# Alaska Workers' Compensation Appeals Commission

| | |
|---|---|
| Gary R. Davis,<br>Appellant,<br><br>vs.<br><br>Wrangell Forest Products and Wausau Underwriters Insurance Company,<br>Appellees. | Final Decision<br><br>Decision No. 256 January 2, 2019<br><br><br><br>AWCAC Appeal No. 18-007<br>AWCB Decision Nos. 18-0018, 18-0032<br>AWCB Case No. 198803834 |

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 18-0018, issued at Juneau, Alaska, on February 27, 2018, by southern panel members Kathryn Setzer, Chair, Bradley Austin, Member for Labor, and Charles Collins, Member for Industry, and Final Decision and Order on Reconsideration No. 18-0032, issued at Juneau, Alaska, on March 28, 2018, by southern panel members Kathryn Setzer, Chair, Bradley Austin, Member for Labor, and Charles Collins, Member for Industry.

Appearances: Gary R. Davis, self-represented appellant; Martha T. Tansik, Barlow Anderson, LLC, for appellees, Wrangell Forest Products and Wausau Underwriters Insurance Company.

Commission proceedings: Appeal filed May 8, 2018; briefing completed October 1, 2018; oral argument held October 15, 2018.

Commissioners: James N. Rhodes, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

*1. Introduction.*

In 1989, Wrangell Forest Products (WFP) petitioned the Alaska Workers' Compensation Board (Board) to terminate benefits to Gary R. Davis (Mr. Davis) for an injury sustained in 1988.[1] In a dispute over which employer was responsible for future

[1] *Gary R. Davis, Wrangell Forest Prod. and Wausau Ins. Co. v. C&F Logging Co. and Alaska Timber Ins. Exch.*, Alaska Workers' Comp. Bd. Dec. No. 89-0064 (Mar. 9, 1989)(*Davis I*).

benefits, the Board found WFP to be the responsible employer for Mr. Davis's ongoing medical expenses and other benefits related to his work injuries. Subsequently, Mr. Davis and WFP entered into a compromise and release (C&R) settling indemnity benefits related to the March 3, 1988, back injury, with medical benefits remaining open.[2]

Mr. Davis subsequently sought benefits for ongoing medical complaints, specifically surgery on his left knee, and on April 18, 2017, a hearing was held in Juneau, Alaska, on his request for a follow-up Second Independent Medical Evaluation (SIME) with a neurosurgeon. The Board denied his request.[3] Mr. Davis filed a petition for review of this decision with the Alaska Workers' Compensation Appeals Commission (Commission), which was denied on June 23, 2017.[4]

WFP then filed a petition to dismiss Mr. Davis's workers' compensation claim for benefits related solely to his left knee on the grounds he failed to timely request a hearing under AS 23.30.110(c).[5] The hearing was held in Juneau on February 6, 2018, and the Board issued its decision granting WFP's petition.[6] Mr. Davis filed a petition for reconsideration which the Board heard on the written record on March 20, 2018, in Juneau, Alaska. The Board denied the petition on March 28, 2018.[7] Mr. Davis appealed both decisions to the Commission on May 8, 2018. Oral argument was heard on October 15, 2018, in Anchorage, Alaska. The Commission now reverses the Board's

---

[2] *Gary R. Davis v. Wrangell Forest Prod. and Wausau Underwriters Ins. Co.*, Alaska Workers' Comp. Bd. Dec. No. 17-0049 (May 2, 2017)(*Davis II*) at 3, No. 8.

[3] *Id.* at 11.

[4] *Gary R. Davis v. Wrangell Forest Prod. and Wausau Underwriters Ins. Co.*, Order on Petition for Review, AWCAC Appeal No. 17-008 (June 23, 2017).

[5] Benefits remain open for Mr. Davis's right leg and back. Hr'g Tr. at 4:24 – 5:4, Feb. 6, 2018; Exc. 0292.

[6] *Gary R. Davis v. Wrangell Forest Prod. and Wausau Underwriters Ins. Co.*, Alaska Workers' Comp. Bd. Dec. No. 18-0018 (Feb. 27, 2018)(*Davis III*); Final Decision and Order Errata (Feb. 28, 2018).

[7] *Gary R. Davis v. Wrangell Forest Prod. and Wausau Underwriters Ins. Co.*, Alaska Workers' Comp. Bd. Dec. No. 18-0032 (Mar. 28, 2018)(*Davis IV*).

decision and remands this matter to the Board in order to schedule a hearing on the merits.

*2. Factual background and proceedings*.[8]

*a. Medical history*.

Mr. Davis has a long history of problems with his back and knees. On January 21, 1987, Mr. Davis injured his back when a log rolled on him while employed with C&R Logging Company.[9] On March 9, 1988, Mr. Davis reported he injured his back again carrying coils of haywire while employed by WFP.[10] John Gibson, M.D., on May 5, 1988, performed an L3-4 micro discectomy. He noted in his operative findings, "[t]here were epidural adhesions present binding down the nerve root. In addition, there was a bulging disc."[11]

David Samani, M.D., on December 26 and 28, 1988, evaluated Mr. Davis's right knee, which he reported injuring on December 25, 1988, when he slipped on ice. His left knee gave out causing him to twist his right knee. Dr. Samani diagnosed a right medial meniscal tear and recommended a diagnostic arthroscopy.[12]

On January 11, 1989, Joseph Shields, M.D., recommended arthroscopic knee surgery and opined Mr. Davis's "back and subsequent nerve difficulties with his left leg caused his left leg to give way and that is the direct cause of the fall and the injury to Mr. Davis's right knee." He opined Mr. Davis's right knee difficulties were attributable to the March 1988 work injury.[13] On January 12, 1989, Mr. Davis underwent right knee trochlea debridement and arthroscopic partial medial meniscectomy. Dr. Shields

---

[8] 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.

