Alaska Workers' Compensation Appeals Commission

Matanuska-Susitna Borough School District, Appellant/Cross-Appellee, vs. Donna M. Hickle, Appellee/Cross-Appellant.	Final Decision Decision No. 273 December 20, 2019 AWCAC Appeal No. 19-004 AWCB Decision Nos. 19-0009, 19-0015 AWCB Case No. 201324463

Final decision on appeal and cross-appeal from Alaska Workers' Compensation Board Final Decision and Order No. 19-0009, issued at Anchorage, Alaska, on January 22, 2019, by southcentral panel members Ronald P. Ringel, Chair, Rick Traini, Member for Labor, and Robert C. Weel, Member for Industry; and, Final Decision and Order on Reconsideration No. 19-0015, issued at Anchorage, Alaska, on February 5, 2019, by southcentral panel members Ronald P. Ringel, Chair, Rick Traini, Member for Labor, and Robert C. Weel, Member for Industry.

Appearances: Michelle M. Meshke, Meshke Paddock & Budzinski, PC, for appellant, Matanuska-Susitna Borough School District; Robert J. Bredesen, Hillside Law Office, LLC, for appellee, Donna M. Hickle.

Commission proceedings: Notice of Appeal filed January 31, 2019, with motion for stay; Notice of Cross-Appeal filed February 8, 2019; order on motion for stay issued March 20, 2019; briefing completed July 17, 2019; oral argument held September 20, 2019.

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

By: Deirdre D. Ford, Chair.

1. Introduction.

Appellee/cross-appellant, Donna M. Hickle, sought benefits related to her injuries while employed by Matanuska-Susitna Borough School District (MSBSD). The Alaska Workers' Compensation Board (Board) heard the issues on November 28, 2018, and issued its final decision on January 22, 2019, granting her past benefits (temporary total

disability (TTD) and medical benefits), interest on TTD, and attorney fees.[1] Ms. Hickle petitioned for reconsideration of the denial of a penalty. The Board heard the petition on the written record and denied it on February 5, 2019.[2] MSBSD timely appealed *Hickle II* to the Alaska Workers' Compensation Appeals Commission (Commission) and filed a motion for stay. Ms. Hickle cross-appealed *Hickle III* on the issues of penalties and the Board's treatment of her claim as a mental-mental injury. The Commission granted the motion to stay the lump sum payment of past TTD, medical benefits, and attorney fees on March 20, 2019, and denied the motion to stay future benefits. The Commission heard oral argument on September 20, 2019. The Commission now affirms the Board.

2. Factual background and proceedings.[3]

Ms. Hickle began working for MSBSD in 1997 as a teacher.[4] In 2000, Samuel Nelson, III, Palmer High School assistant principal, wrote a letter of recommendation for Ms. Hickle to teach in the advanced placement program. He stated all three administrators at Palmer High School agreed Ms. Hickle had the personality, intellect, and commitment to students needed for an advanced placement program.[5]

On January 7, 2003, Wolfgang Winter, Palmer High School principal, wrote a letter supporting Ms. Hickle for leadership and collegiate honor awards. Mr. Winter noted several examples of Ms. Hickle going beyond the requirements of her job and concluded by saying, "there are few teachers I have seen in 22 years in public schools who have the determination and the drive to improve and succeed like Donna Hickle . . . . I am

---

[1] *Donna M. Hickle v. Mat-Su Borough School District*, Alaska Workers' Comp. Bd. Dec. No. 19-0009 (Jan. 22, 2019) (*Hickle II*); *Donna M. Hickle v. Matanuska Susitna Borough School District*, Alaska Workers' Comp. Bd. Dec. No. 18-0123 (Nov. 20, 2018) (*Hickle I*) is not part of this appeal.

[2] *Donna M. Hickle v. Mat-Su Borough School District*, Alaska Workers' Comp. Bd. Dec. No. 19-0015 (Feb. 5, 2019)(*Hickle III).*

[3] We do not, in this decision, make any factual findings. We state the facts as set forth in the Board's decision, except as otherwise noted.

[4] Hr'g Tr. at 28:11, Nov. 28, 2018.

[5] R. 206.

confident that she will put forth the same type of effort in order to become a well-respected educational leader."[6]

However, on September 26, 2003, Ms. Hickle received a note from Mr. Nelson stating "we need to talk as friends and me not as your boss." The note asked that Ms. Hickle see him before leaving for the weekend. It was signed "Sam" followed by a smiley face.[7] Ms. Hickle did not know why the meeting had been requested, but when she arrived she found Glen Ramos, the school psychologist, also there. Mr. Nelson had met with Mr. Ramos prior to the meeting and included him in the meeting. He explained to Ms. Hickle that the meeting was to discuss her "instructional techniques and classroom delivery."[8] Mr. Ramos was angry with Ms. Hickle because she had made a comment he perceived as contrary to the message he was trying to convey in a September 25, 2003, presentation on suicide prevention.[9] Mr. Nelson told Ms. Hickle the meeting would not result in any disciplinary action.[10] Ms. Hickle became visibly upset and began crying.[11] Mr. Ramos told her not to speak or cry during the meeting because she could do that at home on her own time.[12] Ms. Hickle was so upset that Mr. Nelson did not think she understood Mr. Ramos' explanation of the events. Mr. Ramos left after about 30 minutes, but Mr. Nelson continued the meeting even though he described Ms. Hickle as crying and sobbing severely. He told Ms. Hickle to see a psychiatrist, and when she asked why, Mr. Nelson said she would be put on a Plan for Improvement if she did not.[13] Although

---

6 R. 244-245.

7 Exc. 485.

8 Exc. 008; if work performance was to be discussed, Ms. Hickle was entitled to have union representation present. No one from the union was there. Joe Boyle Dep., Oct. 18, 2018, at 15:1-18.

9 Exc. 008.

10 *Id.*

11 *Id.*

12 *Id.*

13 Exc. 008-009; Hr'g Tr. at 105:21 – 106:8 (Kim Dunn testified the plan of improvement is part of the process to remove a teacher from the classroom based on

Ms. Hickle and Mr. Nelson disagreed about the specifics, they agreed that at some point Mr. Nelson pushed Ms. Hickle. The meeting lasted at least two hours.[14]

After the meeting, Ms. Hickle went to the school nurse who told her she needed to see a counselor. The nurse reported the incident to Mr. Winter.[15] An investigation by MSBSD's equal employment opportunity (EEOC) officer found Mr. Nelson had created a hostile, offensive, or abusive work environment.[16]

On October 14, 2003, Mr. Nelson sent Ms. Hickle an email stating he was "sorry if you feel that I have hurt you." He explained the reason for the meeting was because several teachers and one parent had complained about her conduct.[17] There are no complaints in the record regarding Ms. Hickle for any time before the September 29, 2003, meeting.[18] The Monday following Ms. Hickle's meeting with Mr. Nelson, he sent her a "Thank You" card signed "Your Friend" to which he attached a chocolate mint.[19]

On October 20, 2003, Ms. Hickle saw Ellen J. Halverson, M.D., and reported the September 29, 2003, event, naming Mr. Nelson, Mr. Winter, and Mr. Ramos. Dr. Halverson diagnosed Ms. Hickle with post-traumatic stress.[20]

On October 29, 2003, Mr. Winter wrote a "Disposition" noting Ms. Hickle had filed an EEOC report against Mr. Nelson on October 14, 2003. He reviewed statements from both parties regarding the incident and conducted his own investigation. Mr. Winter concluded Mr. Nelson had acted in the manner he did out of a concern for Ms. Hickle's emotional/mental health, and that Ms. Hickle's view of the event was "likely significantly skewed by her emotional/mental state." He found no basis for a claim of sexual

---

performance issues versus an accusation of misconduct which follows a different process).

14 Exc. 011.

15 *Id.*

16 Exc. 007-013.

17 Exc. 002.

18 *Hickle II* at 4, No. 8.

19 R. 215-216.

20 R. 3147.

harassment against Mr. Nelson. Mr. Winter's resolution was for Mr. Nelson to make every attempt to minimize his contact with Ms. Hickle.[21]

MSBSD's EEOC Officer, Carol G. Kane, investigated Ms. Hickle's discrimination complaint. She interviewed nine individuals and reviewed over twenty documents, and concluded Mr. Nelson had created a hostile, offensive, and abusive work environment. The report also noted Mr. Winter had compromised the investigation by contacting Mr. Nelson after Mr. Winter interviewed with George Troxel and Ms. Kane.[22]

Joe Boyle, a union representative, assisted Ms. Hickle in dealing with MSBSD regarding Mr. Nelson.[23] Ms. Hickle contacted him shortly after the incident with Mr. Nelson, and she was very upset and "stressed out" by the matter.[24] Although he had been friends with many principals, he had never seen a document like Mr. Nelson's request to meet as a friend.[25] He explained Ms. Hickle alleged Mr. Ramos, who made the complaint, had been asking her for a date and she had repeatedly declined.[26] When Mr. Boyle raised that concern with the human resource manager, the matter was dropped.[27] Mr. Nelson was fairly popular and Ms. Hickle feared other people blamed her for Mr. Nelson's troubles.[28]

The Board found Mr. Boyle to be credible.[29]

Mr. Winter evaluated Ms. Hickle on February 11, 2004, and noted several areas of concern that required corrective actions, but he recommended continued employment.

---

21 Exc. 488-490.

22 Exc. 007-013.

23 Boyle Dep. at 4:15-23, 10:2-5.

24 *Id.* at 10:21-25, 11:6-19.

25 *Id.* at 14:17-20.

26 *Id.* at 12:15-24.

27 *Id.* at 13:8-15.

28 *Id.* at 31:8-19.

29 *Hickle II* at 5, No. 14.

