NOTABLE CASES FOR OCTOBER 2022 BOARD MEETING

Alaska Supreme Court Decisions:

Mitchell v. United Parcel Services, 498 P.3d 1029 (Alaska 2021), affirmed the Commission's decision that the Board did not abuse its discretion when it denied reimbursement to the injured worker for a Dynesys surgery, but reversed the Commission's conclusion that UPS had rebutted the presumption that Mitchell was permanently and totally disabled, and remanded the case back with instructions for the Board to award PTD benefits to Mitchell. The Board had found Mitchell was PTD status effective 2017, but not before. On the Dynesys issue, the Court said the Board properly exercised its discretion in denying payment for that treatment because the Board relied on the fact that the FDA had warned against the precise use of the device as used in Mitchell's case, and on the fact that his condition did not improve following that surgery.

On the PTD issue, the Court held the Board and the Commission both erred by finding UPS had rebutted the presumption because the vocational evidence relied on was not tailored to specific limitations set forth in a physical capacity evaluation upon which the Board and Commission had also relied. More specifically, Mitchell had limitations on sitting. But the Board and Commission had found he had gone through the vocational reemployment process and had been retrained to a job as an Administrative Clerk, which was categorized officially as a light-duty position. Mitchell presented considerable evidence at hearing about riding his snowmachine 100 miles on one trip and moose hunting in the two years prior to his hearing, which supported the Board's finding that he could probably work a sit-down, light-duty job as an Administrative Clerk and get out of his chair and move around as necessary if his back hurt, at least until 2017, when the evidence showed his condition had worsened. Nevertheless, the Court said the evidence upon which the Board and Commission relied was inadequate to rebut the presumption that he was permanently and totally disabled. This case highlights the importance of the presumption and the fact that if the presumption is raised by the injured worker on a particular issue and not rebutted, the injured worker wins solely on the raised but unrebutted presumption.

Burke v. Criteria General, Inc., 499 P.3d 319 (Alaska 2021), involved a second case filed by the mother of an electrician apprentice who died by electrocution while on her job with a subcontractor working on a credit union remodel project. Related to the first Court decision, Marianne Burke's daughter Abigail Caudle died as a single person with no children. Under the Act, all Caudle and her family were entitled to were funeral expenses, which were paid. Burke thought that was not fair and asked for benefits as somebody who someday would be dependent upon her daughter. The Board denied the request as Burke did not meet the definition of a dependent under the Act, at the time Abigail died, and the Commission and the Supreme Court affirmed.

This newest 2021 opinion is a related case. Burke also sued the general contractor and the credit union in civil court for Abigail's wrongful death. The Superior Court awarded summary judgment to those two parties and dismissed Burke's case because in 2004 the Act had been expanded to include contractors and project owners as parties protected by the Act's exclusive liability provision. In other words, the Act is the exclusive remedy for injured workers against employers, contractors and project owners. An injured worker cannot sue her employer, or general contractor,

or a project owner for a work-related injury under AS 23.30.055, with extremely limited exceptions none of which applied in this case (mainly not having workers' compensation insurance). Burke had argued that the 2004 amendments violated her right to procedural due process because she had no remedy in court whatsoever. The Court pointed out that the remedy she had is the one she received from the Act -- funeral benefits. Because the Act did not prevent her from all access to the courts, it did not violate her due process. She could sue someone in civil court, just not the two parties she sued. Stated differently, if a third-party had been responsible for Abigail's death, other than the contractor-over or the project owner, she could have sued that third-party and possibly recovered civil damages in court.

Roberge v. ASRC Construction Holding Co., 503 P.3d 02 (Alaska 2022), overruled the Commission's decision in *Northern Construction v. James*, and reversed and remanded the Commission's decision in *Roberge*, which was based on *James*, finding that the Board was right in the *James* decision. The question in *James* and *Roberge* was the same and was, which statutory calculation is applied first: the maximum weekly compensation rate statute, or the out-of-state cost-of-living adjustment (COLA) statute?

The parties agreed on the relevant facts and agreed the first step in calculating the compensation rate is determining the spendable weekly wage under AS 23.30.220, and agreed Roberge's spendable weekly wage was $2,190.98. They agreed the next step was multiplying his spendable weekly wage by 80% under AS 23.30.185, and agreed 80% of $2,190.98 was $1,752.78. But the parties' analyses then diverged and depended on which statute should be applied first.