[9] *Davis II* at 2, No. 1.

[10] *Id.*, No. 2.

[11] *Id.*, No. 3.

[12] *Id.* at 2-3, No. 4.

[13] *Id.* at 3, No. 5.

diagnosed a medial meniscus tear with minimal fraying of the anterior cruciate ligament and traumatic chondromalacia of the trochlear side of the patella-femoral joint.[14]

On June 6, 1989, Hamid Mehdizadeh, M.D., performed a bilateral laminectomy at L3-4 levels with cauda equine decompression and exploration of the L3-4 nerve root bilaterally, a laminectomy at L4-L5, a left-sided discectomy at L3-4 with decompression of the L3-4 nerve root on the left side, and a posterior interbody fusion of L3-4 using a cadaver back bone. He placed Harrington rods between L3-4 with a cross link between the Harrington rods, and performed posterior, anterior, and posterolateral fusion at the L3-4 levels.[15]

There is a gap in the medical records until December 12, 2012, when Mr. Davis saw Brent Adcox, M.D., an orthopedic spine surgeon, who examined Mr. Davis's left knee and ordered an MRI. Dr. Adcox noted:

> [Mr. Davis] has a history of left knee pain for quite some time. He has a little genu varum in that knee with a history of some torn cartilage in that knee and surgical treatment of that. The knee hurts when he is walking on unsteady ground. It feels like it catches.

Dr. Adcox opined the medial aspect of Mr. Davis's knee had some early degenerative change, secondary to his previous meniscectomy.[16] An x-ray of the left knee on December 12, 2012, showed significant medial compartment narrowing with subchondral sclerosis consistent with degenerative osteoarthritis.[17] Mr. Davis's left knee posteromedial meniscus demonstrated an absent free edge consistent with a vertical tear or bucket-handle-type tear, possible small displaced meniscal fragments in the medial compartment, focal loss of articular cartilage on the medial femoral condyle with corresponding subcondylar edema in the femoral condyle, a small Baker's cyst, and small joint effusion.[18]

---

14 *Davis II* at 3, No. 6.

15 *Id.*, No. 7.

16 *Id.*, No. 9.

17 *Id.* at 4, No. 10.

18 *Id.*, No. 11.

On January 3, 2013, Dr. Adcox diagnosed Mr. Davis with a left medial meniscus tear and left medial femoral condyle chondromalacia, and recommended left arthroscopic knee surgery for a partial medial meniscectomy. Dr. Adcox noted Mr. Davis "had no specific injury" to his left knee.[19] Mr. Davis underwent left knee surgery on January 22, 2013, which included a partial medial meniscectomy and subchondral medial femoral condyle drilling. He reported he had been suffering with knee pain for "quite some time" and had a "history of a previous medial meniscectomy that did well."[20]

On May 6, 2013, Dr. Adcox stated Mr. Davis "is better than he was prior to surgery but he still has some startup pain. This is all related to his osteoarthritis he has in his knee." He noted Mr. Davis "understands his preexisting osteoarthritis is the likely underlying source of all of his pain, as it is startup pain and it gets better with time."[21]

On May 29, 2013, Michael R. Fraser, Jr., M.D., an orthopedist, performed an Employer Medical Evaluation (EME). Dr. Fraser stated Mr. Davis reported he injured his left knee in December 2012, while walking on a treadmill when Mr. Davis got a shooting pain down the right leg, which caused Mr. Davis to stumble and twist his left knee. Dr. Fraser diagnosed Mr. Davis with left knee osteoarthritis with varus gonarthrosis. He opined Mr. Davis's left knee condition was unrelated to the March 1988 work injury and the March 1988 work injury was not a substantial factor for the left knee arthritis and need for treatment. He stated the substantial cause of arthritis in Mr. Davis's left knee was Mr. Davis's weight, activity level, and genetic disposition.[22]

On October 27, 2014, Mr. Davis visited Dr. Adcox to discuss if work was a substantial factor in the need for medical treatment for his left knee. Dr. Adcox noted:

> [Mr. Davis] had a note from [WFP] regarding his request for my opinion on the left knee and its[sic] relevance to a work-related low back injury and a right knee injury that occurred back in 1988. [I had an] in-depth conversation with [Mr. Davis] [about] his history of intermittent radicular pain stemming from his low back injury. He was on a treadmill when he

---

19 *Davis II* at 4, No. 12.

20 *Id.*, No. 13.

21 *Id.*, No. 14.

22 *Id.*, No. 15.

> had radicular pain emanating from his lumbar spine, which caused him to wince, have a misstep onto the rail twisting the knee with a subsequent injury; therefore, I believe as this individual's treating physician to a reasonable degree of medical certainty that his left knee injury is related in consequence to his lumbar spine injury from 03/09/88 as the cause of the twisting to his left knee.

Dr. Adcox diagnosed a left knee meniscus tear subsequent to an injury precipitated by radicular pain from his back causing an "unfortunate accident on a treadmill."[23]

On November 13, 2015, Mr. Davis saw Kristen Jessen, M.D., for a neurological consultation. Dr. Jessen noted that in 2013 Mr. Davis fell on a treadmill, injuring his left knee. She assessed Mr. Davis with diabetic polyneuropathy and lumbosacral radiculopathy. She suspected Mr. Davis "had an episode of radicular pain which caused the left lower extremity to buckle which in turn caused the left knee damage, which was sustained during the fall."[24]

