

ALASKA WORKERS' COMPENSATION BOARD MEETING



January 11, 2024

TABLE OF CONTENTS

<u>TAB 1</u> Page 4	Agenda
<u>TAB 2</u> Page 6	Board Minutes October 12-13, 2023
<u>TAB 3</u> Page 11	Board Member Roster January 2024
<u>TAB 4</u> Page 13	Board Designees January 2024
<u>TAB 5</u> Page 15 Page 31	Director's Report Director's Report Organization Staffing Chart
<u>TAB 6</u> Page 33 Page 34 Page 97	New Business Public Notice of Stakeholder Meeting 8 AAC 45.070 8 AAC 45.071

TAB 1

ALASKA WORKERS' COMPENSATION BOARD MEETING AGENDA

JAN 11, 2024

**ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION**

Zoom Video Conference: <https://us02web.zoom.us/j/81009515974>

To participate telephonically: 888-788-0099, Webinar ID: 81009515974

Thursday, Jan 11, 2024

- 9:00am** Call to order
Roll call establishment of quorum
Introduction of Senior Staff
- 9:10am** Approval of Agenda
- 9:15am** Reading and approval of minutes from Oct 12 and 13, 2023, Board meeting
- 9:30am** Director's Report
- Division Update
 - Approval of Board Designees
- 10:00am** Break
- 10:15am** Public Comment Period
- Public comments
- 11:15am** Budget & Staffing Update – Alexis Hildebrand, Admin Officer
- 11:30am** Old Business
- None pending.
- 12:00pm** Lunch Break
- 1:30pm** New Business
- AMA Guides, AS 23.30.190(d)
 - Hearing procedures for SIME scheduling, 8 AAC 45.070
 - Hearing officer as a commissioner's designee, 8 AAC 45.071
- 3:00pm** Break
- 3:15pm** New Business Continued
- 5:00pm** Adjournment

TAB 2

Workers' Compensation Board

Meeting Minutes

October 12-13, 2023

Thursday, October 12, 2023

I. Call to Order

Workers' Compensation Director Charles Collins called the Board to order at 9:02 am on Thursday, October 12, 2023. The meeting was held in Anchorage, Alaska, and by video conference.

II. Roll call

Director Collins conducted a roll call. The following Board members were present:

Bradley Austin	Randy Beltz	Pamela Cline	John Corbett
Mike Dennis	Sara Faulkner	Bronson Frye	Anthony Ladd
Sarah Lefebvre	Mark Sayampanathan	Marc Stemp	Robert Weel
Debbie White	Lake Williams		

Director Collins noted that member Steven Heidemann was excused. Member Jonathon Dartt was absent, and members Randy Beltz and Bronson Frye arrived after roll call. A quorum was established.

Director Collins introduced the senior staff present.

III. Agenda Approval

A motion to approve the agenda was made by member White and seconded by member Weel. Member Lefebvre requested that the Board discuss a resolution to protect the Benefits Guaranty Fund under New Business. Member White accepted the amendment to the motion and member Weel seconded. A unanimous vote approved the amended agenda.

IV. Approval of Meeting Minutes

A motion to adopt the minutes from the May 18-19, 2023, Board Meeting was made by member Weel and seconded by member Lefebvre. The minutes were adopted without objection.

V. Director's Report

Director Collins reviewed the list of Board Designees. A motion to accept the board designees was made by member Austin and seconded by member Weel. The motion passed unanimously.

Director Collins presented Division updates.

Break 10:05 am -10:15 am

VI. Public Comment Period 10:15 am- 11:30 am

Jackie Doerner, Rehabilitation Specialist

- Brought attention to SB 147, which would increase reemployment benefits to \$22,150 plus COLA.
- Encouraged individuals to contact their representatives in support of the bill.

Justin Morigeau – representing self

- Gave testimonial on personal case.
- Emphasized the need for oversight of IME doctors and controversions, and a better compensation rate for high-wage earners.
- Stated the litigation process causes long-term emotional distress.

Andrew Wilson – representing Rehbock & Wilson

- Requested the Board consider re-adding the previously removed regulation that allowed Council to ask SIME questions.
- Requested the Division improve the content of compensation reports and notification letters to make them easier to understand.
- Requested the Division consider a secure e-filing system.
- Responded to Mr. Morigeau’s story and stated that the scenario is common and IME doctors often do not read the medical records.
- Asked the Board to propose or support legislation that would allow claimant attorneys to be paid, and to allow them to attend an IME with the injured worker.

Patty Wilson – representing University of Alaska

- In response to Mr. Morigeau and Mr. Wilson’s public comment, Ms. Wilson reminded the Board that AS 23.30.122 gives the Board the power to determine the credibility of witnesses, including medical witnesses.

Dan LaBrosse, Rehabilitation Specialist – representing DAL Enterprises, LLC

- Stated support for SB 147.

Josetta Cranston, Rehabilitation Specialist – representing Northern Country Services

- Stated support for SB 147.

VII. Annual Report

Administrative Officer Alexis Hildebrand provided an overview of Division staffing and the FY23 budget performance.

