup> In the April 19, 2007, C&R, \$5,000.00 was attributed to the release of all PPI benefits, which the City of Fairbanks said was paid.<sup>116</sup>

There are several ratings for PPI in this matter. Dr. Green, in his EME, provided Mr. Pitka with a 20% PPI rating which he attributed to multiple degenerative discs, spinal stenosis, and Grade II spondylolisthesis.<sup>117</sup> In a follow-up report, Dr. Green clarified that this rating was based on factors that preexisted the work injury.<sup>118</sup> Mr. Pitka's treating doctor, Dr. Cross, referred him to Dr. Pulver for a PPI rating following back surgery.<sup>119</sup> Mr. Pitka says he never saw Dr. Pulver, but on September 7, 2006, she rated him as having a 10% whole person PPI rating.<sup>120</sup> For the third-party case, Dr. Cobden rated Mr. Pitka for PPI and said he had "approximately 8% above the preexisting 20% overall."<sup>121</sup>

The Alaska Workers' Compensation Act (Act) provides for payment of PPI benefits at AS 23.30.190.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$273,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the

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<sup>115</sup> *Pitka* at 4, No. 12.

<sup>116</sup> *Id.*, No. 14.

<sup>117</sup> *Id.* at 3, No. 6.

<sup>118</sup> *Id.*, No. 7.

<sup>119</sup> *Id.*, No. 9.

<sup>120</sup> *Id.*, No. 10.

<sup>121</sup> *Id.*, No. 11.

whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

The Board stated that Mr. Pitka misunderstood both Dr. Green's and Dr. Cobden's ratings. The Board properly explained to Mr. Pitka that the Act requires any PPI rating "determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury."<sup>122</sup> Dr. Green stated that his rating was all attributable to preexisting conditions. Dr. Cobden gave Mr. Pitka 8% above a preexisting 20% rating. Thus, Dr. Cobden gave Mr. Pitka only an 8% rating for the work injury. As the Board noted, the best rating for Mr. Pitka was the 10% rating from Dr. Pulver, who Mr. Pitka insisted he had never seen.

At the time of Mr. Pitka's injury, the maximum amount of PPI payable to an injured worker was \$177,000.00.<sup>123</sup> Utilizing the most favorable rating, i.e. that of Dr. Pulver, the most PPI due to Mr. Pitka would have been \$17,700.00. The Board referred to a compensation report dated April 26, 2007, which stated the City of Fairbanks had

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<sup>122</sup> AS 23.30.190(c).

<sup>123</sup> *Pitka* at 13 (AS 23.30.190(a) as law at the time of settlement); the current amount of PPI available is \$273,000.00, as amended in 2022; see note to AS 23.30.190 (am § 17 ch 105 SLA 2000).

previously paid Mr. Pitka \$22,544.44 in PPI benefits.<sup>124</sup> The Board then noted that an additional \$5,000.00 in the settlement was allocated to PPI, making the total paid to Mr. Pitka for PPI benefits \$27,544.44. This is almost \$10,000.00 more than the most favorable 10% rating would have warranted. Mr. Pitka is not owed any additional PPI. In addition, as the Board found, Mr. Pitka waived any additional PPI in the April 19, 2007, C&R which the Board found foreclosed his claim for PPI. The Board properly denied his claim for additional PPI. The Board's denial of additional PPI is affirmed because it is supported by substantial evidence in the record as a whole.

*5. Conclusion and order.*

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

Date: 30 October 2024 Alaska Workers' Compensation Appeals Commission



*Signed*

\_\_\_\_\_  
Nancy Shaw, Appeals Commissioner

*Signed*

\_\_\_\_\_  
S. T. Hagedorn, Appeals Commissioner

*Signed*

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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

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<sup>124</sup> R. 0104-05.

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. 308 issued in the matter of *Raymond Pitka v. City of Fairbanks and Alaska Municipal League Joint Insurance Association*, AWCAC Appeal No. 24-006, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on October 30, 2024.

Date: November 1, 2024



*Signed*

K. Morrison, Appeals Commission Clerk