On March 23, 2016, Peter E. Diamond, M.D., an orthopedist, performed an SIME. Dr. Diamond diagnosed Mr. Davis with (1) lumbar sprain/strain secondary to the January 1987 incident; (2) L3-4 herniated disc secondary to the March 1988 incident; (3) status post multiple surgeries with failed back syndrome secondary to L3-4 herniated disc; (4) history of right knee arthroscopy with right knee partial medial meniscectomy and chondromalacia of trochlea; and (5) history of left knee arthroscopy, partial medial meniscectomy and treatment of Grade IV chondromalacia, and medial femoral condyle of the left knee. He opined the March 1988 work injury was a substantial factor in causing disability and the need for treatment for Mr. Davis's lumbar and right knee injuries, but was not a substantial factor in the recent medical treatment for the left knee. Dr. Diamond stated he would revise his opinion if there was documentation the episode described on the treadmill resulted in the left knee injury; however, only the meniscus tear would be the consequence of the treadmill incident, but not the underlying arthritic condition. Dr. Diamond analyzed Mr. Davis's medical record and stated:

---

[23] *Davis II* at 5, No. 16.

[24] *Id.*, No. 20.

> The etiology of the left leg giving out is unclear, but it would be reasonable to conclude, to a reasonable degree of medical probability, that the left leg collapse on 12/28/88 was related to the lumbar injury, and therefore, that the right knee problem with subsequent medical meniscectomy is attributable to the [March 1988] injury.
>
> . . . .
>
> The first mention of knee pain is by Dr. Adcox on 12/12/12, noting that [Mr. Davis] had a history of left knee pain for 'sometime,' noting a history of prior surgery for a cartilage tear from which the examinee recovered. However, the records available to me do not document previous left knee surgery. It is unclear whether a left knee injury and arthroscopy had previously occurred, or if Dr. Adcox and/or [Mr. Davis] are conflating the left knee with the right knee.
>
> Moreover, there is a reference in an Independent Medical Evaluation to a note by Dr. Adcox on 10/27/1[sic], documenting an injury specifically secondary to radicular pain while [Mr. Davis] was on a treadmill for his lumbar spine injury, causing him to wince, misstep, and twist the knee. Unfortunately, the laterality is not specified in this note, and all I have is a second-hand copy, rather than the original note.
>
> However, a further note by Dr. Adcox on 1/3/13 again indicates no specific injury to the left knee, just chronic, intermittent knee pain.
>
> . . . .
>
> I cannot determine, to a reasonable degree of medical probability, the etiology of the left knee pain, but it appears clear that the examinee had pre-existent arthritis prior to the 1/22/13 left knee arthroscopy.
>
> It would therefore be my opinion, based on the records available to me, that the right knee meniscus tear and a portion of subsequent arthritis are secondary to the [March 1988] injury, but that the left knee condition is not, in fact, demonstrably secondary to the lower back injury. Ascribing the right knee is based on the assumption that [Mr. Davis]'s left leg gave out because of radicular pain and/or weakness.
>
> . . . .

Dr. Diamond said it was inappropriate for Mr. Davis's left knee to be examined by a neurosurgeon, and further treatment for either knee would "most reasonably be performed by an orthopedic surgeon."[25]

---

[25] *Davis II* at 6-7, No. 22.

*b. Procedural history.*

In 1989, WFP petitioned the Board to terminate benefits to Mr. Davis for an injury sustained in 1988.[26] In a dispute over which employer was responsible for future benefits, the Board found WFP to be the responsible employer for Mr. Davis's ongoing medical expenses and other benefits related to his work injuries. Subsequently, Mr. Davis and WFP entered into a C&R which the Board approved on December 3, 1990.[27] The C&R settled indemnity benefits for Mr. Davis's March 3, 1988, work injury, but left medical benefits open.[28] WFP accepted compensability for the March 1988 back injury and the December 1988 right knee injury.[29]

On July 2, 2013, WFP denied all benefits for Mr. Davis's left knee based on Dr. Fraser's EME report and the C&R. WFP served Mr. Davis by mail to his address of record and included the following warning:

> When must you request a hearing (Affidavit of Readiness for Hearing form)?
>
> If the insurer/employer filed this controversy notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.[30]

On August 7, 2013, Mr. Davis claimed a lower back injury, but did not indicate which benefits he was seeking on the claim form.[31] On August 28, 2013, Mr. Davis filed a claim for a lower back injury but did not indicate on the claim form which benefits he was seeking.[32] On August 30, 2013, WFP denied all benefits for Mr. Davis's left knee

---

26 *Davis I.*

27 *Davis II* at 3, No. 8.

28 *Id.*

29 *Id.* at 8, No. 27.

30 *Davis III* at 4, No. 16.

31 *Id.* at 5, No. 17.

32 *Id.*

based on Dr. Fraser's EME report and the December 3, 1990, C&R.[33] WFP's controversion notice was on the Board prescribed form, which on the reverse side of the form stated:

> When must you request a hearing (Affidavit of Readiness for Hearing form)?
>
> If the insurer/employer filed this controversy notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.[34]

Mr. Davis, on September 3, 2013, confirmed he was seeking medical benefits for his lower back and left knee.[35] He confirmed he received the "Workers' Compensation and You" pamphlet. The Board Designee noted an Affidavit of Readiness for Hearing (ARH) form "is a formal request for a hearing and is filed once discovery is complete and the parties are fully prepared for hearing." The Designee advised Mr. Davis:

> AS 23.30.110(c) provides: 'If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.' In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. The board designee will include an Affidavit of Readiness for Hearing form, which is also available at the website http://www.labor.state.ak.us/wc, with this prehearing conference summary.

The Division served the September 3, 2013, prehearing conference summary on Mr. Davis by first-class mail and included an ARH form.[36]

---

33 *Davis III* at 5, No. 18.

34 *Id.*, No. 19.

35 *Id.*, No. 20.