Lunch Break 12:30 pm - 1:30 pm

VIII. Regulations

Adopt 8 AAC 45.083, relating to fees for medical treatment and services. Member Lefebvre moved to adopt the amendment of 8 AAC 45.083, and member Austin seconded the motion. The motion passed unanimously.

Adopt 8 AAC 45.410 – 45.500, relating to reemployment benefits. Member Lefebvre moved to adopt the amendment and member Sayampanathan seconded the motion. The motion passed unanimously.

IX. Annual Report continued

Velma Thomas, Program Coordinator, reviewed statistics from the Division’s 2022 annual report, a compilation of statistics and benefit data obtained from insurers and self-insured employers pursuant to AS 23.30.155(m).

Break 3:00 pm - 3:15 pm

Stacy Niwa, Reemployment Benefits Administrator, reviewed the performance of the Reemployment Benefits Program.

Michele Wall-Rood, Chief of the Special Investigations Unit (SIU), gave an overview of the SIU’s performance.

Member Austin motioned to adjourn for the day, and member Cline seconded.

Meeting Adjourned 4:34 pm

Friday, October 13, 2023

I. Call to Order

Director Collins resumed the Alaska Workers’ Compensation Board meeting at 9:02 am on Friday, October 13, 2023, in Anchorage, Alaska. The following Board members were present.

Bradley Austin	Randy Beltz	Pamela Cline	John Corbett
Micheal Dennis	Sara Faulkner	Bronson Frye	Anthony Ladd
Sarah Lefebvre	Mark Sayampanathan	Marc Stemp	Robert Weel
Debbie White	Lake Williams		

Member Steven Heidemann was excused and member Jonathon Dartt was absent. A quorum was established.

II. Annual Report Continued

William Soule, Workers’ Compensation Hearing Officer, presented notable Decisions and Orders from the Alaska Workers’ Compensation Board, the Alaska Workers’ Compensation Appeals Commission, and the Alaska Supreme Court.

Break 10:20 am – 10:29 am

Dani Byers, Workers' Compensation Officer II, reviewed SIME statistics.

Break 11:09 am – 11:14 am

III. New Business

Adopt 8 AAC 45.440(f)(5). Member Sayampanathan moved to approve the amendment of 8 AAC 45.025 through 8 AAC 45.072. Member White seconded the motion. The motion passed unanimously.

Kyle Redding, Workers' Compensation Hearing Officer, provided an overview of Supreme Court Order No. 2012 regarding remote and in-person hearings.

Lunch 12:00 pm – 1:31 pm

Stacy Niwa, Reemployment Benefits Administrator, presented the information about Stay at Work/Return to Work.

Member Lefebvre motioned that the Board resolve to stabilize the Benefits Guaranty Fund and member Austion seconded. The Board discussed and made amendments to the drafted proposal. Member Lefebvre amended the motion to accept the discussed changes and member Austin seconded. The motion passed unanimously.

A motion to adjourn was made by member Austin and seconded by member Dennis. The motion passed unanimously.

Meeting Adjourned 3:05 pm

TAB 3

ALASKA WORKERS' COMPENSATION BOARD

Chair, Commissioner Catherine Muñoz
Alaska Department of Labor and Workforce Development

Name	Seat	District	Affiliation	
Charles Collins	Commissioner's Designee			
Brad Austin	Labor	1 st Judicial District	Plumbers and Pipe Fitters Local 262	
Debbie White	Industry	1 st Judicial District		
Randy Beltz	Industry	3 rd Judicial District	Intl. Brotherhood of Electrical Workers LU 1547	
Pamela Cline	Labor	3 rd Judicial District		
Mike Dennis	Industry	3 rd Judicial District		
Sara Faulkner	Industry	3 rd Judicial District		
Bronson Frye	Labor	3 rd Judicial District		Painters and Allied Trades Local 1959
Steven Heidemann	Labor	3 rd Judicial District		
Anthony Ladd	Labor	3 rd Judicial District		
Mark Sayampanathan	Industry	3 rd Judicial District		
Marc Stemp	Industry	3 rd Judicial District		
Vacant	Labor	3 rd Judicial District		
John Corbett	Labor	2 nd /4th Judicial District	Laborers Local 942	
Jonathon Dartt	Industry	2 nd /4th Judicial District		
Sarah Lefebvre	Industry	2 nd /4th Judicial District	Colaska	
Lake Williams	Labor	2 nd /4th Judicial District	Operating Engineers Local 302	
Bob Weel	Industry	At Large		
Vacant	Labor	At Large		

TAB 4



BOARD DESIGNEES – January 2024

The following staff members are appointed as Board designees to act on the Board’s behalf in accordance with the Alaska Workers’ Compensation Act and Regulations. (For example, the Board designee may conduct prehearing conferences, take action in connection with Board-ordered second independent medical examinations, and decide whether to continue or cancel scheduled Board hearings.)