Roberge contended the next step was multiplying $1,752.78 by the applicable COLA, and as support for his contention quoted AS 23.30.175(b)(1)'s plain language that required exactly that calculation. The parties agreed Roberge's COLA was 72.04% and that $1,752.78 multiplied by 72.04% is $1,262.70. Because that amount exceeded the maximum compensation rate, which at the time was $1,143 per week, Roberge contended he was entitled to AS 23.30.175(a)'s $1,143 maximum weekly rate.

ASRC agreed AS 23.30.185 required multiplying the spendable weekly wage by 80% and 80% of $2,190.98 is $1,752.78. But ASRC contended that Roberge's compensation first should be reduced to the $1,143 maximum rate under AS 23.30.175(a) and $1,143 then should be multiplied by the COLA under AS 23.30.175(b)(1), resulting in a weekly $823.42 benefit.

The Supreme Court went through all the parties' contentions and reviewed the statutes in question and agreed the COLA adjustment had to be applied before the maximum compensation rate statute was applied. The Court based this in part on the mathematical fact that using the Commission's calculation in *James* and *Roberge*, he received only 30% of his spendable weekly wage and had he received the maximum compensation rate, as he contended he should, he would still receive only about 52% of the spendable weekly wage, both far less than the 80% rate the legislature deemed generally adequate incentive for employees to return to work. The Court further held that while compensation coverage may not be an unreasonable cost to employers, it also must still provide enough income so that an injured worker's standard of living will not be dramatically reduced but still be low enough to provide an incentive for the injured worker to go back to work. The Court also faulted the Commission for relying on the Division's online rate calculator as

supplanting the statutory scheme regarding Roberge's compensation rate, and said the online calculator cannot alter the statutory language.

Rusch v. Southeast Alaska Regional Health Consortium, ___ P.3d ___ (Alaska 2022), came before the Court for the second time. In its first decision in 2019, the Court reversed the Board and the Commission on an attorney fee issue. In that first instance, a mediator resolved most issues in the case except for the claimant's attorney fees, which went to hearing. The Board awarded far less in attorney fees than the claimant sought, and the Commission affirmed. The Court in that appeal reversed. The issue in the 2022 *Rusch* decision deals with the same claimant's request for enhanced attorney fees for work done before the Commission on that previous appeal.

This new decision may or may not affect attorney fees at Board hearings. But at the Commission level the prevailing employee asked the Commission to adopt the "modified lodestar" approach to awarding attorney fees. The modified lodestar approach requires the adjudicative body to first calculate a baseline attorney fee award by determining the reasonable number of hours the attorney worked and multiplying that by a reasonable hourly rate. In other words, that's what the Board does now when a party requests actual attorney fees in a disputed claim. In the modified lodestar approach, the second step is for the adjudicative body to exercise its discretion to "adjust" this baseline lodestar amount to arrive at the "final fee award." In doing so, at least in civil court, the court may consider a variety of factors in calculating the lodestar and deciding whether to adjust it, including what the Supreme Court has called the *Johnson-Kerr* factors. The attorneys in this case contended the same factors should apply in Commission appeals, and the Court agreed.

In the 2022 *Rusch*, the claimants sought an hourly lodestar fee of $450 for all hours their attorneys documented. They further contended that the $450 lodestar rate did not reflect the contingent nature of appeals in workers' compensation cases and contended the Commission should use the modified lodestar approach to adjust the fees to $600 per hour. The Court noted claimants must prevail on a significant issue on appeal to obtain fees for an appeal; by contrast, it said Board-awarded fees depend on success on the claim itself. The Court reviewed the Act and previous case law and decided the Commission misconstrued the law when the Commission decided that the Court had prohibited enhanced fees in appeals to the Commission. As part of their arguments, the claimants pointed to the lack of represented claimants and statistical data to argue that low attorney fees discourage attorneys from representing injured workers.