36 *Id.*

On June 11, 2015, Mr. Davis requested an SIME.[37] On July 2, 2015, WFP acknowledged a dispute between Dr. Adcox and Dr. Fraser, and requested a delay of the SIME process to allow Dr. Fraser to examine Mr. Davis because the previous EME was over two years old.[38]

On July 23, 2015, the Division served Mr. Davis with an August 20, 2015, prehearing conference notice to his address of record.[39]

On August 20, 2015, WFP attended a prehearing conference; Mr. Davis did not attend. The Board Designee scheduled another prehearing conference on September 22, 2015. The prehearing conference summary included the following notice:

> AS 23.30.110(c) provides: 'If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.' In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.[40]

On August 21, 2015, Mr. Davis called the Division and updated his address of record.[41] The Division served Mr. Davis a copy of the August 20, 2015, prehearing conference summary by first-class mail to Mr. Davis's updated address of record and to his previous address.[42]

---

37 *Davis III* at 5, No. 22.

38 *Id.*, No. 23.

39 *Id.* at 6, No. 24.

40 *Id.*, No. 25.

41 *Id.* at 7, No. 26.

42 *Id.*

On September 11, 2015, Dr. Fraser performed an EME. Dr. Fraser diagnosed Mr. Davis with left knee osteoarthritis with varus gonarthrosis. He opined the March 1988 work injury is not the substantial factor for Mr. Davis's left knee arthritis and Mr. Davis's need for additional treatment. Dr. Fraser stated the substantial cause of Mr. Davis's left knee arthritis is Mr. Davis's weight, activity level, prior injury requiring arthroscopy, and a genetic disposition.[43]

On September 22, 2015, the parties stipulated to an SIME by an orthopedist and the parties agreed they might add neurosurgery as a specialty if, after evaluation by both parties' physicians, a neurosurgical dispute existed. The prehearing conference summary stated:

> AS 23.30.110(c) provides: 'If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.' In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.[44]

On November 13, 2015, Mr. Davis saw Kristen Jessen, M.D., for a neurological consultation. She noted Mr. Davis fell on a treadmill in 2013, injuring his left knee during the fall. She assessed Mr. Davis with diabetic polyneuropathy and lumbosacral radiculopathy. She suspected Mr. Davis "had an episode of radicular pain which caused the left lower extremity to buckle which in turn caused the left knee damage, which was sustained during the fall."[45]

---

[43] *Davis III* at 7, No. 27.

[44] *Id.*, No. 28.

[45] *Id.*, No. 30.

On December 14, 2015, WFP filed the SIME binder containing medical records.[46] On December 21, 2015, WFP filed SIME questions.[47]

On January 12, 2016, the parties filed an SIME Request form signed by both WFP and Mr. Davis, listing "orthopedic physician" as the medical specialty required for the SIME.[48] Also on January 12, 2016, Mr. Davis filed an SIME question.[49]

On March 8, 2016, Peter E. Diamond, M.D., an orthopedist, performed an SIME. Dr. Diamond diagnosed Mr. Davis with (1) lumbar sprain/strain secondary to the January 1987 incident; (2) L3-4 herniated disc secondary to the March 1988 incident; (3) status post multiple surgeries with failed back syndrome secondary to L3-4 herniated disc; (4) history of right knee arthroscopy with right knee partial medial meniscectomy and chondromalacia of trochlea; and (5) history of left knee arthroscopy, partial medial meniscectomy and treatment of Grade IV chondromalacia, and medial femoral condyle of the left knee. He opined the March 1988 work injury was a substantial factor in causing disability and the need for treatment for Mr. Davis's lumbar and right knee injuries, but was not a substantial factor in the recent medical treatment for the left knee. Dr. Diamond stated he would revise his opinion if there was documentation the episode described on the treadmill resulted in the left knee injury; however, only the meniscus tear would be the consequence of the treadmill incident, not the underlying arthritic condition. Dr. Diamond analyzed Mr. Davis's medical record and stated:

> The etiology of the left leg giving out is unclear, but it would be reasonable to conclude, to a reasonable degree of medical probability, that the left leg collapse on 12/28/88 was related to the lumbar injury, and therefore, that the right knee problem with subsequent medical meniscectomy is attributable to the [March 1988] injury.
>
> . . . .
>
> The first mention of knee pain is by Dr. Adcox on 12/12/12, noting that [Mr. Davis] had a history of left knee pain for 'sometime,' noting a history

---

46 *Davis III* at 8, No. 31.

47 *Id.*, No. 32.

48 *Id.*, No. 34.

49 *Id.*, No. 33.

> of prior surgery for a cartilage tear from which the examinee recovered. However, the records available to me do not document previous left knee surgery. It is unclear whether a left knee injury and arthroscopy had previously occurred, or if Dr. Adcox and/or [Mr. Davis] are conflating the left knee with the right knee. Moreover, there is a reference in an Independent Medical Evaluation to a note by Dr. Adcox on 10/27/1[sic], documenting an injury specifically secondary to radicular pain while [Mr. Davis] was on a treadmill for his lumbar spine injury, causing him to wince, misstep, and twist the knee. Unfortunately, the laterality is not specified in this note, and all I have is a second-hand copy, rather than the original note.
>
> However, a further note by Dr. Adcox on 1/3/13 again indicates no specific injury to the left knee, just chronic, intermittent knee pain.
>
> . . . .
>
> I cannot determine, to a reasonable degree of medical probability, the etiology of the left knee pain, but it appears clear that the examinee had pre-existent arthritis prior to the 1/22/13 left knee arthroscopy. It would therefore be my opinion, based on the records available to me, that the right knee meniscus tear and a portion of subsequent arthritis are secondary to the [March 1988] injury, but that the left knee condition is not, in fact, demonstrably secondary to the lower back injury. Ascribing the right knee is based on the assumption that [Mr. Davis]'s left leg gave out because of radicular pain and/or weakness.
>
> . . . .