Ms. Hickle stated this was the most negative evaluation she had received in the fourteen years she had been teaching.[30]

The date and reason are unclear, but Mr. Nelson went on leave and then retired. On March 11, 2004, he returned to the school, where the administration, counselors, and secretaries threw a party for him with a banner wishing him the very best.[31] After Mr. Nelson left, Ms. Hickle asserted that other teachers and staff were rude to her, would walk away, not respond to her, or ignore her in conversations.[32]

In November 2003, two plainclothes police officers came to Ms. Hickle's home where, in the presence of her young son, they questioned her about a complaint alleging she had a sexual relationship with a student. She was not told the identity of the student or who made the complaint. Ms. Hickle denied having a relationship with any student. The police did not take further action, but Ms. Hickle was very stressed by the incident.[33] Katherine A. Gardner, then MSBSD's personnel supervisor, did not recall the specifics of the incident, but noted the police did not find any evidence Ms. Hickle had a relationship with a student.[34]

On October 22, 2004, Michael Fry, a teacher at Palmer High School who did not have a child in any of Ms. Hickle's classes, filed a Parent Survey of Teacher Performance. He reported that on October 7, 2004, he had gone to Ms. Hickle's room to get a DVD player. There were no students present at the time. Ms. Hickle told Mr. Fry the week was a "blown" week as students were absent due to retesting for the High School Graduation Qualifying Exam, and she had shown her students two movies that week. Mr. Fry found her actions deplorable and gave the teaching profession the label of "buffoonery and incompetence." He stated the testing schedule was known before the school year began and a teacher that couldn't come up with an alternate lesson plan was

---

30 Exc. 500-501.

31 R. 395.

32 Hr'g Tr. at 40:19 – 41:5; Donna Hickle Dep., Oct. 12, 2018, at 51:5-15.

33 *Id.* at 46:11-24.

34 Katherine Gardner Dep., Sept. 21, 2018, at 47:7-19.

incompetent. Ms. Hickle responded that MSBSD's policy was that nothing new be taught on testing days, and her students had been scheduled to use the computer lab to work on an assignment, but due to last-minute changes, the computer lab was not available. She stated the exchange with Mr. Fry took only about two minutes and she did not believe it should be given any credence.[35]

On December 1, 2004, Mr. Fry approached Ms. Hickle in the office, stuck his head very close to her, and kept repeating, "hi." He repeated the conduct later that day outside her classroom. Ms. Hickle reported the incidents to Mr. Winter.[36] Ms. Hickle stated that despite the fact Mr. Winter had talked to Mr. Fry, he continued to block doorways, follow her, and look at her through her classroom window until May 2005.[37]

Ms. Hickle reported to Ms. Gardner the problem with Mr. Fry was really bothering her and she asked for a transfer, but Ms. Gardner responded there wasn't another placement available. Ms. Hickle stated she was stressed, feeling sick, couldn't cope with it, didn't want to come to work anymore, and did not even want to be alive.[38]

On February 1, 2005, Ms. Gardner wrote to Ms. Hickle stating that during their January 28, 2005, conversation, Ms. Hickle admitted entertaining thoughts of suicide. Ms. Gardner stated that in a later conversation she told Ms. Hickle she would need a medical authorization to return to work, and the authorization Ms. Hickle provided on January 31, 2005, was not adequate because the doctor did not have formal training in assessing individuals with serious mental and emotional stresses. Ms. Gardner informed Ms. Hickle she was being placed on conditional family medical leave. MSBSD's risk management department handled work injuries, and Ms. Gardner did not recall informing them of Ms. Hickle's complaint.[39]

---

35 Exc. 014-018; R. 207-210.

36 R. 421-422.

37 Hr'g Tr. at 44:6-11; R. 396-397.

38 Hickle Dep. at 67:11-25.

39 Exc. 023; Gardner Dep. at 19:24 – 20:7.

In a second February 1, 2005, letter to Ms. Hickle, Ms. Gardner stated MSBSD had been notified Ms. Hickle was unable to perform her normal job duties due to a serious health condition, and placed her on conditional family leave until a Family and Medical Leave Act (FMLA) request could be processed.[40] The January 31, 2005, medical authorization Ms. Hickle provided to Ms. Gardner is not in the file.[41]

On February 7, 2005, Ms. Hickle returned to Dr. Halverson, who noted Ms. Hickle felt suicidal two weeks earlier as a result of the work dispute with Mr. Fry. Ms. Hickle reported she felt trapped in her work and MSBSD was trying to get rid of her.[42] Dr. Halverson is a psychiatrist.[43]

On February 8, 2005, Phillip Baker, Ed.D., a psychologist, diagnosed Ms. Hickle as suffering from an adjustment disorder with anxiety and depression attributed to "an interaction between herself, a fellow teacher and school officials." He released Ms. Hickle to return to work.[44]

On January 3, 2006, Ms. Hickle was evaluated by a different evaluator who found she met or exceeded standards in all listed categories and found her to be "a pleasant and diligent teacher who is eager to demonstrate greater potential."[45]

On a prescription form dated October 10, 2008, Dr. Halverson excused Ms. Hickle from work for four days. She did not include a diagnosis or explanation.[46]

Although the date is unclear, Ms. Hickle wrote a letter to her personnel file in response to an October 16, 2008, letter that is not in the file. She had been serving as an advisor for the yearbook and was disciplined for sending the publisher a list of student names that also included the students' email addresses. Ms. Hickle stated she had

---

40 R. 1436.

41 *Hickle II* at 7, No. 26.

42 R. 3146.

43 *Hickle II* at 8, No. 28.

44 Exc. 024.

45 R. 1846-1848.

46 Exc. 043.

checked with administration and had been told to send the list she had been given.[47] On April 4, 2009, the Anchorage Daily News ran an article stating the Colony High School principal had sued MySpace and other individuals for defamation and invasion of privacy.[48] The suit was dropped when the students who created the page confessed.[49]

At the beginning of the 2009 school year, not as many students as anticipated enrolled in Palmer High School. As a result, two teachers, including one English teacher, had to be transferred to other schools.[50] A young, untenured teacher was selected for transfer to Colony High School. Because the teacher selected didn't want to go, Ms. Hickle volunteered. She gathered her belongings from the classroom and went to Colony High School. The principal took Ms. Hickle to the office and told her that her reputation preceded her, a zebra could not change its spots [sic], and she had already hired someone for the position. It is unclear what the principal was referring to, but Ms. Hickle was transferred back to Palmer High School, and the untenured teacher was transferred elsewhere.[51]

Other teachers and staff at Palmer High School were upset with Ms. Hickle, believing the other teacher had to leave because Ms. Hickle had reneged on her agreement. After a weekend, during which students did not have access to her classroom, a note saying "Karma is a bitch . . . just remember that!" was left on Ms. Hickle's chair.[52] On August 21, 2009, an assistant principal at Palmer High School sent an email to the staff stating the "most recent staffing changes were not as a result of ANY PHS staff member's actions," but he was not at liberty to discuss it more specifically.[53]

---

47 R. 185-186.

48 Exc. 044-046.

49 Exc. 047-048.

50 R. 263-265.

51 Hickle Dep. at 85:24 – 88:14.

52 *Id.* at 89:23 – 90:9; R. 0239.

53 R. 264.

On September 4, 2009, Mr. Winter hand-delivered a letter to Ms. Hickle stating she was being placed on administrative leave pending the outcome of an investigation into a complaint regarding her conduct in class on August 27, 2009.[54] The letter was delivered to Ms. Hickle in front of a classroom of students, and she was required to leave immediately.[55]

Ms. Hickle learned someone had complained she had threatened to sue students. In her fourth-period class, in accordance with her lesson plan, she was discussing the artist Georgia O'Keeffe, and how some people had disparaged her. The discussion turned to rumors and their possible consequences. One student asked Ms. Hickle what she would do if someone were spreading rumors about her; she jokingly replied she would sue them for 4.2 million dollars.[56]

On September 8, 2009, Ms. Hickle visited Mattie "Randi" Owens, MSED, LPC, a counselor, due to the stress. Ms. Owens diagnosed adjustment disorder with anxiety, depression, post-traumatic stress disorder (PTSD), and a mood disorder. Ms. Hickle saw Ms. Owens on several occasions through July 23, 2010.[57]

Five students submitted letters in support of Ms. Hickle. Three of those students were in the class where Ms. Hickle made the comment, including the student who asked Ms. Hickle what she would do if someone defamed her. He stated he didn't mean for the question to be taken as it was and Ms. Hickle was a "great teacher."[58]

The complaint led to a pretermination hearing that was held over three dates in October 2009. MSBSD presented evidence Ms. Hickle had misused instructional time by addressing personal issues with students and threatening to sue any student who spread rumors about her for 4.2 million dollars. MSBSD had interviewed more than ten students from the four classes Ms. Hickle had taught that day. At the advice of her union

---

54 Exc. 053.

55 R. 0401.

56 Hickle Dep. at 82:4-12.

57 Exc. 055-062, 067-068.

58 R. 426-431.

representative, Ms. Hickle did not participate in the pretermination hearing. The hearing officer found the case for dismissal to be compelling, and that the statements were made to frighten the students, resulted in harm, and irreparably damaged the teaching relationship. The hearing officer concluded that Ms. Hickle be dismissed and that MSBSD file a complaint with the Alaska Professional Teaching Practices Commission (PTPC). Ms. Hickle was informed she could appeal the decision to the school board.[59]

On May 6, 2010, Ms. Hickle again met with Ms. Owens. Ms. Hickle was near tears when she reported feeling harassed by people at work, and she believed MSBSD did not want her in the school system. Ms. Owens appeared to report, "We discussed paranoia resulting from treatment."[60]

The parties agreed to arbitration and on July 17, 2010, the arbitrator issued his decision. The arbitrator explained MSBSD had the burden to prove two elements by a preponderance of the evidence: that Ms. Hickle engaged in the conduct for which she was disciplined, and that the penalty was appropriate. The arbitrator found MSBSD had not proved Ms. Hickle made the statements in all four periods as alleged, and the dismissal could not be sustained. However, the arbitrator also found Ms. Hickle had "testified very persuasively" that the statement had only occurred during one class period, and was in response to student questions. The arbitrator noted Ms. Hickle's statement was supported by statements from students, including the student who had asked the question. MSBSD was ordered to reinstate Ms. Hickle with back pay, although given the distrust between Ms. Hickle and the administration, Ms. Hickle could be transferred to another school with her consent.[61]

On August 2, 2010, the PTPC informed Ms. Hickle the complaint against her had been dismissed for insufficient evidence.[62]

---

59 Exc. 063-066.

60 R. 2518; *Hickle II* at 10, No. 42.

61 Exc. 069-084.

62 R. 595.

Ms. Hickle transferred to Wasilla High School.[63] On February 10, 2011, students told Ms. Hickle another student was spreading rumors she had acted inappropriately with a male student. Ms. Hickle sent the students to the office to report what they had heard. The students also said there was a rumor going around the school she had been fired from her last job for having sex with kids. She explained that wasn't true, or she wouldn't be working in a school.[64]