The Court rejected the Commission's decision that $450 an hour was a fully compensatory and reasonable rate because it did not explain in detail how it weighed the relevant factors from Professional Conduct Rule 1.5(a) in reaching its decision. In short, the Court determined that the Commission had made the same error the Board had made in the original decision from which the attorneys sought fees on appeal. The Commission failed to address relevant evidence and related arguments at least minimally. Workers' compensation legal experience is relevant in awarding attorney fees but is not the only factor that needs to be considered. The Court said on remand the Commission should evaluate the claimants' requests and evidence, and make findings that explain how it considered Professional Conduct Rule 1.5(a) factors in determining fees, understanding that it is permitted, but not required, to enhance fees under a modified lodestar approach. The Court noted fees under the modified lodestar approach could also go down.

The professional conduct rule in question states in relevant part:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.

State of Alaska, Workers' Compensation Benefits Guaranty Fund v. Adams, ___ P.3d ___ (Alaska 2022), arose from an underlying injury claim by Adams against an uninsured employer, Heath. Adams fell about 30 feet while working on a roof repair on Heath's rental property after cribbing underneath the ladder he was using gave way. Adams is now permanently and totally disabled. It was undisputed he was drinking beer and using cocaine at some point before the accident. Because Heath had no insurance, the Guaranty Fund was added as a defendant in the claim. At hearing, the Board determined the proximate cause of Adam's fall was the fact that the cribbing underneath the ladder shifted causing the ladder and Adams to fall. The Board found that whatever Adam's alcohol and cocaine level was at the time of the injury, which was speculative, it was not the proximate cause of his fall and, consequently, Heath and the Fund could not use that as a successful bar to his recovery under AS 23.30.235, which bars recovery for an injury proximately caused by intoxication or by the employee being under the influence of non-prescribed drugs. The Fund appealed from the Board's decision.

The Commission affirmed the Board's decision by relying on the statutes, the evidence and prior case law and found the Board's decision was supported by substantial evidence. The Fund appealed to the Alaska Supreme Court, which affirmed. The Court also found the Board was justified in giving an expert doctor's opinion less weight and giving greater credibility to the injured worker who said he fell because the cribbing shifted, which would have caused anyone on the ladder to have fallen, intoxicated or not.

Board and Commission Decisions:

Amos v. Tidwell, et al. AWCB Dec. No. 21-0102 (November 4, 2021) involved a case with three potentially liable employers for an injured worker who fell from a roof while working on a "shop" at Plambeck's residence. The Board found potentially liable employer Plambeck credible and found the shop on which Amos was injured had no connection with any business interest and was

built solely for Plambeck's personal use and enjoyment. Thus, under applicable statutes and case law, the Board found the shop construction project was consumptive rather than productive and Plambeck was not Amos' employer or a project owner as those terms are used in the Act, so Plambeck was dismissed from the case.

The Board next addressed Amos' claim that Plambeck's flooring company, PFCI, was Amos' employer. Amos contended Plambeck hired his own business to construct the shop, making PFCI Amos' employer. The Board found Plambeck's testimony that all materials purchased for the shop were made from personal funds, except for one relatively minor amount that was accidentally charged to the PFCI credit card, was credible. No PFCI products were stored there. Because PFCI did only flooring work, and there was no evidence PFCI was Plambeck's contractor constructing the shop, and because constructing shops was not the business PFCI undertakes, it was neither Amos' employer nor his "special employer" and would be dismissed as a party.

That left Tidwell as potentially Amos' employer. The Board found substantial evidence proved Tidwell helped Plambeck out of friendship and Tidwell asked Amos to help on the shop project also because they were friends and Amos needed money. The Board found friendship is not a route through which the cost of industrial accidents should be channeled and, since Tidwell's regular work was as a flooring installer for PFCI, helping other friends out may have been a regular activity for him, but it was an activity not in connection with any business or industry Tidwell had. Consequently, the Board also dismissed Amos' claim against Tidwell.

Amos had filed a claim against the Fund because Plambeck as an individual and Tidwell had no insurance. Since the Board found Plambeck, PFCI and Tidwell were not liable to Amos as his employer under any legal theory, the Board also dismissed Amos' claims against the Fund, because the Fund only pays benefits if an "employer" is found liable and fails to pay.

This case is on appeal to the Commission. The question remains if Amos now can sue Plambeck or Tidwell in tort under some theory.