Dr. Diamond said an examination of Mr. Davis's left knee by a neurosurgeon is inappropriate and further treatment for either knee would "most reasonably be performed by an orthopedic surgeon."[50]

On March 23, 2016, the Division received Dr. Diamond's SIME report.[51]

On April 6, 2016, Mr. Davis called the Division and spoke with a workers' compensation officer about how he "should approach the SIME report." The officer advised Mr. Davis to call WFP's attorney "to see what [WFP] was thinking or planning to do." Mr. Davis planned to call back the following week.[52]

---

50 *Davis III* at 8-9, No. 35.

51 *Id.* at 9, No. 36.

52 *Id.*, No. 37.

On December 21, 2016, Mr. Davis called the Division and told a workers' compensation officer he wanted another SIME by a neurosurgeon. The officer advised Mr. Davis to file a petition for an SIME and request a hearing on the petition if WFP did not agree to another SIME. The officer mailed Mr. Davis by first-class mail a petition, an SIME form, and the "Workers' Compensation and You" pamphlet.[53]

On January 30, 2017, Mr. Davis filed a petition for an SIME along with a letter and an SIME request form, requesting a neurosurgeon undertake another SIME. Mr. Davis attached portions of medical reports he asserted demonstrated a dispute warranting an SIME by a neurosurgeon. Mr. Davis's letter stated:

> I have always maintained since the beginning of this dispute that nerve damage from my original injury is responsible for the injury to my left knee. This dispute between myself and [WFP] has gone on for three years with no resolution in sight.
>
> I have enclosed parts of medical records supporting both my side and the side of [WFP]. You will notice that medical reports form [sic] Dr. Diamond seem to support both sides. This to me is very confusing.
>
> It is my belief that a neurosurgeon may help resolve this dispute . . . .[54]

On February 6, 2017, WFP opposed Mr. Davis's petition for an SIME with a neurosurgeon.[55] On March 1, 2017, the parties stipulated to a hearing on April 18, 2017, on Mr. Davis's petition for an SIME with a neurosurgeon, pending receipt of an ARH form completed by Mr. Davis.[56] The Board designee directed Mr. Davis to complete the ARH form enclosed with the prehearing conference summary. The prehearing conference summary stated:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve

---

53 *Davis III* at 9, No. 38.

54 *Davis II* at 7, No. 23.

55 *Id.*, No. 24.

56 *Davis III* at 10, No. 41.

> on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.[57]

At the April 18, 2017, hearing, Mr. Davis argued his petition for a second SIME by a neurosurgeon should be granted because his left knee injury was caused by his March 1988 work injury and Dr. Diamond did not understand the cause of Mr. Davis's left knee injury. Mr. Davis contended an SIME by a neurosurgeon would assist the Board by providing more evidence regarding the nerve damage he sustained in his back from the March 1988 work injury and would address whether the March 1988 work injury caused his left knee injury. Mr. Davis stated he injured his right knee in 1988 in a way similar to the way his left knee was injured in 2012, and he was confused by Dr. Diamond opining the right knee was work-related but the left knee was not work-related. Mr. Davis testified he had been complaining about left knee pain for thirty years and he believed the nerve damage to his back caused his left knee injury.[58]

On May 2, 2017, *Davis II* denied Employee's January 20, 2017, petition for an additional SIME with a neurosurgeon.[59]

Mr. Davis petitioned the Commission for review of *Davis II* and on June 23, 2017, the Commission affirmed the denial of Mr. Davis's petition for an additional SIME.[60]

On November 7, 2017, WFP requested Mr. Davis's August 7, 2013, claim be dismissed for his failure to request timely a hearing on his claim.[61] On November 16, 2017, Mr. Davis called the Division and spoke with a workers' compensation technician

---

[57] *Davis III* at 10, No. 41.

[58] *Davis II* at 7-8, No. 26.

[59] *Davis III* at 10, No. 44.

[60] *Gary R. Davis v. Wrangell Forest Products and Wausau Underwriters Insurance Company*, AWCAC Appeal No. 17-008, Order on Petition for Review (June 23, 2017).

[61] *Davis III* at 10, No. 46.

about WFP's November 7, 2017, petition. The technician discussed the deadline for requesting a hearing.[62]

On December 6, 2017, Mr. Davis stated he did not want his case dismissed. The prehearing conference summary stated:

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.[63]

On December 7, 2017, the Division served the December 6, 2017, prehearing conference summary on Mr. Davis by first-class mail.[64]

On December 18, 2017, Mr. Davis opposed WFP's November 7, 2017, petition:

> I am writing this letter to oppose this petition to dismiss dated on 11/17/17. I realize I made a mistake but that was two years ago. I would hope that my total cooperation over the years on this matter would help 'carry the day' so to speak for my case.[65]

On January 9, 2018, WFP called the Division and told a workers' compensation officer it had not received Mr. Davis's December 18, 2017, letter. The officer emailed WFP a copy of Mr. Davis's December 18, 2017, letter addressed to WFP.[66]

---

62 *Davis III* at 10-11, No. 47.

63 *Id.* at 11, No. 48.

64 *Id.*, No. 49.

65 *Id.*, No. 50.

66 *Id.*, No. 51.