<u>NAME</u>	<u>LOCATION</u>	<u>POSITION TITLE</u>
Charles Collins	Juneau	Director
Janel Wright	Juneau	Acting Chief of Adjudications
William Soule	Anchorage	WC Hearing Officer II
Janel Wright	Anchorage	WC Hearing Officer II
Vacant	Anchorage	WC Hearing Officer I/II
Vacant	Anchorage	WC Hearing Officer I/II
Kyle Reding	Anchorage	WC Hearing Officer I
Kathryn Setzer	Juneau	WC Hearing Officer II
Robert Vollmer	Fairbanks	WC Hearing Officer II
Vacant	Fairbanks	WC Hearing Officer I/II
Elizabeth Pleitez	Anchorage	WC Officer II
Harvey Pullen	Anchorage	WC Officer II
Amanda Johnson	Anchorage	WC Officer II
Vacant	Anchorage	WC Officer I
Vacant	Anchorage	WC Officer I
Dani Byers	Juneau	WC Officer II
Amy Bender	Fairbanks	WC Officer II

TAB 5



**ALASKA DEPARTMENT OF LABOR
& WORKFORCE DEVELOPMENT**

Workers' Compensation Division

Director Report

...to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers...

Accomplishments 2023

Successfully held a series of open meetings with rehabilitation specialists to understand issues and statutory shortcomings.

Reclassification of positions in the support team started successfully with two vacant positions reclassified.

The Program Coordinator position was adjusted from a series 1 to 2, this realigned the team to better match the work produced.

Anchorage Hearing/Board room received technological updates.

Regulation updates for rehabilitation benefits were agreed upon with the user group and signed into code.

Successful adoption of a Medical Fee Schedule on time.

Several new Board members were integrated into our team.

The Special Investigations Unit not only had a record year for settlements but made the news by assisting in uncovering Medicare Fraud at a business and successfully getting an indictment of the owners.

The Workers' Compensation Division stayed within budget and met all key metrics.

Goals in progress 2023

Chief of Adjudications.

A bill for protection of the Benefits Guarantee Fund.

Forms update.

Classification/Salary study for hearing Officers.

Reclassification of support team positions in Anchorage to meet the needs of the Division.

Legislation to address issues in reemployment/rehabilitation.

Stay-at-Work / Return-to-Work program.

Prehearing procedures.

New Fish Fund database.

Goals for 2024

- Update the Proof of Coverage module.
- Improve the process for audit of trading partners annual reporting.
- Implement a user-friendly web page for claim tracking.
- Update Emergency Action Plans for all locations.
- Hold division wide business process training sessions.
- Division wide HIPPA and ADA training.
- Prepare for Legislative Audit.
- Successful adoption of a Medical Fee Schedule on time.
- Hire a Hearing Officer

Issues to Address

Regarding the Benefit Guarantee Fund

We are forecasting a budget shortfall for the Benefit Guarantee Fund, (BGF), for FY2024, which ends on June 30 of this year. The past few budget cycles, a constitutionalized budget sweep has occurred with no “reverse” sweep action.

A requirement by Article IX, Section 17(d) of the Alaska Constitution to sweep the funds in the general fund and sub-funds of the general fund that are available for appropriation at the end of each fiscal year into the Constitutional Budget Reserve Fund (CBRF).

Although the BGF ended FY 2021 with a healthy balance of \$3.9 million, the lack of a reverse sweep in the next fiscal years has erased any funds available for large claims. This has resulted in the Division asking for supplemental funds for coverage of claim expenses both last year and this year. Projected shortfall for FY2024 is \$518,570.

Regarding the AMA Guides

AS 23.30.190(d) requires the adoption of a new edition of the AMA Guidebook upon publication of a new edition. In the past we, (the Director), had held the view that new edition would be a change from the current sixth edition to a seventh edition as in the past. However, the AMA has currently moved to a digital version that is published differently. While still the “sixth” edition, it has updated changes and name. The newest “version” is the AMA Guides

Sixth 2023 edition was authorized for use on January 1, 2023. This release has generated questions from our partners pressuring the Division / Board to adopt the current version for Alaska, as prescribed by statute. After conferring with the Attorney General's office, a determination of the statute does provide for guidance of adopting new "editions" as released. A quick look at Black's Law Dictionary shows "edition – any quantity of books put forth to the bookselling trade at one time by the publisher." The attorney who looked at this stated in plain language "The consistent use of "new AMA Guide", "newest version", and "newly published AMA Guide" in the legislative history indicates to me that "new edition" does not just mean a 7th or 8th Edition, but rather any new version of the AMA Guide that is published."

The statute, AS 23.30.190(d), states that a open meeting must be held to select a date when all determinations required un AS 23.30.190(b) will require the use of the new edition. I have set January 18, 2024, as the date for the open meeting. After the meeting we have ninety days to move to the new edition.

Pending Legislation

House Bill 63 and Senate Bill 60

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Workers' Compensation Appeals Commission; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions; repealing rules..."

These bills are in the respective judicial committees and have passed the labor and commerce committee of both the House and Senate. Discussion has continued between sessions and currently the AWCAC has only had two appeals in 2023.

Senate Bill 147

"An Act relating to reemployment rights and benefits."