November 15, 2011, Dr. Halverson wrote Ms. Hickle had "some reactive paranoia," and she noted that "in times of extreme stress (which have been real for this pt.) she becomes, a little 'unglued' (paranoid obsessive)," but her diagnoses were an unspecified episodic mood disorder and PTSD.[65]

On April 9, 2012, Ms. Hickle reported to Jeff Nelles that a student told the class Ms. Hickle had been fired from her job at Palmer High School because she had a close relationship with a student.[66]

On February 8, 2013, Amy Spargo, Wasilla High School principal, observed Ms. Hickle's teaching. After making 11 positive and no negative observations, Ms. Spargo stated, "You are doing a great job."[67] On February 11, 2013, Ms. Spargo completed Ms. Hickle's annual evaluation. Her comments were all positive, she found Ms. Hickle met or exceeded all standards, and recommended Ms. Hickle's continued employment.[68]

On February 21, 2013, Ms. Gardner, now MSBSD's human resources director, wrote to Ms. Hickle notifying her the school board had approved her employment for the 2013-14 school year and enclosing her employment contract.[69]

---

63 Hr'g Tr. at 296:13-16; Dr. Wolf Medical Examination Tr., Aug. 22, 2013, at 11:2-3, 33:16-17.

64 R. 1911.

65 R. 120-123.

66 R. 226.

67 R. 658-659.

68 R. 459.

69 R. 1266.

On May 2, 2013, before her second period class, Ms. Hickle got a cup of coffee during the break, set it on her desk, and returned to the hallway. She returned to the classroom at the end of the break and proceeded with the next class. A student commented on the smell of her coffee, and she noticed it was somewhat bitter but proceeded to drink it. She began to feel strange and began making mistakes. By the fourth or fifth hour, she knew something was wrong. She went to the adjacent room and asked the staff if it looked like anything was wrong with her. They responded that her eyes were dilated. She drove home, realizing on the way she should not be driving. When she arrived at home, her son convinced her to call an ambulance. She called the school and told the office staff what had happened; they told her to call 911. She was also told they would test her cup. When she was laying in the ambulance, a police officer questioned her as to who might have done it, and what the substance might have been. She named one student who she had had conflicts with and who had a troubled history, but noted there were two students with the same name. She threw up in the ambulance, but the vomitus was not tested or saved.[70]

When EMS personnel arrived, they noted Ms. Hickle was talkative with rambling, repetitive speech, and they assessed anxiety and possible involuntary drug use. Their report indicates the Wasilla Police Department assisted them.[71]

Ms. Hickle was taken to the emergency room at Mat-Su Regional Medical Center where she reported she thought a student had put something in her coffee, but the symptoms were improving. Urinalysis was negative for thirteen common drugs, six of which were opioids, and a sample was sent to be tested for LSD. There is no record of any blood tests. There was no odor of alcohol whatsoever on Ms. Hickle 's breath. The attending physician explained to Ms. Hickle there were "all kinds of potential substances out there that this could be." Ms. Hickle was diagnosed with a "possible ingestion" and directed to follow up with her doctor. She was discharged at 4:49 p.m.[72] The result of

---

70 Hickle Dep. at 17:11 – 23: 23.

71 R. 3498-3499.

72 Exc. 90-96.

the LSD test is not in the record, but Ms. Hickle stated it was negative.[73] A day or two before the incident with her coffee, Ms. Hickle overheard students talking about a "trip;" concerned they were discussing LSD, she cautioned them against drug use.[74]

When Ms. Spargo learned of the possible poisoning, she directed Officer Tim Jessen to go to Ms. Hickle's classroom and collect her coffee cup and other drink containers.[75] However, Ms. Spargo and assistant principal, Mr. Nelles, went to Ms. Hickle's classroom and "without touching anything, removed two cups and an empty root beer can."[76] She spoke to Ms. Hickle after she was released from the hospital and Ms. Hickle told her they had not found anything in the tests, but additional tests were being done.[77] Mr. Nelles collected any cups and drink containers from Ms. Hickle's room which he stored in his office for about three years. He then threw them away because Ms. Hickle was no longer working for MSBSD.[78] The cups were never tested.

On the morning of May 3, 2013, Ms. Spargo emailed Ms. Gardner stating Ms. Hickle's "paranoia is continuing to grow." Ms. Spargo explained Ms. Hickle believed she had been drugged by students, naming one student in particular. Ms. Spargo stated a police officer had stated Ms. Hickle had made over 70 police reports in the last two years. She stated she would be clear with Ms. Hickle that the identities of the students involved must not be made public as there is no evidence or reason to suspect them other than Ms. Hickle's belief.[79]

Ms. Spargo then viewed security video of the hallway outside Ms. Hickle's classroom taken after the last class on May 2, 2013. There was no evidence the student

---

73 *Hickle II* at 12, No. 54; R. 1919.

74 R. 1919.

75 R. 1921.

76 R. 1919.

77 Hr'g Tr. at 257:21-25.

78 *Id.* at 176:4-23.

79 R. 1920; no evidence was presented that Ms. Hickle filed a police report or specifically named a student.

Ms. Hickle thought was responsible had gone into the classroom. There had been a group of students working in the hall after school, and Ms. Spargo interviewed the students individually. Some of the students reported they had a conversation with Ms. Hickle where she warned them against LSD. She did not review the surveillance video for the whole day. Ms. Spargo was very concerned Ms. Hickle had made a police report about a particular student. She felt an allegation like that crossed the line when there was no evidence or reason to think the student had done it, although she had no idea how the matter got referred to the police. Ms. Spargo relied on Ms. Hickle's statement the tests at the hospital had been negative and her own investigation in deciding not to send the cups from Ms. Hickle's classroom for testing. She did not report the incident as a work injury, because she did not believe it had happened. She did not know whether the police had responded to Ms. Hickle's 911 call, or how the police complaint was made.[80]

The evening of May 3, 2013, Ms. Spargo emailed Ms. Gardner stating Ms. Hickle had a doctor's note excusing her from work, and she had "filed a police report for what she described as attempted murder" by a specific student, who she believed put LSD or some other drug in her coffee. Ms. Spargo stated Ms. Hickle had asked her to pull the video for that day and save it for evidence. She stated she would investigate, but questioned whether Ms. Hickle should be supervising students "when she can come up with accusations like this."[81]

Ms. Spargo also emailed MSBSD's attorney on May 3, 2013, attaching her email to Ms. Gardner, and saying she would like to discuss the matter with him. On May 4, 2013, the attorney responded saying Ms. Spargo needed to maintain the chain of custody for the items taken from the classroom.[82]

---

[80] Hr'g Tr. at 258:1 – 260:17, 261:9 – 262:22.

[81] R. 1919.

[82] The parties stipulated at hearing that these emails were produced (*see* Hr'g Tr. at 276:18 – 277:4); however, the Commission was not able to locate them in the Board's record.

On May 3, 2013, Dr. Halverson stated she had seen Ms. Hickle that day. Ms. Hickle reported she had gone to the emergency room because she believed students had put something in her coffee. Ms. Hickle reported she felt she had been "picked on" for some time at school. "[S]he admittedly feels paranoid about this situation, although she believes that this has been happening." Dr. Halverson noted she was concerned Ms. Hickle was experiencing paranoia, but she did not have information to prove or disprove it. Ms. Hickle was diagnosed with an unspecified episodic mood disorder, and Dr. Halverson asked that Ms. Hickle be excused from work until May 14, 2013.[83]

On May 4, 2013, MSBSD's attorney also sent an email to Ms. Gardner stating that, if the police were investigating the matter as a crime, the chain of custody of anything taken from the classroom needed to be maintained and it would be best to have the police test the cups.[84]

On May 14, 2013, Dr. Halverson released Ms. Hickle to return to work.[85]

On June 3, 2013, MSBSD notified Ms. Hickle she was being placed on administrative leave as of May 15, 2013, and, before she could return for the following year, she would be required to undergo an independent medical evaluation in accordance with State regulations to determine if she was medically fit to teach.[86]

At the recommendation of Ms. Hickle's doctor, a stomach biopsy was done on June 21, 2013. The results were negative.[87]

On July 29, 2013, MSBSD informed Ms. Hickle the independent medical evaluation would be performed by Aron S. Wolf, M.D., a psychiatrist, on August 22, 2013.[88]

Dr. Wolf issued his report on August 26, 2013. He stated he had interviewed Ms. Hickle at MSBSD's request for an independent medical evaluation. Prior to meeting

---

83 Exc. 94-97.

84 *See* n. 82.

85 R. 2530.

86 Exc. 101.

87 R. 3184-3185.

88 R. 1922.

with Ms. Hickle, he had conversations with MSBSD's attorney, two MSBSD staff members, and reviewed 11 documents that MSBSD provided:

- Two February 1, 2005, letters from Ms. Gardner to Employee
- A February 8, 2005, Letter from Dr. Baker to Employer
- A note from Dr. Halverson excusing Employee from work
- An October 16, 2008, "letter to the file" by Employee
- A February 23, 2009, "letter to the file" by Employee
- The October 23, 2009, pretermination hearing decision
- A February 21, 2013, letter from Ms. Gardner to Employee
- The May 3, 2013, email from Ms. Spargo to Employer's attorney
- A May 20, 2013, letter from Ms. Gardner to Employee relating to administrative leave
- A July 29, 2013, letter from Ms. Gardner to Employee regarding Dr. Wolf's evaluation
- Several conversations with Employer's attorney clarifying the issues in the documents
- A teleconference with Ms. Gardner
- A teleconference with Ms. Spargo

Dr. Wolf noted that in 2005 Ms. Hickle "took" FMLA leave because of thoughts of suicide. He stated "all of the material" showed Ms. Hickle had similar incidents over the years, and had increasingly felt her peers, the administration, and even students were plotting against her. Dr. Wolf noted Ms. Hickle "was almost terminated" in 2009 for making threatening statements in her class, but the "termination was halted" when the case was taken to arbitration. Dr. Wolf noted the only medical data in the record was the February 8, 2005, letter from Dr. Baker and the brief work release from Dr. Halverson, neither of which gave any information as to Ms. Hickle's diagnosis or prognosis. Ms. Hickle showed Dr. Wolf pictures showing how her vehicle had been defaced by thrown eggs. Dr. Wolf diagnosed paranoid personality disorder, and explained it was defined as "'a pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent, beginning in early adulthood and present in a variety of

contexts.'" Because Ms. Hickle's diagnosis was "longstanding and pervasive," Dr. Wolf did not feel she was fit to return to employment with MSBSD.[89]