The Board heard, on February 6, 2018, WFP's petition to dismiss Mr. Davis's August 7, 2013, workers' compensation claim.[67] At hearing, Mr. Davis contended his December 18, 2017, letter met the requirements under AS 23.30.110(c) and further contended justice required a hearing on the merits of his claim. He also contended WFP should not be allowed to assert an AS 23.30.110(c) defense because of WFP's delay in asserting the defense.[68] He also alleged the ongoing settlement talks negated his need to file an ARH while the parties discussed settlement. He testified he is not an attorney and simply made a mistake by not requesting a hearing on his claim. He stated he had no additional excuse for failing to request a hearing on his claim.[69]

On February 27, 2018, *Davis III* granted WFP's petition to dismiss under AS 23.30.110(c) and dismissed Mr. Davis's claim for left knee medical benefits.[70]

On March 12, 2018, Mr. Davis filed a petition for reconsideration of *Davis III*. Mr. Davis's petition and attached letter stated:

> Please reconsider your decision on my case (AWCB 18-0018). I have spent 4 ½ years trying to get my case heard. I have filled out forms, went to all my appointments, [and] was present for all phone conferences.
>
> All I have ever wanted was for the board to hear my case. I would never knowingly do anything to prevent my case from being heard.
>
> I'm a little puzzled by the timing of [WFP]'s decision to dismiss my case. According to the [rules] this action should have taken place sometime in 2015. Why now? Did [WFP] decide to be nice to me and give me two extra years to discover my mistake. I think not. I believe [WFP] also forgot about this form and are scrambling to prevent my case from being heard.
>
> I made a mistake; we all make mistakes. I noticed in your original decision you got the wrong body part. A correction was sent the next day.
>
> If counsel can have my case dismissed because of a mistake can I have your decision dismissed as well?
>
> I have maintained from the very beginning that nerve damage from my original injury caused by leg to give out thus causing the left knee injury.

---

67 *Davis IV* at 2, No. 1.

68 *Davis III* at 11, No. 53.

69 *Id.* at 12, No. 54.

70 *Davis IV* at 2, No. 2.

> On the original dismissal letter page 2 item 3, Dr. John Gibson performed a [micro discectomy] at the L3-4 level. He states that there were epidural adhesions present binding down the nerve root.
>
> I have been living with this nerve damage for 30 years. My history is backed up by years of facts, by every doctor and specialist I have seen, my story has never changed . . . .[71]

WFP did not file a response to Mr. Davis's petition.[72] The Board declined to reconsider its decision.[73] Mr. Davis, to date, has not specifically requested a hearing on his claim by filing an ARH.[74]

*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.[75] On questions of law and procedure, the Commission does not defer to the Board's conclusions, but rather exercises its independent judgment. "In reviewing questions of law and procedure, the commission shall exercise its independent judgment."[76] The Board's findings of credibility are binding on the Commission because the Board "has the sole power to determine the credibility of a witness."[77] Such a determination by the Board is conclusive "even if the evidence is conflicting or susceptible to contrary conclusions."[78]

*4. Did the Board properly dismiss the claim of Mr. Davis because he failed to timely request a hearing?*

When an employer has controverted a claim filed by an employee, the employee needs to request a hearing within two years of the date of filing of the controversion,

---

71 *Davis IV* at 2-3, No. 3.

72 *Id.* at 3, No. 4.

73 *Id.* at 4.

74 *Davis III* at 11, No. 52.

75 AS 23.30.128(b).

76 AS 23.30.128(b).

77 AS 23.30.122.

78 AS 23.30.122.

unless the time is tolled. "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied."[79] This section is generally referred to as the .110(c) defense.

The Alaska Supreme Court (Court) first addressed the requirements of AS 23.30.110(c) in *Pan Alaska Trucking, Inc. v. Crouch*, when the Court held that this statute is a procedural rule which an injured worker ignores at his own peril.[80] In *Crouch*, the Court stated "[t]his claim has faltered on the two-year limit not because it was a significant obstacle but because Crouch failed to pay it any heed."[81] In other words, an employee must pursue his claim in some manner and may not simply fail to take any action.

In *Summers v. Korobkin Construction*, the Court clarified that the time limitation in AS 23.30.110(c) only begins to run after an injured worker has filed a claim for benefits.[82] In *Jonathan v. Doyon Drilling, Inc.*, the Court again made it clear that the requirement to request a hearing by an injured worker is triggered only after the worker has filed a claim for benefits and the employer has controverted the claim.[83] The Court, in *Tipton v. ARCO Alaska, Inc.*, held that an injured worker, whose request for a hearing was put on hold (i.e., cancelled) by settlement negotiations, did not have to file a new request when the settlement fell through.[84] The original request for a hearing satisfied the time limitation in AS 23.30.110(c). The Court has long disfavored dismissal of claims for procedural reasons. In *Sheehan v. University of Alaska*, the Court said, "We note that the law favors deciding cases on their merits."[85]

---

79 AS 23.30.110(c).

80 *Pan Alaska Trucking, Inc. v. Crouch*, 773 P.2d 947 (Alaska 1989).

81 *Id.* at 949.

82 *Summers v. Korobkin Constr.*, 814 P.2d 1369, 1372 (Alaska 1991).

83 *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1125 (Alaska 1995).

84 *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-913 (Alaska 1996).

85 *Sheehan v. Univ. of Alaska*, 700 P.2d 1295, 1298 (Alaska 1985).

The Court reiterated that an injured worker who has filed a claim has an obligation to prosecute timely the claim in *Huston v. Coho Elec.*[86] "We agree the plain language of subsection 110(c) demands only that the employee request a hearing within two years of the date of controversion; the board may require no more from the employee . . . . The board may not unilaterally re-start subsection 110(c)'s time limit after the employee has timely requested a hearing."[87] The Court has also clarified that failure to timely request a hearing supports dismissal of the claim to which the controversion applied, but does not bar future claims even for the same medical treatment which may occur in the future.[88]

In *Kim v. Alyeska Seafoods, Inc.*, the Court held that AS 23.30.110 is directory and not mandatory, meaning strict compliance is not required.[89] The Court further stated that, nonetheless, an injured worker must do something to stop the time limit in AS 23.30.110(c).[90] In *Kim*, the employee filed a motion for a continuance stating his attorney was not ready for a hearing and needed more time. The Board did not act on the motion and the employer then filed a petition to dismiss the claim based on AS 23.30.110(c). The Board granted the petition to dismiss. The Court reversed, noting that the purpose of .110(c) was to create guidelines for the orderly conduct of public business.[91] The Court further noted the Board has power to excuse a failure to request a hearing on time if the evidence supports relief.[92] An approach of looking at the circumstances of the case to see if the evidence is sufficient to excuse a failure to file timely an ARH is an "approach . . . consistent with the notion that a statute of limitations

---

86 *Huston v. Coho Elec.*, 923 P.2d 818 (Alaska 1996).