This bill implements many changes in AS 23.30.041, a number of those changes have been pushed by this Board and are finally getting noticed. SB 147 has been assigned to the Senate Labor and Commerce committee and several members of this committee have asked for information about the proposed changes. I worked with Senator Bjorkman and his staff to explain the bill and possible amendments for the committee to consider. Recently, RBA Niwa and I met with Senator Gray-Jackson and supplied those amendments to this bill. Both of those meetings were productive. I met with Senators Kaufman and Bishop to explain our position and I am confident that the Senate is agreeable to amending AS 23.30.041.

House Bill 92 and Senate Bill 93

“An Act relating to claims for injury, disability, or heart attack payable from the fishermen’s fund...”

These companion bills raise the amount the Fishermen’s Fund could reimburse an injured fisherman for medical care and transportation from \$10,000 to \$15,000. The bills also increase the reimbursement of vessel owners with P&I coverage for their deductible amount up to \$15,000.

The Senate version has taken precedence and is currently in the Rules Committee in both houses and could be sent to the floor of either the House or Senate quickly.

Legislation Needed

Regarding the Benefit Guarantee Fund

AS 23.30.082. Workers' compensation benefits guaranty fund.

- (a) The workers' compensation benefits guaranty fund is established in the general fund to carry out the purposes of this section. The fund is composed of civil penalty payments made by employers under [AS 23.30.080](#), income earned on investment of the money in the fund, money deposited in the fund by the department, and appropriations to the fund, if any. However, money appropriated to the fund does not lapse. Amounts in the fund may be appropriated for claims against the fund, for expenses directly related to fund operations and claims, and for legal expenses.

Protection of the Benefit Guarantee Fund, this statutory change is needed to remove the BGF from Legislative sweep action and preserve the funds to be available for Alaska’s most vulnerable injured employees. This bill action has been supported by the AWCB in Resolution 23-01, recently shared with the Legislature and the Governor.

AS 23.30.082. Workers' compensation benefits guaranty fund.

- (a) The workers’ compensation benefits guaranty fund is established [*in*] **outside and separate from** the general fund to carry out the purposes of this section. The fund is composed of civil penalty payments made by employers under AS 23.30.080, [*income earned on investment of the money in the fund*], money deposited in the fund by the department, and appropriations to the fund, if any. However, money appropriated to the fund does not lapse. Amounts in the fund may be [*appropriated*] **used by the division** for claims against the fund, for expenses directly related to fund operations and claims, and for legal expenses **without further appropriation.**

- (b) Every three months, the Department of Revenue shall provide the division with a statement of the activities of, balances in, **and** interest earned on, [*and interest returned to*] the fund. **The legislature may appropriate the interest earned on the fund to the fund.**
- (c) Subject to the provisions of this section, an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers' compensation claim. The fund may assert the same defenses as an insured employer under this chapter.
- (d) If the fund pays benefits to an employee under this section, the fund shall be subrogated to all of the rights of the employee to the amount paid, and the employee shall assign all right, title, and interest in that portion of the employee's workers' compensation claim and any recovery under AS 23.30.015 to the fund. Money collected by the division on the claim or recovery shall be deposited in the fund.
- (e) If the money deposited in the fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the fund shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order in which the claims were originally filed, without interest.
- (f) The division may contract under AS 36.30 (State Procurement Code) with a person for the person to adjust claims against the fund. The contract may cover one or more claims.
- (g) In this section, "fund" means the workers' compensation benefits guaranty fund.

Regarding a Stay-at-Work / Return-to-Work Plan

A program designed for employers to successfully maintain their employees in a productive/cost effective manner, following an on-the- job injury. Stay at Work / Return to

Work programs allow employees to continue working while recovering from a work-related injury.

A conversation with Senate Labor and Commerce Committee has generated interest with Senator Gray-Jackson working with Leg Legal on producing language for a bill.

Regarding Procedure on Claims

AS 23.30.110. Procedure on claims.

d) At the hearing the claimant and the employer may each present evidence in respect to the claim and may be represented by any person authorized in writing for that purpose.

Alaska Workers' Compensation Laws and Regulations Annotated, Rel. EB21-22E Sec. 23.30.110

This paragraph allows a claimant to name a representative to assist with the claim procedure. Originally intended for those who may have language barriers or communication issues, this was to allow a family member to assist. Currently this has been used by parties that have a non-attorney relationship to assist in integrating themselves into the workers' compensation procedure and hinder the process. The most common issue before the Board is the implementation of ADA accommodations, which only requires a notice from a medical provider, to be placed upon the Division and the Board allowing for the very real possibility of stagnation of the procedure. Amending the statute to narrow the representation to immediate family members may improve expediency. The removal of representation by any person without a license to practice law may be a hurdle to high. The State may want to investigate an ombudsman type approach for unrepresented claimants.

California recently updated their law to implement standards for non-attorneys:

Regarding Determination of Fraud

AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions.

- (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 — 11.46.150.

Alaska Workers' Compensation Laws and Regulations Annotated, Rel. EB21-22E Sec. 23.30.250

To aid the Division in expediting and enforcing this statute I propose adding a path to a civil penalty for misclassification of employees.

The division may assess a civil penalty against an employer that misclassifies employees or engages in deceptive leasing practices as provided in AS 23.30.080.