Wilson v. The Home Depot USA, Inc., AWCB Dec. No. 21-0120 (December 20, 2021) shows the old-fashioned compensation rate adjustment claim is alive and well in certain circumstances. Wilson was injured in 2020. Under the standard compensation rate calculation method, her weekly disability benefits would normally be based on the highest of her earnings in either 2018 or 2019, divided by 50. It was undisputed Wilson earned only $1,405 in 2018, and nothing in 2019. The Board applied past and recent Commission and Alaska Supreme Court decisions to this evidence and decided using the standard calculation method from AS 23.30.220 would result in an irrational award. They found Wilson was mostly out of the job market in the two years preceding her work injury and at the time of her injury was working full time and earned over $4,000 between March 23, 2020 through May 3, 2020, which was more than she made altogether in 2018, which resulted in her compensation rate going from a minimal amount to $482.26 per week. Moreover, the Board found a $2.50 per hour COVID pay bonus also had to be included in the earnings calculation.

Hughes v. Medical Park Family Care, AWCB Dec. No. 22-0003 (January 13, 2022), addressed a claim by a nurse that she contracted a heart condition known as POTS from a hepatitis B vaccine

she had after a contaminated needle-stick at work for the employer. After the vaccination, Hughes began having symptoms, and was ultimately diagnosed with POTS. At hearing, the Board found the employer's expert medical testimony said POTS was idiopathic, which means he did not know what causes it, but he knew it was not the vaccine; the Board found these opinions were based on speculation and were not "substantial evidence" to rebut the presumption. Therefore, she prevailed. Alternately, the Board found even had the employer rebutted the presumption Hughes still proved she had a work-related condition based on her physician's opinion that the hepatitis B vaccine caused it. The Board would give greater weight to his opinions than to the employer's medical experts. The Board also found Hughes was entitled to PTD benefits due to her undisputed diagnosis. It also awarded a compensation rate adjustment, medical benefits, a penalty, interest and attorney fees.

The employer appealed to the Commission, which found the employer had rebutted the presumption; it ordered a stay and remanded the case to the Board for a supplemental decision to determine whether the employee had proven her case by a preponderance of the evidence.

On remand, a different panel heard the matter and in *Hughes v. Medical Park Family Care*, AWCB Dec. No. 22-0044 (June 21, 2022), came to the opposite conclusion from the first panel's decision in January 2022. It found the evidence showed Hughes' needle-stick injury and resultant prophylactic hepatitis B vaccine were not the cause of her POTS. This *Hughes* decision found Hughes failed to prove by a preponderance of the evidence that her work injury was the substantial cause of her disability and need for treatment, and denied her claim. This case is on appeal to the Commission.

Eljmazi v. Burlington Coat Factory, AWCB Dec. No 22-0009 (February 3, 2022), considered Eljmazi's appeal from the RBA-designee's decision finding her not eligible for reemployment benefits based on a finding she could return to work as a Custom Tailor, which was work she had done in the 10 years prior to her injury while being self-employed in Macedonia. Eljmazi contended the RBA failed to consider her limited English-speaking ability, which was an important requirement according to the applicable selected vocational preparation code requirements for that position. The employer contended several physicians opined she could return to work as a Custom Tailor and, absent any contrary medical opinions, the RBA-designee did not abuse her discretion and it should be affirmed.

There were no factual disputes. Notably, the parties agreed Eljmazi's two attending physicians predicted she had permanent physical capacities to return to work as a Custom Tailor. Eljmazi implied the Board should infer that neither of those two physicians knew she had language difficulties, and if they had they would have come to a different conclusion. The panel declined to make that inference as there was no evidence the attending physicians did not take Eljmazi's language skills into account, which they would have known about since they had treated her for her work injury. A vocational reemployment specialist who worked on Eljmazi's case testified if it was up to him he would say it was unlikely Eljmazi could perform the Custom Tailor job in the United States, because of the language issue, but he also recognized it was not up to him; it was up to her physicians to make those physical capacity predictions. Based on the record before it, the Board affirmed the RBA-designee's decision finding Eljmazi was not eligible for retraining benefits. This case is on appeal before the Commission.