Ms. Hickle spent just under one hour with Dr. Wolf.[90] She explained to Dr. Wolf she believed a student put something in her coffee. She also acknowledged she could be mistaken because the cup had been left out overnight, but she had rinsed it before filling it with coffee. She explained she began to feel intoxicated, numb, and urinated a lot. A staff member in an adjoining room said her eyes were dilated. By the time she went home, her stomach was hurting, she was nauseated, and she had a headache. The police came with the ambulance, and she tried to tell them what was going on. Shortly after she began teaching in Palmer, there were rumors she was sleeping with the principal. Then in 2003, she had the incident with the assistant principal keeping her in his office for hours. About the same time, the police had come to her door and questioned her about an accusation she had inappropriate relations with a student. Then, about three years prior to seeing Dr. Wolf, MSBSD accused her of threatening students, and she prevailed at arbitration. These problems were when she was at Palmer High School; after her transfer to Wasilla High School most of the staff was fine, but there were a couple of people with connections to Palmer High School who still treated her differently. Ms. Hickle told Dr. Wolf that Dr. Halverson had cleared her to go back to work, and she believed that as long as she was under a physician's care for the beginning of school, she would be fine. At no time did Dr. Wolf tell Ms. Hickle he had conversations with MSBSD's representatives or tell her what documents MSBSD had provided.[91]

On October 3, 2013, Ms. Hickle gave MSBSD a worker's compensation report of injury for the May 2, 2013, injury.[92]

On October 28, 2013, MSBSD controverted all benefits stating:

---

[89] Exc. 105-107; the evidence presented indicated MSBSD put Ms. Hickle on family medical leave in 2005, rather than as Dr. Wolf reported she asked for it (Exc. 023).

[90] Hr'g Tr. at 62:2-6.

[91] Exc. 527-588.

[92] Exc. 108; MSBSD did not file a report of injury in May 2013 because Ms. Spargo did not believe anything had happened.

> This is a complex medical claim wherein the employee alleges her coffee was poisoned or drugged by a student. The alleged incident was not witnessed by anyone. There is no medical evidence received to date to indicate employee was poisoned or drugged.[93]

Paul L. Craig, Ph.D., a neuropsychologist, evaluated Ms. Hickle on November 13 and 19, 2013. He interviewed Ms. Hickle and reviewed some medical records. Ms. Hickle described the May 2, 2013, and the 2003 incidents to Dr. Craig. Dr. Craig administered several psychological tests, and found Ms. Hickle suffered mild anxiety and moderate depression but no neuropsychological disorder.[94]

On January 24, 2014, Ms. Hickle's administrative leave was terminated when she was terminated from employment with MSBSC.[95]

On March 25, 2014, Grace M. Long, Ph.D., wrote to Dr. Halverson regarding her psychological assessment of Ms. Hickle. Dr. Long met with Ms. Hickle on six occasions, and diagnosed unspecified episodic mood disorder and PTSD. Dr. Long explained she did not have enough data to assess Ms. Hickle's experiences with MSBSD, but if "her explanation of her experiences is accurate, at a minimum it will contribute to the exacerbation in symptoms of her PTSD."[96]

On May 4, 2015, Ms. Hickle filed a workers' compensation claim listing the date of injury as May 2, 2013, and alleging her digestive system had been injured and she had suffered mental stress. In describing how the injury occurred, she described the events of May 2, 2013, and stated she had been deemed unfit for duty by MSBSD's doctor after 17 years of employment. She stated she had been harassed, causing her extraordinary and unusual stress.[97]

MSBSD answered Ms. Hickle's claim on May 18, 2015, and on the same date filed a medical summary to which were attached Dr. Wolf's August 26, 2013, report,

---

93 Exc. 114.

94 Exc. 115-123.

95 Hickle Dep. at 34:12-14.

96 Exc. 124-125.

97 Exc. 160-161.

Dr. Baker's February 8, 2005, report, and Dr. Halverson's October 10, 2008, off-work slip.[98]

On May 18, 2015, MSBSD again controverted all benefits stating:

> There is no medical evidence received to date to indicate employee was poisoned or drugged. There is no medical evidence that indicates the 05/02/13 incident is the substantial cause of the employee's disability or need for treatment.[99]

On September 24, 2015, MSBSD controverted all benefits, again stating:

> There is no medical evidence received to date to indicate employee was poisoned or drugged. There is no medical evidence that indicates the 05/02/13 incident is the substantial cause of the employee's disability or need for treatment.[100]

Ms. Hickle began working as a gardener at Providence Medical Center on June 27, 2016.[101]

On May 3, 2017, Ms. Hickle was seen by Ronald Turco, M.D., a psychiatrist, for an employer's medical evaluation (EME). Dr. Turco noted he had studied "a great many medical records," but he only identified Dr. Wolf's report, Dr. Craig's November 13 and 19, 2013, report, and Dr. Long's March 25, 2014, report. He noted Ms. Hickle was seeing Dr. Halverson, who had effectively assisted Ms. Hickle with a mood disorder and possible PTSD. Dr. Turco reported Ms. Hickle stated she had been the subject of a variety of incidents that appeared not to have been documented and Ms. Hickle had concerns some individuals did not like her. Ms. Hickle reviewed her 2003 difficulties with Mr. Nelson, Mr. Winter, and Mr. Fry, and the claim she had sexually abused a minor. In his summary, Dr. Turco noted many of Ms. Hickle complaints regarding MSBSD "may not have been substantiated on any realistic basis," and, as Dr. Wolf noted, that would meet the criteria for paranoid personality disorder, but an MMPI-2 test would help clarify the matter. He

---

98 Exc. 162-163; R. 3049, 3053, 3065-3066.

99 Exc. 164.

100 R. 019.

101 R. 5310.

did not find any indication of paranoia or PTSD at the time of his examination. Dr. Turco explained:

> [I]t is difficult to know whether she has, in many respects, simply imagined what has been going on or whether she has been delusional. I am aware of the fact that teaching can be difficult and situations and circumstances with regard to the students can be problematic and students do tend to have a tendency to retaliate against teachers and do a variety of odd things.

Dr. Turco opined Ms. Hickle had not been exposed to unusual stress as a teacher, either as a result of the May 2, 2013, incident or while employed by MSBSD, but the issue "should be tried in the context of fact by an independent investigator."[102]

On May 4 2017, Ms. Hickle was seen by Brent T. Burton, M.D., a toxicologist, for an EME. Dr. Burton evaluated Ms. Hickle and reviewed her medical records, including those from Dr. Halverson, Dr. Craig, Dr. Long, and Dr. Wolf. He diagnosed Ms. Hickle with six conditions, only one of which is relevant – paranoid delusional disorder. He stated Ms. Hickle persisted in her belief something was placed in her coffee on May 2, 2013, "without any corresponding evidence or observations that involve anyone having the means or opportunity to surreptitiously add anything to her coffee." Because there was no medical evidence to indicate Ms. Hickle was injured by contaminated coffee, her claim "most likely arose from her underlying psychiatric condition." Dr. Burton stated, "the evaluation performed by Dr. Wolf clearly indicates that Ms. Hickle suffers from a paranoid thinking disorder," and, consequently, it must be concluded the event did not occur.[103]

On June 19 and 20, 2017, Ms. Hickle was again seen by Dr. Craig for a reevaluation. Ms. Hickle provided Dr. Craig with additional details about the May 2, 2013, incident, and Dr. Craig again administered several psychological tests and found no underlying neuropsychological disorder, although her depression continued. Dr. Craig

---

[102] Exc. 173-182.

[103] Exc. 183-201.

noted it was possible, although not probable, that a student had put something in her coffee, but it could never be known what actually occurred.[104]

On January 22, 2018, Ms. Hickle was seen by Dana Headapohl, M.D., for a Board-ordered second independent medical evaluation (SIME). Dr. Headapohl is a specialist in occupational medicine. Dr. Headapohl reviewed Ms. Hickle's medical record, examined Ms. Hickle, and discussed the May 2, 2013, incident extensively with Ms. Hickle. Dr. Headapohl stated, "there is no objective data that helps us understand what, if anything, was in the coffee. A toxicology screen including LSD was negative. This does not confirm that there was nothing extraneous put in her coffee, as only a few chemicals were screened." Dr. Headapohl concluded the May 2, 2013, incident temporarily exacerbated Ms. Hickle's underlying psychiatric condition, and her current disability status was "related to Dr. Wolf's 2013 assessment only." From a toxicology standpoint, Dr. Headapohl opined Ms. Hickle's disability would have ended one week after the May 2, 2013, incident.[105]

On January 23, 2018, Ronald G. Early, M.D., a psychiatrist, examined Ms. Hickle for an SIME. Dr. Early reviewed Ms. Hickle's medical record and examined Ms. Hickle. He stated the first time Ms. Hickle had mental health difficulties was following the 2003 meeting with Mr. Nelson, and Ms. Hickle had experienced a series of continuing problems she thought were related to Mr. Nelson's threat. Ms. Hickle additionally reported she became increasingly distressed and felt isolated by the rumors she had sexual interactions with a student. Ms. Hickle was already feeling insecure and vulnerable by the May 2013 incident. Ms. Hickle reported that when she began feeling "weird" on May 2, 2013, she was hesitant to let the administration or other teachers know because before when she told them she was upset, she was placed on a leave of absence. When she was not allowed to continue teaching, she became increasingly depressed and anxious, but her depression and anxiety resolved when she was away from the school system. Dr. Early explained Ms. Hickle had taken the MCMI-III test, which revealed she was a well-

---

104 Exc. 202-211.

105 Exc. 212-274.

organized person with obsessive compulsive traits, but no personality disorder, and no evidence whatsoever of paranoia. The test showed no major psychiatric illness, and Ms. Hickle's depression and anxiety were within normal limits. Dr. Early diagnosed unspecified anxiety disorder and unspecified depressive disorder, both of which were initially caused by the 2003 assault and temporarily aggravated by the May 2, 2013, incident. Both the depression and anxiety were in remission at the time of his evaluation. Dr. Early opined the May 2, 2013, injury exacerbated Ms. Hickle's symptoms following the 2003 incident to the point she was no longer able to continue teaching, and as a result, the 2013 injury was the substantial cause of Ms. Hickle's subsequent disability and need for more intense medical treatment. He determined Ms. Hickle's disability ended when she began working full-time at the hospital. Dr. Early stated that Dr. Wolf did not consider that the events and situation at school may have been genuine and Ms. Hickle was overwhelmed and did not know how to respond. Dr. Wolf's report was an extension of the May 2, 2013, injury, and the sequelae of the May 2, 2013, injury would have resolved quickly had it not been for Dr. Wolf's report that prevented her from returning to teaching. Dr. Early found Ms. Hickle had no permanent impairment. Dr. Early opined the stress Ms. Hickle experienced since 2003 would be considered extraordinary or unusual.[106]

On May 25, 2018, MSBSD controverted TTD, temporary partial disability, permanent partial impairment (PPI), medical benefits, transportation costs, a compensation rate adjustment, penalties, interest, and attorney fees and costs. The reason for controverting was:

> Per the 01/22/18 report of Dr. Headapohl and the 01/23/18 report of Dr. Early, the employee is medically stable with no permanent impairment.
>
> The work injury of 05/02/13 is not the substantial cause of the employee's injury or disability or need for medical treatment, if any.[107]

On July 15, 2018, Dr. Early responded to questions from Ms. Hickle's attorney. He reviewed 891 pages from Ms. Hickle's personnel file, Dr. Wolf's Report, and his

---

[106] Exc. 275-304.