Regarding determination of Wages

AS 23.30.220. Determination of spendable weekly wage.

- (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

Payroll tax deductions has become an issue with the changed W-4 form.

Pending Regulation Work Done

8 AAC 45.083

The Official Alaska Medical Fee Schedule 2024 edition will take effect on January 1, 2024.

8 AAC 45.400 – 500.

Reemployment and rehabilitation regulation amendments went into effect November 29, 2023.

Regulation Work Needed

Hearings, 8 AAC 45.070

The amended regulation provides hearings on petitions for SIMEs will be held on the written record and decisions will be issued within 40 days of a party filing: (1) a petition for an SIME, (2) a “substantially completed SIME form,” and (3) the medical records that reflect a dispute.

8 AAC 45.070. Hearings. (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

(b) Except as provided in (1)(A) **and (F)** of this subsection and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

(1) A hearing is requested by using the following procedures:

(A) For review of an administrator's decision issued under AS 23.30.041, a party shall file a petition asking for review of the administrator's decision. An affidavit of readiness for hearing form is not required. In reviewing the administrator's decision, the board may not consider evidence that was not available to the administrator at the time of the administrator's decision unless the board determines the evidence is newly discovered and could not with due diligence have been produced for the administrator's consideration.

(B) On the written arguments and evidence in the board's case file regarding a claim or petition, a party must file an affidavit of readiness for hearing in accordance with (2) of this subsection requesting a hearing on the written record. If the opposing party timely files an affidavit opposing a hearing on the written record, the board or designee will schedule an in-person hearing. If the opposing party does not timely file an affidavit opposing the hearing on the written record, the board will, in its discretion, decide the claim or petition based on the written record. If the board determines additional evidence or written arguments are needed to decide a claim or petition, the board will schedule an in-person hearing or will direct the parties to file additional evidence or arguments.

(C) For an appearance in-person at the hearing, except for a venue determination, a party must file an affidavit of readiness in accordance with (2) of this subsection requesting an in-person hearing.

(D) On a venue dispute, a party must file a petition asking the board to determine the venue and an affidavit of readiness for hearing on the written record. In accordance with 8 AAC 45.072, the board will consider the parties' written arguments and evidence in the case file, and an in-person hearing will not be held.

(E) For default under AS 23.30.170, a party shall file a claim and may file the claim together with an affidavit of readiness for hearing.

(F) On a medical dispute under AS 23.30.095(k) or AS 23.30.110(g), a party shall file and serve on opposing parties

(1) a petition asking the board to order a second independent medical evaluation,

(2) a completed second independent medical evaluation form, and

(3) medical records reflecting the medical disputes.

If the parties do not stipulate to the second independent medical evaluation within 20 days of service of the documents in (1)-(3) of this subsection, the board or its designee will schedule and the board will hold a hearing on the written record with briefs, and will issue its decision and order within 40 days of the date the documents in this subsection were filed with the division and served on the opposing party. An affidavit of readiness for hearing form is not required.

(2) Except as provided in (1) of this subsection, a party may not file an affidavit of readiness for hearing until after the opposing party files an answer under 8 AAC 45.050

to a claim or petition or 20 days after the service of the claim or petition, whichever occurs first. If an affidavit is filed before the time set by this paragraph,

(A) action will not be taken by the board or designee on the claim or petition;
and

(B) the party must file another affidavit after the time set by this paragraph.

(3) If the board or designee determines a hearing should be scheduled even though a party has not filed an affidavit of readiness for hearing, the board or designee will give notice of the hearing in accordance with AS 23.30.110 and 8 AAC 45.060(e).

(c) To oppose a hearing, a party must file an affidavit of opposition in accordance with this subsection. If an affidavit of opposition to a hearing on a claim for compensation or medical benefits is filed in accordance with this subsection, the board or its designee will, within 30 days after the filing of the affidavit of opposition, hold a prehearing conference. In the prehearing conference the board or its designee will schedule a hearing date within 60 days or, in the discretion of the board or its designee, schedule a hearing under (a) of this section on a date stipulated by all the parties. If the affidavit of opposition is not in accordance with this subsection, and unless the parties stipulate to the contrary, the board or its designee will schedule a hearing within 60 days, and will exercise discretion in holding a prehearing conference before scheduling a hearing. An affidavit of opposition that is filed under this subsection must

(1) be filed with the board's office nearest the requested hearing location;

(2) be filed within 10 days after the filing of the affidavit of readiness for hearing that is being opposed;

(3) have proof of service upon the other parties;

(4) list the parties' names and the date of the affidavit of readiness for hearing that is being opposed; and

(5) state the specific reason, and not a general allegation, that the case should not be heard, that a party is not ready, or why a hearing is not appropriate.