87 *Id.* at 820.

88 *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321, 324-325 (Alaska 2005).

89 *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 199 (Alaska 2008).

90 *Id.*

91 *Id.* at 197.

92 *Id.*

defense is disfavored."[93] The Court further stated that a request for an extension of time, whether implicit or explicit, is sufficient to stop the time limit and allows the Board to determine if a request for more time is to be granted. When the additional time is granted, the claimant is to be told what amount of time remains for requesting a hearing. The Board was admonished not to place form over substance.[94]

The Commission has also addressed the time limitation in AS 23.30.110(c), and noted in *Tonoian v. Pinkerton Security* that the Board has the power "to excuse failure to file a request for hearing on time."[95] While the Board may not waive a procedural requirement "merely to excuse a party from failing to comply with the requirements of law" there are recognized reasons why a *pro se* litigant may be excused. The Commission, in *Omar v. Unisea, Inc.*, remanded a matter to the Board to consider whether "the circumstances as a whole constitute compliance with the requirements of [AS] 23.30.110(c) sufficient to excuse any failures."[96] The Commission found that the SIME process had tolled the running of the statute of limitations and that the two ARHs considered by the Board were filed after the time had run in .110(c). However, the Board had failed to consider a previously and timely filed ARH; hence, the remand.

In *Bohlmann v. Alaska Construction & Engineering, Inc.*, the Court set forth instructions to the Board to inform a *pro se* litigant on how to preserve his claim.[97] In *Bohlmann*, the Board failed to clarify the actual date by which an ARH needed to be filed after the employer had erroneously asserted the date had already past.[98] The Court declined to "decide here whether the prehearing officer had a duty to tell Bohlmann the

---

93 *Kim*, 197 P.3d at 198.

94 *Id.*

95 *Id.* at 197, citing *Tonoian v. Pinkerton Security*, Alaska Workers' Comp. App. Comm'n Dec. No. 029 at 11 (Jan. 30, 2007).

96 *Id.* at 198, citing *Omar v. Unisea, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 053 at 7-8 (Aug. 27, 2007).

97 *Bohlmann v. Alaska Constr. & Eng'g, Inc.*, 205 P.3d 316, 321 (Alaska 2009).

98 *Id.* at 319-320.

exact date."[99] Nonetheless, the Court held the Board should have informed Bohlmann how to preserve his claim or specifically how "to determine what the correct deadline was . . . ."[100] The Court further found, since there was no evidence the Board "informed Bohlmann of the correct deadline or at least how to determine what the correct deadline was, the board should deem his affidavit of readiness for hearing timely filed."[101] The Court further noted that had Bohlmann been apprised of the actual date by which his ARH needed to be filed, he probably would have complied.[102]

Here, Mr. Davis initially filed a claim for benefits on August 7, 2013, but did not explicitly mention his left knee. Nonetheless, WFP filed a notice of controversion on a board-prescribed form on August 30, 2013. Following the first prehearing on September 3, 2013, Mr. Davis was reminded there was a time limit for requesting a hearing which would run two years from the date of WFP's controversion. He was provided with an ARH form.[103] However, the prehearing officer did not tell Mr. Davis the date by which he needed to file an ARH.[104]

On June 11, 2015, Mr. Davis requested an SIME, and the Board found this request tolled the requirement in .110(c) for requesting a hearing within two years of the date of controversion following a claim for benefits.[105] In *Davis III*, the Board held, that after allowing for the mailing of the controversion notice, Mr. Davis needed to request a hearing by September 2, 2015, absent any extensions of time or tolling of the statute.[106]

---

99 *Bohlmann*, 205 P.3d at 320.

100 *Id.* at 321.

101 *Id.*

102 *Id.*

103 R. 2484-86.

104 *Id.*

105 *See, Narcisse v. Trident Seafoods Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 242 (Jan. 11, 2018).

106 *Davis III* at 16.

However, prior to the decision in *Davis III*, this specific date was not at any time mentioned to Mr. Davis.

Mr. Davis also does not appear to have been told by the Board that the time for requesting a hearing was tolled by the SIME process. Nonetheless, in *Davis III,* the Board agreed this request stopped the clock, or tolled the time, in which to request a hearing pursuant to AS 23.30.110(c) until the SIME report was received. Once the Board received the SIME report, Mr. Davis had 80 days left in which to request a hearing according to the Board's calculations.[107] Nowhere in the record is there any indication anyone at the Board told Mr. Davis of this new deadline. From the prehearing summaries, it also does not appear anyone at the Board told Mr. Davis that the SIME would stop the clock on the time for requesting a hearing nor how many days remained in which to request a hearing once the clock started rolling again.[108]

The SIME process went forward and the Board received the SIME report on March 23, 2016. At this point, the time for requesting a hearing started up again and Mr. Davis had 80 days left, or until June 14, 2016, in which to request a hearing. On April 6, 2016, well within the time to request a hearing, Mr. Davis called the Board to ask what he should now do since the SIME report had been received. According to the ICER notes, the Board officer advised Mr. Davis to talk to WFP's attorney to see what WFP might do next.[109] Specifically absent from this note is any mention of the fact that Mr. Davis had a right to request a hearing now that the SIME process was complete. Also absent from this note is any mention of the fact that his time for requesting a hearing might be running out. It also appears he was not told he needed to file an ARH on or before June 14, 2016. According to the record, Mr. Davis has not yet filed an ARH to request a hearing on the merits of his claim.