[107] Exc. 309.

January 23, 2018, SIME report. He noted Dr. Wolf had been provided eleven written records, and had three conversations or teleconferences with administration personnel. Dr. Early found many records in Ms. Hickle's file that would have been valuable for Dr. Wolf's evaluation. Dr. Early noted Dr. Wolf's report is designated as an "independent medical examination" which indicates it is a forensic evaluation for legal purposes. Dr. Early also noted Dr. Wolf's report does not document telling Ms. Hickle the purpose of the evaluation, nor did he document telling her he had personal communications with Ms. Gardner, Ms. Spargo, and MSBSD's attorney before the evaluation. In response to Ms. Hickle's questions, Dr. Early stated an independent medical examination would be conducted using only the records provided and to ensure independence, it would not involve contact with anyone associated with Ms. Hickle's job prior to the issuance of the report. Dr. Early had never heard of an independent medical examiner having conversations with an employee's supervisors or administrative personnel prior to the report. Because the information, both written and oral, is not summarized, there is no basis for the conclusions in the report. Additionally, when records from a personnel file are reviewed as part of an independent medical examination, all records should be provided. In Dr. Early's opinion, the selection of the documents sent to Dr. Wolf raises questions of bias. Dr. Wolf had described paranoid personality disorder as "a pervasive distrust . . . in a variety of contexts." However, from his review of 931 pages of medical records and 891 pages of school records, there was no record of suspiciousness or pervasive mistrust in any aspect of Ms. Hickle's life other than in the school setting. There was no documentation in the personnel records that any students or teachers had been interviewed to determine if the rumors and innuendo were valid. Dr. Early stated that had Dr. Wolf reviewed all the records and administered psychometric testing, he might have reached a different conclusion.[108]

---

[108] Exc. 310-315.

At the September 4, 2018, prehearing conference, Ms. Hickle amended her claim to clarify that she was alleging a cumulative injury, not just an injury that occurred on May 2, 2013.[109]

Dr. Early was deposed on October 19, 2018.[110] He explained the 2013 injury occurred near the end of the school year, and by the beginning of the next school year Ms. Hickle would have been able to teach, but she was precluded from doing so because of Dr. Wolf's findings.[111] He stated it was not wise to make a personality diagnosis on the basis of one evaluation, and the ability of psychiatrists to do so was not good, particularly without psychiatric testing. To diagnose paranoia there must be some proof that what the person is reporting is untrue. Commenting on Ms. Owen's May 6, 2010, discussion with Ms. Hickle regarding paranoia, Dr. Early explained it was important to differentiate between a formal diagnosis and its use as a phrase in a medical narrative. Paranoia begins early and continues throughout life; it does not just go away. He clarified that because Dr. Wolf's report precluded Ms. Hickle from teaching, it was psychologically distressing to her, but he did not consider it to be part of the May 2013 injury. Dr. Early had no information that any component of Ms. Hickle's anxiety predated her employment with Employer. Although an anxiety disorder may go into remission, it is a permanent condition. He stated an incident such as Ms. Hickle described in 2003, if accurate, would make her anxious and afraid of being exploited, and the 2003 incident was the beginning of Ms. Hickle's anxiety and depression. Ms. Hickle's ongoing medical treatment related to her employment with MSBSD.[112]

Dr. Turco testified he had reviewed additional records, but he did not identify those records, and it is unclear what records he reviewed in addition to those he had at the

---

109 Exc. 316-319.

110 R. 2227-2333.

111 Ronald Early, Ph.D., M.D., Dep., Oct. 19, 2018, at 15:15-22, 16:6-7.

112 Early Dep. at 29:4-14, 29:21 – 30:2, 35:7-10, 46:10-18, 53:5-11, 55:23 – 56:14, 60:9-12, 60:16-22, 80:7-12, 80:13- 81:10.

time of his May 3, 2017, report.[113] Dr. Turco noted Ms. Hickle had been diagnosed with PTSD, but he found nothing in her adult life that would have caused PTSD. He did not believe the assault by Mr. Nelson, although extremely stressful, would give rise to PTSD.[114] The records, including the new records he reviewed, showed Ms. Hickle projecting difficulties onto others that have not actually occurred.[115] Dr. Turco liked Dr. Early's report; the report was very logical and Dr. Early did psychological testing.[116] Dr. Turco explained independent medical evaluations and fitness for duty examinations were conducted the same way, but the focus was somewhat different. Often there are fewer medical records for a fitness for duty examination, but he would "absolutely" request more records if needed. It would be extremely rare, however, to interview a coworker or supervisor, and when it happens he addresses it with the examinee and documents it in his report. He lets the examinee review any written notes provided by the employer. In a fitness for duty examination he would typically administer an MMPI if he suspected a serious illness. Dr. Turco stated he typically spends about two hours with the person in a fitness for duty examination, and he acknowledged he had never diagnosed paranoid personality disorder in a fitness for duty examination.[117] He agreed with Dr. Wolf that Ms. Hickle has paranoid personality disorder, but not based on the single incident with the coffee, but on Ms. Hickle's ongoing behavior.[118] Dr. Turco agreed the 2003 incident "definitely" contributed to Ms. Hickle's need for medical treatment, and all of the stresses during her employment contributed to her need for treatment after the 2013 injury.[119] He could not rule out that a student had put something in Ms. Hickle's

---

113 Hr'g Tr. at 193:7-9.

114 *Id.* at 197:16-25.

115 *Id.* at 198:10-13.

116 *Id.* at 199:5-10.

117 *Id.* at 205:5 – 206:20, 213:15-17, 213:20-25, 214:22-24, 215:13 – 216:2, 216:21.

118 *Id.* at 208:22 – 209:1.

119 *Id.* at 221:4-20, 222:10-17.

coffee, and could not offer an alternative explanation for her visit to the emergency room.[120]

Dr. Wolf testified that, for a fitness for duty evaluation, he typically gets records from both the employer and employee and asks for more records if needed, but he only had two medical records in Ms. Hickle's case.[121] He stated he had been given only limited access to medical records for his examination, and his diagnosis was based on his interview with Ms. Hickle and the documents MSBSD provided.[122] When he spoke to Ms. Gardner and Ms. Spargo, it was to get confirmation of what was in the documents.[123] Dr. Wolf had recently been provided with additional medical records, which he noted mentioned potential personality disorder, but no paranoia. [124] At the time of his examination, Dr. Wolf was not aware the 2009 pretermination decision had been rejected in a subsequent arbitration.[125] He did not have a list of the drugs which were tested for at the emergency room.[126]

Mr. Boyle, a union representative and later union president, testified that after the 2003 incident, Ms. Hickle was always suspicious of MSBSD. Mr. Nelson had been a popular administrator, and Ms. Hickle felt people blamed her for his troubles. She seemed stressed and it never went away. He could not recall any instance other than Ms. Hickle's where MSBSD had required a fit-for-duty evaluation.[127]

Ms. Gardner was aware of the conflict between Ms. Hickle and Mr. Fry and Mr. Fry was vocal about Ms. Hickle's teaching abilities. In 2005, Ms. Hickle reached out to Ms. Gardner in distress. Ms. Gardner could not remember the specifics of what Ms. Hickle

---

120 Hr'g Tr. at 223:20 – 224:3.

121 *Id.* at 239:23 – 240:8.

122 *Id.* at 239:5-22, 240:19-22, 241:2-3.

123 *Id.* at 241:17-21, 242:1-5.

124 *Id.* at 243:1-13.

125 *Id.* at 244:18-25.

126 *Id.* at 245:2-7.

127 Boyle Dep. at 9:3, 30:13-16, 31:8-19, 41:17-18.

said, but she did not like where she was working or with whom she was working. Ms. Hickle's statement led Ms. Gardner to conclude Ms. Hickle was considering self-harm, and she required Ms. Hickle to obtain a mental health evaluation. Ms. Gardner did not consider work to be the cause of Ms. Hickle's stress. In 2013, MSBSD would have had about 2,500 permanent employees, including 1,200 teachers. Ms. Gardner did not know the exact number for earlier years, but in the last year, there had been five EEOC complaints. Less than one termination proceeding per year proceeded to arbitration.[128] Ms. Gardner was unaware of any other situation in which an employee was required to undergo a fitness for duty evaluation by a psychologist or psychiatrist selected by MSBSD.[129]

The Board found Ms. Hickle was credible.[130]

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.[131] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[132] "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."[133] The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is

---

[128] Hr'g Tr. at 283:9-12, 15-19; 286:15 – 287:8; 287:18-19; 289:1-6; 316:20-22, 25; 317:1-2, 20-21.

[129] Gardner Dep. at 12:4-11.

[130] *Hickle II* at 25, No. 99.

[131] AS 23.30.128(b).