(d) If an agreed settlement is reached less than 14 days before a scheduled hearing and (1) it conforms to AS 23.30.012 and 8 AAC 45.160, and is filed with the board at least two working days before the scheduled hearing, the parties must appear at the scheduled hearing time to request board action under AS 23.30.012 on the agreed settlement; if the board does not approve the agreed settlement, the hearing will proceed as scheduled; or (2) it is not in accordance with AS 23.30.012, 8 AAC 45.160 and this subsection, the parties must appear before the board or its designee at the scheduled hearing time to state the terms of the settlement agreement; after the parties have stated the terms of the settlement, a request to continue, postpone, cancel, or change the scheduled hearing may be made in accordance with 8 AAC 45.074; if the board or its designee denies the request to continue, postpone, cancel, or change the scheduled hearing, the hearing will proceed as scheduled.

(e) If a settlement is reached more than 14 days before a scheduled hearing, but it is not written and signed by the parties, and approved by the board, the hearing will proceed as scheduled.

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

- (1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the claim or petition;
- (2) dismiss the claim or petition without prejudice; or
- (3) adjourn, postpone, or continue the hearing.

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.

(h) If no prehearing was conducted or if not determined at the prehearing, the board will provide for opening and closing arguments, including a statement of the issues, in accordance with 8 AAC 45.116.

(i) At hearing, the board will consider a legal memorandum only if it is in accordance with 8 AAC 45.114.

(j) If the hearing is not completed on the scheduled hearing date and the board determines that good cause exists to continue the hearing for further evidence, legal memoranda, or oral arguments, the board will set a date for the completion of the hearing.

(k) The board will, in the board's discretion, permit a member

(1) to attend a hearing by telephone; or

(2) who did not attend a hearing before a two-member panel to review the written record, evidence, and hearing recording and to deliberate with

(A) a deadlocked two-member panel to make a decision; or

(B) the remaining member of a two-member panel if, before a decision is filed on a case heard by a two-member panel, one member dies, resigns from the board, is replaced by the governor, or the member's term of appointment expires.

(l) Before the member is added to the panel under (k) of this section, the board will write to the parties, stating the member's name, and give the parties an opportunity to request the member's disqualification from the panel in accordance with AS 44.62.450(c).

8 AAC 45.071. Hearing officer as a commissioner's designee

(a) A hearing officer shall serve as a commissioner's designee to hear and decide procedural and stipulated matters without a panel. An action of a hearing officer under this section is an action of the full board.

(b) For purposes of this section,

(1) a procedural matter is limited to

- (A) a petition for an order under AS 23.30.015;
- (B) settlement terms on the record;
- (C) venue;
- (D) a supplementary default order;
- (E) a petition to quash a subpoena;
- (F) a petition for testimony by teleconference;
- (G) a petition for social security offset;
- (H) a declaration of amount in default; **or**
- (I) an uninsured employer's discharge order;**
- (J) a petition for a second independent medical evaluation.**

(2) a stipulated matter is limited to

- (A) an award of attorney's fees and costs;
- (B) a continuance;
- (C) a failure to insure and civil penalty assessment under AS 23.30.080;
- (D) a stipulation under 8 AAC 45.050(f); **or**
- (E) approving or denying a compromise and release agreement.**

Possible regulation amendments

SIME regulation **8 AAC 45.092** should be clarified to explain the role of the committee and the power to remove medical professionals from the SIME list.

Furthermore, 8 AAC 45.900(j), the definition of "previously rehabilitated" is improper and outside of statute. This paragraph should be deleted in its entirety. (Legal opinion from 2005)

Staff has identified issues caused by 8 AAC 45.072. Venue. This regulation is unwieldy and does not match the Alaska Court System process for location of hearings. A proposed change to wording and using the Court District as boundaries is offered. This will match the Court and keep the Board Panel in each District intact.

Regulation updates under consideration

Expanding the procedural and stipulated matters hearing officers can hear as the commissioner’s designee. Those procedural issues are uninsured employer’s discharge orders and SIME petitions. The possible new stipulated matter is approving or denying a compromise and release agreement. Board members may be opposed to the addition of SIME disputes and C&R approval and denial.

Amendments to further regulations dealing with medical treatment plans, 8 AAC 45.086(a)(14), gross weekly earnings, 8 AAC 45.220, and possible HIPPA guidance have been contemplated by WCD staff. Medical Fee Schedule regulations are being reviewed to ensure consistency and clarity. A clarification of 8 AAC 45.210(b), needs to be accomplished. The words [the green copy of] should be removed in the sentence before **form 07-6101**.

With the last Legislative session changes in Senate Bill 131, consideration of regulations on firefighter presumptions and permanent partial impairment may also require amending.

Due to the findings at the Alaska Supreme Court in the Rusch case, an adjustment to 8 AAC 45.180 might need to be addressed. Guidelines for attorney billings, the format billed, and the makeup of time for which the bill relates too are required.

AWCB Issues

Currently we have two vacancies in Board membership, both are Labor designee positions. The at large Panel seat is vacant and one third District Panel seat is vacant.

Board member terms due for reappointment

On March 1, 2024, six sitting members have terms that expire. To remain on the Board, each member must file a letter of interest and fill out the on-line application.

Name	Panel	Affiliation
Pamela Cline	Southcentral	Labor
John Corbett	Northern	Labor
Bronson Frye	Southcentral	Labor
Steven Heidemann	Southcentral	Labor
Robert Weel	At Large	Industry

Debbie White	Southern	Industry
--------------	----------	----------

Form and Communication Updates

WC staff has formed a team to identify forms and letters that are used in the claims database to update language to match current law.