---

107 *Davis III* at 17.

108 Record.

109 *Davis III* at 9, No. 37.

Rather, on December 21, 2016, Mr. Davis called the Board asking for another SIME with a neurosurgeon.[110] This request was after the time for requesting a hearing pursuant to .110(c) as that time ran on June 14, 2016. Mr. Davis did file a new form requesting another SIME, this time by a neurosurgeon, on January 30, 2017, which was not opposed by WFP. Mr. Davis filed an ARH on this issue on March 14, 2017.[111] The Board apparently relaxed its rules by allowing this issue to go forward to hearing, ostensibly because no one raised the issue of the statute of limitations in .110(c).

The Board held a hearing on the question of the second SIME, and, in an opinion issued on May 2, 2107, denied his request for another SIME. This decision did not address that the deadline for seeking a hearing on the merits had passed. Mr. Davis petitioned the denial of the second SIME to the Commission, and on June 23, 2017, the Commission affirmed the Board denial of the request for a new SIME.

Only on November 11, 2017, did WFP file a petition to dismiss the claim of Mr. Davis because he had not requested a hearing on the merits of his claim and the time in .110(c) for requesting a hearing expired by June 14, 2017. On December 6, 2017, Mr. Davis opposed this petition to dismiss his claim, explaining he did not want his claim dismissed. This letter, along with the request for a second SIME with a neurosurgeon, could be considered an implicit request for an extension of time to request a hearing on the merits of his claim. Moreover, these actions are evidence that he was not sitting on his rights, but was actively pursuing his claim.

Under the statute, the responsibility is on the employee to request timely a hearing on the merits. An employer has no obligation to inform an employee of this time frame. However, an employer may not do anything expressly to lead an employee into thinking that the time for requesting a hearing has been tolled or extended. WFP did not at any time expressly waive its right to assert an AS 23.30.110(c) defense, but it did continue to discuss settlement with Mr. Davis. It also did not oppose the request by Mr. Davis for a

---

110 *Davis III* at 9, No. 38.

111 *Id*. at 10, No. 43.

second SIME. WFP made a calculated decision to wait until the time for a hearing on the merits ran out under .110(c).

While this might be prudent claims handling, such a decision by WFP underscores why the Board has an affirmative obligation to ensure that an injured worker is aware of their worker's compensation rights, obligations, and responsibilities under the Act, including the importance of the statute of limitations in .110(c).[112]

Moreover, the Court has admonished the Board to extend leeway to an injured worker actively engaged in the litigation process. The petition by Mr. Davis seeking a second SIME is evidence that he was not fully prepared for a hearing and wanted to obtain further evidence. It also demonstrates that he was actively pursuing his claim. If the Board, at any time, had given Mr. Davis a firm date by which he needed to request a hearing, and he did not then timely request a hearing, the Board would have fulfilled its obligation to Mr. Davis.

However, the Board, in prehearings, only advised of the mechanism by which the time for requesting a hearing was calculated. Mr. Davis never was given a date by which he needed to request a hearing. More troubling, is the fact that on April 6, 2016, after receiving the SIME report, Mr. Davis called the Board seeking direction on pursuing his claim. At that point he still had time to request a hearing. He was not told of his right to seek a hearing now that the SIME process was complete, nor was he told that his time for requesting a hearing was coming to an end. He was simply advised to contact WFP. Furthermore, the Board continued to lead him astray by not telling him his time for requesting a hearing was past when he filed for a second SIME with a neurosurgeon. Indeed, both the Board and WFP allowed that process to play out before WFP filed its petition to dismiss his claim based on the failure to request a hearing. In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time. It would also

---

[112] *See Richard v. Fireman's Fund Ins. Co.*, 384 P.2d 445, 449 n.15 (Alaska 1963).

be prudent for anyone at the Board assisting a self-represented litigant to know the date by which an ARH needs to be filed. If the date changes for any reason, such as tolling during the SIME process, the new date for requesting a hearing should be clearly communicated to the self-represented litigant.

Therefore, based on the fact that Mr. Davis was never told of the actual date by which he needed to request a hearing and his continuing actions to prosecute his claim, the Commission now finds that Mr. Davis substantially complied with the requirements of the Act and is entitled to a hearing on the merits of his claim. The Board's assistance to Mr. Davis was insufficient to apprise him of the deadline for requesting a hearing on the merits, since the Board never told Mr. Davis when he must file an ARH. Even though Mr. Davis still has not requested a hearing on the merits of his claim for medical treatment, it is apparent from the record and his actions to pursue his claim that, had he been fully informed about the deadline for asking for a hearing on the merits, he, like Mr. Bohlmann, would have timely requested a hearing.

*5.* Conclusion.

The Commission REVERSES the Board's decision and REMANDS this matter to the Board to set an actual date by which Mr. Davis must request a hearing on the merits of his claim and to hold such a hearing.

Date: *2 January 2019* Alaska Workers' Compensation Appeals Commission

*Signed*
James N. Rhodes, Appeals Commissioner

*Signed*
S. T. Hagedorn, Appeals Commissioner

*Signed*
Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no 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. 256, issued in the matter of *Gary R. Davis vs. Wrangell Forest Products and Wausau Underwriters Insurance Company*, AWCAC Appeal No. 18-007, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on January 2, 2019.

Date: *January 3, 2019*

*Signed*
K. Morrison, Appeals Commission Clerk