[132] *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

[133] *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984).

true even if the evidence is conflicting or susceptible to contrary conclusions.[134] On questions of law and procedure, the Commission does not defer to the Board's conclusions, but rather exercises its independent judgment.[135] However, the Board's conclusions with regard to credibility are binding on the Commission, since the Board has the sole power to determine credibility of witnesses.[136]

Furthermore, the Commission's decision is based on the record before the Board, the briefs of the parties, and oral argument before the Commission. The Commission does not accept or review new evidence.[137]

4. Discussion.

Two decisions of the Board are at issue here, the original decision on the merits of Ms. Hickle's claim and the subsequent decision on reconsideration.[138] In *Hickle II,* the Board found Ms. Hickle suffered cumulative trauma while working for MSBSD, sustained a compensable mental injury, was entitled to benefits including medical and time loss, was not entitled to PPI, and was entitled to interest on unpaid benefits, but not a penalty. In *Hickle III*, the Board reconsidered the question of a penalty under AS 23.30.070(f) and reaffirmed its decision that Ms. Hickle was not entitled to a penalty.

MSBSD appealed *Hickle II* claiming the Board erred in finding Ms. Hickle sustained a mental-mental injury as a result of employment actions MSBSD had taken which were not in good faith. MSBSD contends the Board failed to articulate a good faith standard and failed to evaluate properly the employment actions taken by MSBSD. Further, MSBSD asserted the Board failed to apply a correct legal standard to what constitutes extraordinary and unusual stress for employment actions. The Board also erred, according to MSBSD, in finding that multiple stressful events could result in a compensable cumulative injury. MSBSD also asserted the Board erred in finding that

---

134 AS 23.30.122.

135 AS 23.30.128(b).

136 AS 23.30.122; AS 23.30.128(b).

137 AS 23.30.128(a).

138 *Hickle II*; *Hickle III.*

MSBSD had actual knowledge of Ms. Hickle's mental injury and that it was not prejudiced by her failure to file timely written reports of injury.

Ms. Hickle cross-appealed, asserting the Board erred in denying her a penalty under AS 23.30.070(f) for the failure of MSBSD to file timely reports of injury to an employee. She also contended the Board erred in not finding her injury was a physical-mental injury.

a. Did Ms. Hickle suffer a physical-mental injury?

Ms. Hickle claims she sustained a physical-mental injury while working for MSBSD, not just the mental-mental injury the Board found compensable. If she sustained a physical component in her injury, the presumption of compensability would apply to her claim.

The Alaska Supreme Court (Court), in *Runstrom v. Alaska Native Medical Center*, detailed the different kinds of mental injuries a worker may sustain. "[W]ork-related mental injuries have been divided into three groups for purposes of analysis. A 'physical injury that causes a mental disorder' is considered a physical-mental clam; a 'mental stimulus that causes a mental disorder' is considered 'mental-mental' claim; and a 'mental-physical' claim occurs when a mental stimulus causes a physical injury."[139] Ms. Runstrom was splashed in the eye by fluid from an HIV patient. Even though she tested clear for HIV over several years, she nonetheless continued to be frightened by the specter that she still might be diagnosed with HIV. The Court held this was a physical-mental injury.[140] "[W]hen there has been a physical accident or trauma, and [a] claimant's disability is increased or prolonged by traumatic neurosis, . . . it is now uniformly held that the full disability including the effects of the neurosis is compensable."[141]

Exactly what happened on May 2, 2013, is not fully known. What is known is that Ms. Hickle drank some coffee from a cup left unattended for some period of time. During

---

139 *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567, 572 (Alaska 2012).

140 *Id.* at 573.

141 *Id.*

the course of the school day she became conscious of not feeling well and a co-worker said her eyes were dilated. She left work in the afternoon and sometime after arriving home she called an ambulance to take her to the emergency room. She vomited in the ambulance, but the vomitus was not tested. The EMS personnel assessed anxiety and possible involuntary drug use. At the Mat-Su Regional Medical Center her urine was tested, but there is no record of any blood tests. The LSD test, according to Ms. Hickle, was negative. The other hospital tests did not reveal any specific contaminant, but there is no report identifying what tests were run. A couple of days before this, Ms. Hickle overheard students talking about a "trip" and concerned, she advised them against drug use; hence the test for LSD.

Ms. Hickle notified Amy Spargo, Wasilla High School principal, of the possible poisoning after her release from the hospital. She also provided a medical release taking her off work for a few days. Ms. Spargo then had an assistant principal retrieve the coffee cup and other drink containers which he stored for about three years. These were never tested for any sort of contaminant. Ms. Spargo also reviewed the security video taken after the last class on May 2, 2013, but apparently did not review any of the videos from earlier in the day, or from around the time the coffee might have been tampered with. Ms. Spargo did not interview the co-worker who thought Ms. Hickle's eyes were dilated. Ms. Spargo stated she did not file a report of injury because she did not believe an incident had occurred.

However, the evidence is that Ms. Hickle went to the hospital after work, vomited, was tested for some contaminants, but not all, and was taken off work for a few days. Dr. Turco, MSBSD's EME physician, stated he could not rule out that a student had put something in the coffee, nor could he offer an alternative explanation for her visit to the emergency room. Dr. Headapohl, one of the Board's SIME physicians, opined there was no objective evidence that something was in the coffee, but also there was no evidence to the contrary "as only a few chemicals were screened."[142]

---

142 *Hickle II* at 20, No. 86.

The Board did analyze the 2013 injury with the contaminated coffee cup, but came to the conclusion that Ms. Hickle did not suffer a physical injury. However, the Commission finds the Board erred. First, AS 23.30.120(a) provides that benefits sought by an injured worker are presumed to be compensable. Nonetheless, the injured worker must establish a link between the alleged injury and the work.[143] To raise the presumption of compensability, a minimal amount of evidence is necessary. The Commission agrees with the Board that Ms. Hickle raised the presumption of a physical injury based on her testimony that she developed symptoms at work, students made comments, and a staff member observed her pupils were dilated.

However, the Board found that MSBSD rebutted the presumption with substantial evidence by looking at the negative drug test results only. MSBSD contends the report of its EME, Dr. Burton, also rebutted the presumption. However, he relied on the report of Dr. Wolf that Ms. Hickle was paranoid and concluded the episode with the coffee cup did not happen. He did not offer an alternative explanation for the trip to the emergency room.

The Court, in *Huit v. Ashwater Burns, Inc.*, held that, in determining whether substantial cause exists for rebutting the presumption of compensability, the evidence must not only rule out work as the substantial cause, but the evidence must also point to an alternative explanation as the substantial cause.[144] That is, the Board must weigh the relative contributions of all causes and where there is no alternative cause there is nothing to weigh.

Dr. Craig, in his report, noted that it was possible, although not probable, a student put something in Ms. Hickle's coffee, but agreed it could not be known what actually occurred.[145] The Board's SIME physician, Dr. Headapohl, stated, "[t]here is no objective data that helps us understand what, if anything, was in the coffee. A toxicology screen including LSD was negative. This does not confirm that there was nothing extraneous

---

143 *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011).

144 *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904, 919 (Alaska 2016).

145 Exc. 202-211.

put in her coffee, as only a few chemicals were screened."[146] Dr. Turco, MSBSD's EME physician, testified at hearing that he could not rule out that a student had put something in her coffee, and could not offer an alternate explanation for her visit to the emergency room.[147] No doctor indicated that the lack of negative testing was evidence Ms. Hickle did not drink contaminated coffee.

The objective evidence is that Ms. Hickle went to the emergency room due to physical symptoms developed at school after ingesting the coffee. She felt ill at school, a co-worker commented on her dilated pupils, and her son had her call an ambulance. She vomited in the ambulance. The emergency room reports diagnosed a possible ingestion reaction.

Under *Huit*, MSBSD did not rule out a work-related incident and was unable to provide an alternative explanation for her visit to the hospital following discomfort that developed at work. Therefore, the unrebutted evidence is that Ms. Hickle had a physical problem that led to a mental stress issue. This is a physical-mental injury that should have been analyzed using the presumption analysis. However, this error by the Board does not require a remand, because the Board found Ms. Hickle sustained a mental stress injury as a result of her work with MSBSD. She was awarded benefits for that injury, which are the same benefits she would be entitled to receive if her claim had been analyzed as a physical-mental injury.

b. Was the work stress claimed by Ms. Hickle extraordinary and unusual?

MSBSD contends Ms. Hickle's work stress was the result of work actions: evaluation, disciplinary actions, transfers, and/or terminations all undertaken in good faith. Therefore, MSBSD asserts Ms. Hickle does not have a compensable mental-mental injury. MSBSD also requested the Commission to define good faith in mental stress claims.

---

146 Exc. 212-274.

147 Hr'g Tr. at 223:20 – 224:3.

Ms. Hickle points to the bias in the one-sided and incorrect evidence presented at the 2009 pretermination hearing, which was later overturned in arbitration, and again in the incomplete, erroneous, and one-sided information provided to Dr. Wolf for his report which led to her termination in 2013. She contends this manipulation of evidence is prima facie evidence of the lack of good faith on the part of MSBSD.

In *Kelly v. State, Dep't of Corrections*, the Court held that an employee's perception of stress may be considered, but "is by itself inadequate to establish 'extraordinary and unusual' stress."[148] The Court noted that other courts require an "inquiry into whether the claimed mental injury is the result of 'actual, not merely perceived or imagined, employment events.'"[149] *Kelly* involved a death threat and the Court found that the Board should have focused on the "character and quality of the threats as described" by the employee.[150] The Court further found that even though prison guards may be subject to threats the nature of the threat to Kelly was extraordinary and unusual, nor was the threat related to a personnel action "such as evaluation or termination."[151]

Ms. Hickle asserts, and the Board found, the personnel actions taken by MSBSD over the years of her employment caused her mental distress and were not undertaken in good faith. MSBSD asserts the actions resulted from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer, here MSBSD. MSBSD contends there is no statutory definition of good faith and the actions of MSBSD must be judged by the objective actions and the subjective intentions of MSBSD and not be judged based on Ms. Hickle's subjective interpretations of those actions. Furthermore, the actions taken by MSBSD must be unusual and extraordinary before they may be considered to have been undertaken not in good faith. MSBSD contends all of the actions involving Ms. Hickle were bona fide disciplinary actions, job transfers, or termination. Thus, any mental distress suffered by

---

148 *Kelly v. State, Dep't of Corrections*, 218 P.3d 291, 300 (Alaska 2009).