Director Concerns

The National Council on Compensation Insurance, (NCCI), has recommended a -10.4% reduction in the voluntary market and a -12.4% reduction in the assigned risk market for 2024. This will make the fourteenth year of consecutive rate reductions for the voluntary market. This does not mean that a certain business will pay less than the preceding year in premiums as this is only one part of the components that make up the cost of insurance. Classification rates, experience modules, payroll amount, and even payment plans all impact the premium and influence the actual amount a business may pay annually. However, the big picture shows an improvement in costs to employers.

Attorney fees, how to balance AS 23.30.145 to the Supreme Court decision.

Medical treatment and billing questions.

Sourcing Hearing officer candidates.

Developing a reemployment plan guide.

Develop a Board member training manual.

Update and improve the Hearing Officer manual.

Independent contractor issue.

Self-Insurance reserves and Letters of Credit.

Legislative Audit

Charles Collins
Director
PCN 07-3001
JNU XE

Velma Thomas
Program Coordinator II
Rg 20 PCN 07-1026
JNU SU

Alexis Hildebrand
Admin Officer II
Rg 19 PCN 07-3026
JNU SU

Stacy Niwa
RBA
Rg 22 PCN 07-3047
ANC XE

Michele Wall-Rood
Investigator IV
Rg 20 PCN 07-4557
ANC SU

Janel Wright
Acting Chief of Adj
Rg 25 PCN 07-3005
ANC XE

Dawn Wilson
 Collections Officer
 Rg 16 PCN 21-3047
 JNU GG

Michael Christenson
 Project Assistant
 Rg 16 PCN 07-5527
 JNU GG

Grace Morfield
 WC Officer II
 Rg 18 PCN 07-3007
 ANC GG

William Keen
 Investigator II
 Rg 16 PCN 07-3064
 ANC GG

Kathryn Setzer
 WC Hearing Off II
 Rg 22 PCN 07-3061
 JNU GG

William Soule
 WC Hearing Off II
 Rg 22 PCN 07-3060
 ANC GG

Ted Burkhart
 WC Officer I
 Rg 16 PCN 07-3046
 JNU GG

Brittani Scanlon
Admin Assistant II
Rg 14 PCN 07-3055
JNU SU

Malaika Tesson
 WC Officer II
 Rg 18 PCN 07-3012
 ANC GG

Christine Christensen
 Investigator III
 Rg 18 PCN 07-3070
 ANC GG

VACANT
 WC Hearing Off I/II
 Rg 22 PCN 07-3042
 FBKS GG

Janel Wright
 WC Hearing Off II
 Rg 22 PCN 07-3059
 ANC GG

Nanette Ferrer
 WC Tech - FF
 Rg 12 PCN 07-3028
 JNU GG

Myron Speller
 Office Asst I
 Rg 8 PCN 07-3003
 JNU GG

Darlene Charles
 WC Tech
 Rg 12 PCN 07-3030
 ANC GG

Julie Milazzo
 Investigator III
 Rg 18 PCN 07-3072
 ANC GG

VACANT
 WC Tech
 Rg 12 PCN 07-3037
 ANC GG

Robert Vollmer
 WC Hearing Off II
 Rg 22 PCN 07-3044
 FBKS GG

VACANT
 WC Hearing Off I/II
 Rg 22 PCN 07-3043
 ANC GG

031

VACANT
 WC Tech - FF
 Rg 12 PCN 07-1027
 JNU GG

Marcus Schaufele
 Office Asst II
 Rg 10 PCN 07-3014
 JNU GG

Zach Penor
 Office Asst I
 Rg 8 PCN 07-3071
 ANC GG

Wayne Harger
 Investigator III
 Rg 18 PCN 07-3069
 FBKS GG

VACANT
 WC Tech
 Rg 12 PCN 07-3052
 ANC GG

Kyle Reding
 WC Hearing Off I
 Rg 21 PCN 07-3013
 ANC GG

Elizabeth Pleitez
 WC Officer II
 Rg 18 PCN 07-3040
 ANC GG

Danielle Kalmakoff
 Office Asst I
 Rg 8 PCN 07-3010
 JNU GG

Deirdre Ford
Chair, WC Appeals
Commission
Rg 27 PCN 07-X001
ANC XE

David Price
 Investigator III
 Rg 18 PCN 07-3068
 JNU GG

Rochelle Comer
 Office Asst II
 Rg 10 PCN 07-3011
 ANC GG

Dani Byers
WC Officer II
Rg 18 PCN 07-3009
JNU SU

Harvey Pullen
 WC Officer II
 Rg 18 PCN 07-3027
 ANC GG

Aldwyn McCuiston
 Office Asst I
 Rg 8 PCN 07-3062
 JNU GG

VACANT
 WC Tech - SIU
 Rg 12 PCN 07-5872
 ANC GG

Pamela Hardy
 WC Tech
 Rg 12 PCN 07-3025
 ANC GG

Lorvin Uddipa
 WC Tech
 Rg 12 PCN 07-3004
 JNU GG

Ariella Cristobal
 Student Intern I
 Rg 6 PCN 07IN1901
 JNU GG

Devin Gross
 Office Asst I
 Rg 8 PCN 07-1720
 JNU GG

Kathleen Morrison
 Law Office Assistant III
 Rg 14 PCN 07-3067
 ANC GG

VACANT
 WC Officer I
 Rg 16 PCN 07-3031
 ANC GG

Hannah Seutter
 Office Asst I
 Rg 8 PCN 07-7005
 ANC GG

Amy Bender
WC Officer II
Rg 18 PCN 07-3024
FBKS SU

VACANT
 WC Officer I
 Rg 16 PCN 07-3056
 ANC GG

Suzie Schmidt
 WC Technician
 Rg 12 PCN 07-3063
 FBKS GG

Whitney Murphy
 Office Asst II
 Rg 10 PCN 07-3036
 FBKS GG

Zach Norman
 Student Intern I
 Rg 6 PCN 07IN1902
 ANC GG

TAB 6

STATE OF ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT BENEFITS SECTION