Woodell v. Alaska Regional Hospital, AWCB Dec. No. 22-0019 (March 16, 2022) was the tenth decision in this case and decided nurse Woodell's four physicians' letters supporting his claim were inadmissible as evidence because, contrary to the Commission's order in one of the previous nine decisions in this case, Woodell failed to present them for cross-examination by the employer. The Board further held that a prior Board decision with a different panel finding Woodell's C-diff infection arose out of his work with the employer did not result in "the law of the case doctrine" applying here because that decision was based on the inadmissible physicians' reports. Lastly, the Board found Woodell lacked medical evidence in a highly technical case to raise the presumption and cause it to attach. Therefore, it found Woodell had to prove his claim by a preponderance of the evidence, which the Board found he could not do basically because he had no admissible medical evidence. The Board chose to rely on the employer's expert opinions over Woodell's opinions and reports to them, and Woodell did not present them for cross-examination at hearing so the Board could not rely on most of them anyway. This case is on appeal to the Commission.

Edwards v. State of Alaska, AWCB Dec. No. 22-0027 (April 22, 2022) addressed an injury Edwards had in 2010 when a tree fell on him. As result of his work injuries, Edwards a functional paraplegic was prescribed hand controls and other adaptations to his existing pickup truck. Nearly 10 years later, Edwards's physician prescribed a wheelchair and in 2020 Edwards bought a new truck outfitted with accessibility modifications to replace his previous vehicle. His employer refused to pay for the new truck for Edwards since he would require transportation even if he were not injured. The Board held the employer was required to pay for increased costs associated with the purchase of a modifiable vehicle with Edwards contributing towards the vehicle's cost. It also found the employer failed to rebut the presumption regarding the requirement for leather seats, hands-free controls, a backup camera and auxiliary battery and alternator since Edwards would not have needed those amenities but for his work injury. The Board further credited Edwards' testimony that he needed leather seats so he could slide himself into and out of the truck more easily, hands-free controls because driving always required both hands, a backup camera because he cannot turn his head to look over his shoulder, and an auxiliary battery and alternator to power the additional hand controls, hydraulic lift and clamshell topper that had a crane in it to assist him in loading his wheelchair. The Board ordered the employer to pay for these. As for other amenities, the Board found his previous truck would have had to be replaced due to mileage and use regardless of his work injury. The Board found since the employee was not permanently and totally disabled, and was working, the employer did not have to pay for additional features such as a crew-cab, four-wheel drive and an off-road package because they were not necessitated by the work injury but were necessitated because Edwards lives in Alaska. In short, the Board ordered the employer to pay for the increased costs associated with numerous modifications and amenities that arose out of his work injury, but Edwards had to pay the full cost of any truck he selected and could sell or trade in his current vehicle to offset his costs. This case is on appeal to the Commission.

Martino v. Alaska Asphalt Services, LLC, AWCB Dec. No. 22-0046 (June 29, 2022), addressed Martino's request for so-called reemployment "stipend" benefits during a period she was being evaluated for vocational reemployment eligibility, even though she was ultimately found not eligible. If an injured worker suffers a compensable injury and is not able to return to the worker's employment at the time of injury for 90 consecutive days, the statute requires an eligibility

evaluation. The employer paid Martino temporary total disability benefits for well over 90 days but never advised the RBA of this fact until months past the 90-day period. Board regulations provide exclusive grounds for an employer to controvert an eligibility evaluation that will result in the RBA halting the evaluation process. Employer never controverted on grounds the employee lied on her employment application, failed to give the employer timely injury notice, failed to timely file a claim or committed workers' compensation fraud. Moreover, the employer never controverted based on grounds Martino's injury did not arise out of or in the course of her employment. These are the only grounds upon which an employer can controvert benefits that will stop the reemployment eligibility evaluative process from moving forward. So, the RBA-designee was correct in moving the evaluation forward. Relying on the statutes and Supreme Court precedent, the Board held that since Martino was actively pursuing reemployment benefits by participating in the reemployment benefits eligibility evaluation, she was entitled to the stipend benefits during the evaluation period, until she was found not eligible, as a matter of law.