149 *Id.*

150 *Id.* at 301.

151 *Id.* at 302.

Ms. Hickle from these actions should not rise to the level of a compensable workers' compensation claim for mental stress.

The Alaska Workers' Compensation Act (Act) provides at AS 23.30.010:

> (b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.

AS 23.30.120 further provides that:

> (c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

The Act does not define what a good faith action would be. MSBSD suggests adoption of a definition similar to that of "just cause" in an employment contract, contending that good cause exists if there is a reasonable basis for the employment action measured by facts known at the time of the action and whether the action is supported by substantial evidence. Ms. Hickle points out that statutory interpretation should be undertaken "according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose."[152] She also contends "good faith" may vary from situation to situation and notes that the Court has declined to define good faith in the context of Civil Rule 68 Offers of Judgment.[153] She, thus, asserts the Commission likewise should not adopt a definition.

The Commission notes the pattern of actions taken by MSBSD supports the Board's finding that MSBSD did not act in good faith. MSBSD routinely relied on incomplete and erroneous information when it came to making decisions about continued employment for Ms. Hickle.

---

[152] *Harris v. M-K Rivers*, 325 P.3d 510, 518 (Alaska 2014).

[153] *Anderson v. Alyeska Pipeline Service Company*, 234 P.3d 1282, 1289 (Alaska 2010).

The pattern started in 2003, when Mr. Nelson enticed Ms. Hickle to a meeting on the pretext of it being a friend to friend meeting. The meeting was held under false pretenses as Mr. Nelson included Mr. Ramos to discuss a teaching problem he had with Ms. Hickle. This problem was not previously disclosed to her, nor was she apprised she could have a union representative present when her job performance was being discussed. After about 30 minutes into the meeting Mr. Ramos left. However, Mr. Nelson kept Ms. Hickle at the meeting for somewhere between 2 and 3 hours and at some point pushed Ms. Hickle. He then told her to seek psychological help or be placed on a Plan for Improvement. Ms. Hickle reported the incident to the school nurse who recommended she see a counselor. The push by Mr. Nelson and Ms. Hickle's subsequent stress clearly constituted a work injury.

MSBSD maintains it was proper for the meeting between Mr. Nelson and Ms. Hickle to have gone forward as it did because there were concerns about her teaching. However, MSBSD had an investigation performed by its EEOC officer, Ms. Kane, who determined Mr. Nelson had created "a hostile, offensive, or abusive work environment."[154] MSBSD did not challenge the findings.

The Commission finds that creation of a hostile work environment by an assistant principal is not, and should not, be considered a normal work environment. No employee should be subjected to working in a hostile work environment, nor should such an environment be considered "normal." The work stress resulting from that meeting or the evaluation undertaken in that meeting was unusual and extraordinary in comparison to that experienced by individuals in a comparable work environment. At least, no evidence was presented that MSBSD employees as a whole were working in a hostile work environment produced by Mr. Nelson. The resulting stress was not the result of a work evaluation undertaken in good faith.

In October 2004, Ms. Hickle sought help from the administration after a fellow teacher, Mr. Fry, filed a Parent Survey of Teacher Performance, when he did not have a student in any of Ms. Hickle's classes. He filed out the evaluation because he did not like

---

154 *Hickle II* at 4, No. 5.

her plans for her class on a day when most of her students were taking a high school qualifying test and her plans for computer lab use fell through. According to Ms. Hickle, Mr. Winter said he spoke to Mr. Fry who continued to pester her for the rest of the school year. Rather than protect Ms. Hickle, MSBSD decided her distress should result in her being placed on conditional family medical leave.[155] She returned to work after her psychologist released her to return to work in February 2005.[156]

At the beginning of the 2009-2010 school year, Ms. Hickle volunteered to transfer to Colony High School in place of a non-tenured faculty who did not want to be transferred. The Principal at Colony High School told her he did not want her working there, saying her reputation had preceded her. She returned to Palmer High School and rumors at Palmer High School circulated that she reneged on her agreement. Finally, on August 21, 2009, an assistant principal defused the situation with an email to staff that "recent staffing changes were not the result of ANY PHS staff member's actions. . . ."[157]

Then, in September 2009, Ms. Hickle was placed on administrative leave pending an investigation into a complaint that Ms. Hickle has threatened to sue some students. The complaint led to a pretermination hearing in October 2009 where MSBSD presented "evidence" Ms. Hickle had, in four different classes, threatened to sue students, intending to frighten the students. Based on this evidence a hearing officer concluded Ms. Hickle should be dismissed and a complaint should be filed with the PTPC. The evidence presented in the pretermination hearing was contrary to the actual evidence. At least five students wrote letters in support of Ms. Hickle, agreeing she made the statement in only one class, and the statement was made as a joke in response to a joking question from a student. The evidence provided in the pretermination hearing was incomplete and erroneous. The hearing was followed by an arbitration in July 2010, after which the arbitrator held MSBSD had not proved Ms. Hickle made the statements as alleged and ordered her rehired. The PTPC informed her in August 2012 the complaint against her

---

155 *Hickle II* at 6-7, Nos. 20-25.

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

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

was dismissed for insufficient evidence. Perhaps more important is the question why Ms. Hickle was subjected to being terminated over an alleged statement, when previously another faculty member had actually sued a student for libel and was not subjected to any discipline.[158] Use of incomplete, erroneous, or deceptive evidence in the pretermination hearing cannot be considered an action undertaken in good faith.

The final alleged job action occurred after Ms. Hickle went to the hospital after drinking some coffee at work. She thought the coffee had been contaminated by a student. Ms. Spargo, on her own, decided Ms. Hickle's "paranoia is continuing to grow" and asserted she had filed over 70 police reports in the past year. She further decided that the coffee cup had not been contaminated after viewing a video of the hallway late in the afternoon (several hours after the alleged contamination) and interviewing some students also present in the late afternoon.[159] She further alleged Ms. Hickle had filed a police report naming a specific student, but she offered no evidence to support this statement.

MSBSD decided Ms. Hickle should be evaluated for fitness to return to work and engaged the services of Dr. Wolf. MSBSD provided Dr. Wolf with selected documents including the October 2009 pretermination hearing decision, but not the arbitration decision reversing that decision, and arranged for him to talk to its attorney as well as two other employees. He was not provided with any current medical reports nor was he supplied with Ms. Hickle's complete personnel file. He was not given the 2003 report finding the assistant principal had created a hostile work environment nor was he given the arbitrator's report reversing the termination of Ms. Hickle in 2009. He met with Ms. Hickle for an hour and provided his report to MSBSD's attorney for editing. He recommended she be found unfit for duty. Ms. Gardner also testified that she spoke to Dr. Wolf herself to ensure that he understood the perspective of MSBSD when making

---

158 *Hickle II* at 8, No. 33.

159 Hr'g Tr. at 269:20-24; 273:15 – 274:10.

his evaluation.[160] Even though Dr. Wolf called his report an independent medical evaluation, it was clearly conducted with a particular conclusion in sight.

Dr. Early further noted that had Dr. Wolf been provided with a complete and unbiased record on Ms. Hickle he might well have reached a different conclusion.[161] The Board's SIME physician, Dr. Early, and MSBSD's EME physician, Dr. Turco, both testified that the "independent medical evaluation" done by Dr. Wolf was not professionally handled.

MSBSD did not obtain Dr. Wolf's report in good faith and Ms. Hickle's termination was not undertaken in good faith. Dr. Wolf was provided with incomplete and erroneous information and he compromised his report with one-sided conversations with school district employees and its attorney. He did not administer the MMPI yet came to a medical conclusion that Ms. Hickle was paranoid. Yet, the school undertook to end Ms. Hickle's teaching career based on this report it set up. Ms. Gardner further testified she discounted Dr. Halverson's release for Ms. Hickle to return to work because she did not find the information acceptable. She did not convey that to Ms. Hickle nor provide her with an opportunity for Dr. Halverson to supplement her release.[162]

All of the above identified personnel actions were undertaken with incomplete and erroneous evidence and seemingly with the intent to find an excuse to terminate Ms. Hickle. Unlike the claimant in *Williams v. State, Dep't of Revenue*, the stresses endured by Ms. Hickle were not the same as those encountered by others teaching at MSBSD. At least the Commission does not find creating a hostile work environment, and manipulating evidence for a termination hearing and independent medical evaluations to be normal work place stress encountered by other teachers.

The Board awarded benefits to Ms. Hickle stating, "work-related stress was the predominant cause of [Ms. Hickle's] anxiety and depression, and it was not caused by

---

160 Hr'g Tr. at 303:19-21.

161 *Hickle II* at 22-23, No. 91.

162 Hr'g Tr. at 305:15 – 307:3.

good faith personnel actions."[163] This finding is supported by substantial evidence in the record as a whole.

c. Did MSBSD have actual knowledge of injury to Ms. Hickle?

MSBSD contends Ms. Hickle failed to file a report of injury timely and, therefore, her claim is time barred. Ms. Hickle claims MSBSD had actual notice of each stressful action taken by MSBSD which cumulated in the final stressful situation of her termination from teaching.

The Act, at AS 23.30.100, provides that:

> (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the employer.
>
> (b) The notice must be in a format prescribed by the director and contain the name and address of the employee, a statement of the time, place, nature, and cause of the injury or death, and authority to release records of medical treatment for the injury or death, and be signed by the employee or by a person on behalf of the employee, or, in case of death, by a person claiming to be entitled to compensation for the death or by a person on behalf of that person.
>
> (c) Notice shall be given to the employer by delivering it to the employer or by sending it by mail addressed to the employer at the employer's last known place of business. If the employer is a partnership, the notice may be given to a partner, if a limited liability company, the notice may be given to a member, or if a corporation, the notice may be given to an agent or officer on whom legal process may be served or who is in charge of the business in the place where the injury occurred.
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
>
> (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
>
> (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

---

[163] *Hickel II* at 48.

The Board found that MSBSD had actual knowledge of each event Ms. Hickle asserts led to her claim of cumulative trauma for mental injury and, thus, excused her late written report of injury. The Board further held that because MSBSD had actual knowledge of each stressful event it was not prejudiced by her failure to file a report of injury, especially when no one from MSBSD ever advised her of the need to file a report of injury.