NOTICE OF PUBLIC MEETING: The Alaska Workers' Compensation Division will conduct public stakeholder meeting on January 18, 2024. This meeting is open to the public and will begin at 10:00 am. The meeting is scheduled to last one hour but may be extended depending on turnout and participation. The meeting will be held in-person and by Zoom video conference.

The meetings will be held in person at the following location:

Department of Labor Building
3301 Eagle Street
Hearing Room 208
Anchorage, Alaska

- To participate telephonically, call 888-788-0099, Meeting ID: 830 2128 4718
- To participate by Zoom Video Conference: <https://us02web.zoom.us/j/83021284718>

The purpose of these meeting is to discuss adoption of a new AMA Guide to the Evaluation of Permanent Impairment, and the date of inception of use as directed by Alaska Statute 23.30190(f).

Public comment will be taken telephonically or in person. If you are unable to participate telephonically, you may submit written comments prior to the meeting. Written comments must be received no later than 5:00pm on the preceding Friday. Send written comments to:

Charles Collins
3301 Eagle Street, Suite 301
Anchorage, AK 99503-4749
-or-
workerscompensation@alaska.gov

If you are a person with a disability who needs a special accommodation to participate in this process, please contact Alexis Hildebrand at (907) 465-6059 or alexis.hildebrand@alaska.gov no later than 10 days prior to each meeting to ensure that any necessary accommodations can be provided.

For additional information regarding the meeting, please contact Alexis Hildebrand at (907) 465-6059.

Charles Collins
Director
Division of Workers' Compensation
Office: 907-465-2790
Fax: 907-465-2797

PROPOSED REGULATION AMENDMENT

PROMPT HEARINGS ON DISPUTED REQUESTS FOR SECOND INDEPENDENT
MEDICAL EVALUATIONS

Register _____, _____ 202_ LABOR AND WORKFORCE DEVELOPMENT

8 AAC 45.070 is amended to read:

8 AAC 45.070. Hearings. (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

(b) Except as provided in (1)(A) **and (F)** of this subsection and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

(1) A hearing is requested by using the following procedures:

.....

(F) On a medical dispute under AS 23.30.095(k) or AS 23.30.110(g), a party shall file and serve on opposing parties

(1) a petition asking the board to order a second independent medical evaluation,

- (2) a completed second independent medical evaluation form signed by the party that filed the petition, and**
(3) medical records reflecting the medical disputes.

If the parties do not stipulate to the second independent medical evaluation within 20 days of service of the documents in (1)-(3) of this subsection, the board or its designee will schedule and the board will hold a hearing on the written record with briefs, and will issue its decision and order within 40 days of the date the documents in this subsection were filed with the division and served on the opposing party. An affidavit of readiness for hearing form is not required.

(In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 3/31/2002, Register 161; am 5/12/2019, Register 230, am ___ / ___ / ___, Register ___)

Authority: AS 23.30.005

AS 23.30.110

AS 23.30.135

PROPOSED REGULATION AMENDMENT
HEARING OFFICER AS BOARD DESIGNEE

Register _____, _____ 202_ LABOR AND WORKFORCE DEVELOPMENT

8 AAC 45.071 is amended to read:

8 AAC 45.071. Hearing officer as a commissioner's designee

(a) A hearing officer shall serve as a commissioner's designee to hear and decide procedural and stipulated matters without a panel. An action of a hearing officer under this section is an action of the full board.

(b) For purposes of this section,

(1) a procedural matter is limited to

....

(G) a petition for social security offset; [OR]

(H) a declaration of amount in default;

(I) an uninsured employer's discharge order; or

(J) a petition for a second independent medical evaluation.

(2) a stipulated matter is limited to

....

(C) a failure to insure and civil penalty assessment under AS 23.30.080; [OR]

(D) a stipulation under 8 AAC 45.050(f); **or**

(E) approving or denying a compromise and release agreement.

(Eff. 3/28/2012, Register 201; am ___ / ___ / ___, Register ___)

Authority: AS 23.30.005