Ocean Beauty Seafoods, Inc. v. Quimiging, AWCAC Dec. No. 296 (October 4, 2022) dealt with Quimiging who had a stipulation with the employer and settled his case in a Board-approved partial C&R. Part of the stipulated agreement and the partial C&R was that the employer agreed to pay reasonable and necessary future medical and transportation benefits to include a nurse case manager to assist Quimiging in locating a hand surgeon and therapist to provide him with rehabilitative treatment for his left hand, subject of the work injury. The Commission's decision is the last in a series of decisions.

Quimiging severely injured his left hand and developed complex regional pain syndrome in it due to the injury, which caused additional symptoms. He also had poor English and normally spoke Tagalog. Quimiging returned to California and his attorney repeatedly asked the employer to provide a nurse case manager to assist Quimiging in finding someone in his local area to provide the treatment recommended by his Alaska physician. The Board's first decision, among other things, ordered the employer to provide a nurse case manager to assist Quimiging in finding appropriate treatment, and found the employer had improperly relied on a treating doctor's statements that Quimiging had reached medical stability because the same physician had also stated Quimiging's condition might improve with pain management treatment, which the Board found rendered his opinions confusing and unreliable. In other words, a person cannot be medically stable if a doctor predicts that there will be objectively measurable improvement from additional treatment. Thus, the Board in the first decision found the employer's controversion of TTD benefits was unfair or frivolous and referred the matter to the Division of Insurance under AS 23.30.155(o). The employer appealed.

On appeal, the employer contended the Board mistakenly ordered it to provide a nurse case manager to assist Quimiging because this amounted to the Board ordering it to direct the pain management specialist how to treat Quimiging. It further contended the Board had no authority to direct the employer to use a nurse case manager, which it considered an administrative cost and not a medical benefit to Quimiging. The Commission drew a distinction between a nurse case manager hired to assist the injured worker in finding medical treatment and one hired to monitor the employee's treatment and report back to the insurance company. Since the parties stipulated the employer would use a nurse case manager to help Quimiging find and obtain appropriate treatment, the Commission relied on "going forward" language from the stipulation and applied

AS 23.30.095(a) to these facts to find the employer's agreement to provide a nurse case manager to be "medical and other attendance" as contemplated by the Act. The Commission also rejected the employer's argument that the Board's requirement for a nurse case manager required the employer to direct Quimiging's treatment. It simply required the employer to pay for the nurse case management services to assist him in finding a doctor who could provide necessary treatment. The Commission affirmed the Board's decision on this point.

On the TTD issue, the employer contended Quimiging was medically stable, and it justifiably stopped his TTD benefits. Quimiging contended he was not medically stable because his physician also recommended additional pain management to improve his function, which is an opinion opposite of the definition of medical stability under the Act. The Commission agreed with Quimiging that the employer should not have relied on the physician's internally inconsistent medical stability opinion and should not have cut off his TTD benefits. It affirmed the Board's award of TTD benefits during the applicable times.

The Commission also agreed with Quimiging that the employer should have sought a Board order before terminating his TTD benefits, because those benefits were being paid because of a prior Board decision. It relied on Supreme Court precedent for this finding.

The employer also contended on appeal the Board should not have ordered it to pay Quimiging two separate late-payment penalties. It first contended the two penalties were not listed separately on the prehearing conference summary that controls the issues for the hearing. The Commission held "penalty" was listed as an issue for hearing, giving the employer notice it should be prepared to defend against any penalty. The employer also contended it never denied medical treatment nor the use of a nurse case manager so it should not have been penalized on those benefits. The Commission disagreed and found the Board ordered TTD should have continued until he was medically stable and the penalty on those benefits was automatic and owed.

The Commission further affirmed the Board's decision on the referral to the Division of Insurance, finding the physician's opinion on which the employer had relied was so equivocal that the employer never should have relied on it to terminate Quimiging's TTD benefits, without first having a hearing before the Board.

Lastly, the employer contended the Board should not have ordered a work-hardening program and a PPI rating evaluation when Quimiging ultimately became medically stable because those issues were not identified on the controlling prehearing conference summary, and it had not controverted those benefits. The Commission again disagreed with the employer and found "medical costs" were listed as an issue on the controlling prehearing conference summary and work-hardening programs are medical costs and PPI rating is required if an injured worker is to be eligible for retraining benefits. The Commission found the Board did not err in awarding these costs.