In 2003, Ms. Hickle suffered stress following meeting with Mr. Nelson which he set up under false pretenses and then made more stressful by barring her from leaving and actually pushing her. Mr. Nelson is part of the administration and MSBSD is on notice of what Mr. Nelson knew. Ms. Hickle reported the incident to the school nurse who reported it to Mr. Winter. Ms. Hickle then saw Dr. Halverson who diagnosed PTSD. Following the meeting with Mr. Nelson, MSBSD requested an investigation by MSBSD's EEOC officer who reported a finding of a hostile work environment. According to Dr. Early, the Board's SIME physician, the meeting with Mr. Nelson set in motion the stress felt by Ms. Hickle which the 2013 incident fully exacerbated, and became the substantial cause of her disability.

Subsequent events built on this initial onset of stress from her work environment. In 2004, Ms. Hickle complained about Mr. Fry to her principal, Mr. Winter. In lieu of protecting Ms. Hickle from Mr. Fry's unwanted attentions, MSBSD placed her on leave until she obtained a medical release. Certainly Mr. Winter and Ms. Gardner, who placed her on leave, knew about the stress being caused to her.

In 2009, following a joke in one classroom, Ms. Hickle was suspended by Mr. Winter. Mr. Winter knew about the incident and the incomplete and faulty investigation into the allegations Ms. Hickle threatened to sue students.

The Court, in *Tinker v. Veco*, held that a failure to give timely written notice may be excused if "first, knowledge of the injury by the employer, in-charge agent, or carrier, and second, a lack of prejudice to the employer or carrier."[164] The question to be asked is whether written notice would have provided any additional information not already in

---

[164] *Tinker v. Veco*, 913 P.2d 488, 491-492 (Alaska 1996).

the possession of the employer. If additional information would have been provided by the written notice, then the employer is prejudiced by the lack of written notice. If the written notice would not have provided any additional information, then there is no prejudice. The lack of specific knowledge that the incident is work-related does not vitiate the employer's knowledge of the injury.[165]

The next question is when an injured employee knows or should have known the injury was work-related.[166] This is the timeframe in which the employee should file her report of injury. This is especially pertinent when, as here, the employee is alleging a cumulative trauma. The Commission has previously indicated the pertinent date is "the last day the employee engaged in the work activity that he or she alleges brought about the "cumulative" injury.[167]

Here, the Board found that Ms. Hickle, although previously aware of seeking medical treatment following each stressful work event, was not aware until Dr. Early's report that each of the prior incidents continued the stress and contributed to her reaction to the May 2013 coffee incident. This situation is similar to that in *Fox v. Alascom, Inc.*, in which the employee gave timely notice when she became aware of the connection between her stress and her work.[168] Dr. Early opined the 2003 event set in motion, or was the initial cause of, her anxiety and depression and this pre-existing condition was aggravated by the May 2013 coffee cup incident. It was following receipt of his report that she was aware she had a workers' compensation claim. Her report of injury was timely.

Moreover, MSBSD had actual knowledge of each incident cumulating in the 2013 termination of Ms. Hickle. Even if MSBSD did not think these incidents were work injuries, they were not precluded from filing reports of injury since they were aware Ms. Hickle

---

165 *Kolkman v. Greens Creek Mining Co., 936 P.2d 150 (Alaska 1997).*

166 *Cogger v. Anchor House,* 936 P.2d 157, 160 (Alaska 1997).

167 *Sourdough Express, Inc. v. Barron,* Alaska Workers' Comp. App. Comm'n Dec. No. 069, 23, n. 99 (Feb. 7, 2008).

168 *Fox v. Alascom, Inc.*, 783 P.2d 1154 (Alaska 1989).

sought medical treatment after each event. However, the juxtaposition of the event and her subsequent visits for medical treatment gave them notice that there might be a work connection. MSBSD could have filed a report of injury. Moreover, MSBSD was not prejudiced by Ms. Hickle's failure to file her own reports of injury. In each incident, they were aware she sought medical treatment and could have requested a medical release from her. They chose not to consider these as work injuries even as they knew the events were stressful to Ms. Hickle. This is a choice MSBSD freely made.

The Board's decision is supported by substantial evidence in the record as a whole.

d. Is Ms. Hickle entitled to TTD between 2013 and 2016?

MSBSD contends that the Board improperly awarded TTD between 2013 and 2016. MSBSD further asserts that Dr. Early, in his deposition, agreed that no doctor had previously found Ms. Hickle disabled as a result of the May 2, 2013, incident.[169] MSBSD further asserts that Dr. Wolf only addressed fitness for duty and did not mention disability. MSBSD further asserts that no evidence was provided that Ms. Hickle was precluded from teaching or other work by her termination from employment with the school district. MSBSD points to her attempts to attend nursing school and to work for Walmart (sic) as evidence that she was not disabled from work by her termination and by Dr. Wolf's report.

Ms. Hickle, to the contrary, asserts that the finding of unfit for duty and the report to the PTPC effectively stopped her from teaching anywhere in Alaska and potentially anywhere else. Moreover, MSBSD did not present any evidence of actual jobs available to Ms. Hickle from January 2014 to June 2016 and did not establish a wage-earning capacity for her. Ms. Hickle notes that her anxiety caused her to be unable to complete her school work for the first time in her life and she was terminated from her work at Fred Meyer on an odd-lot basis when a former co-worker began to pester her.

AS 23.30.185 provides for the payment of TTD benefits for the period of temporary disability to the date of medical stability. AS 23.30.395(16) defines disability to mean "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."

---

[169] Early Dep at 13:7-8.

The Board found that Ms. Hickle had suffered a compensable mental injury and was disabled by the injury on May 2, 2013. The Board found that under AS 23.30.185 she was entitled to TTD during the continuance of her disability. The Board based its conclusion on the fact that MSBSD declined to accept a release to work from Ms. Hickle's treating doctor and terminated her employment. She was paid her salary through January 24, 2014.[170] The Board also relied on the testimony and reports of Dr. Early, one of its SIME physicians, that Ms. Hickle was disabled from the work injury due to the report of Dr. Wolf, until she found work as a gardener with Providence Hospital on June 27, 2016. The Board awarded TTD from January 24, 2014, to June 26, 2016.

Ms. Hickle was not able to work as a teacher in Alaska once MSBSD found her unfit to teach and reported that finding to PTPC. This falls within the definition of disability to earn the wages she was earning at the time of her injury. Her testimony, which the Board found credible, was that while she tried to return to school to learn a new profession, this attempt was unsuccessful due to her anxiety and depression. She also testified she tried to work at Fred Meyer until a former co-worker began bothering her. It was not until she found work as a gardener at Providence that she was able to return to work. There are no physician reports in the record finding her medically stable between January 2014 and June 2016 which would preclude receipt of TTD benefits. In addition, no testimony or evidence was presented of any alternative work available to her during this period of time.

The Board relied on the testimony of Dr. Early that Ms. Hickle was disabled during this time period. The Board found Ms. Hickle credible and determined Dr. Early's testimony to be the more persuasive. The Board's findings of credibility are binding on the Commission. The Board has the prerogative of determining which doctors are the most persuasive. The Commission looks at the Board's determination to see if it is supported by substantial evidence in the record as a whole. The Board's decision regarding TTD is supported by substantial evidence in the record as a whole. The Commission affirms the Board's award of TTD.

---

[170] *Hickle II* at 49.

e. Is Ms. Hickle entitled to a penalty under AS 23.30.155(e) and/or AS 23.30.070(f)?

Ms. Hickle asserts she is entitled to a penalty on all unpaid benefits under AS 23.30.155(e) for late payment, and under AS 23.30.070(f) because MSBSD failed to file reports of injury after the 2003 incident and especially after the 2013 incident. The Board held she was not entitled to a penalty under AS 23.30.155(e) because she had not presented any argument that MSBSD's controversions were not in good faith. AS 23.30.155 provides in pertinent part:

> (d) if the employer controverts the right to compensation, the employer shall file with the division, in a format prescribed by the director, a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the division, in a format prescribed by the director, a notice of controversion not later than the date an installment of compensation payable without an award is due. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorney fees incurred by the prevailing employer, shall be made not later than 14 days after the determination.
>
> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.

The statute plainly provides that a penalty is excused when a proper controversion if filed.

In her appeal brief, Ms. Hickle contends she did not need to present an argument MSBSD did not properly controvert her claim because she argued MSBSD did not have

evidence to rebut the presumption of compensability in AS 23.30.120. However, the analysis of what constitutes sufficient evidence for a valid controversion and what constitutes sufficient evidence to rebut the presumption are two different analyses and occur at different points in the process of deciding if an injury is work-related.

MSBSD controverted Ms. Hickle's claim on May 15, 2015, on the basis that there was no evidence she had been poisoned, relying on the initial reports from the emergency room and Ms. Hickle's statements that the testing so far was negative. MSBSD followed this controversion with another on May 28, 2018, following the first SIME report of Dr. Early and the EME report of Dr. Headapohl. On the face, these controversions were filed in good faith because if no contrary evidence had been filed or argued, Ms. Hickle would not have prevailed on her claim for benefits. These controversions occurred well before any hearing on the presumption of compensability. A controversion may be in good faith, but the total evidence at hearing may well establish that the presumption was not, in final analysis, rebutted. That does not make the controversions in bad faith.

The Board's decision she was not entitled to a penalty under AS 23.30.155(e) is supported by the evidence.

In its response to Ms. Hickle's motion for reconsideration, the Board held she had not properly requested a penalty under AS 23.30.070(f) in her claim for benefits, and MSBSD was not on notice of that penalty request. Therefore, MSBSD could not properly prepare a defense. The Board denied her penalty request.

The Act states that:

> (f) An employer who fails or refuses to file a report required of the employer by this section or who fails or refuses to file the report required by (a) of this section within the time required shall, if so required by the board, pay the employee or the legal representative of the employee or other person entitled to compensation by reason of the employee's injury or death an additional award equal to 20 percent of the amounts that were unpaid when due. The award shall be against either the employer or the insurance carrier, or both.

Thus, if an employer fails to file a report of injury, the Board may require the employer to pay an additional twenty percent penalty. This penalty is not mandatory nor is it self-actuating. Imposition of this penalty requires Board action. Here, Ms. Hickle admits she

only requested a penalty on "late paid compensation" and did not specifically raise a penalty issue under AS 23.30.070(f).

Alaska is a notice pleading state, meaning that some information is necessary to put the other party on notice of the recovery or defense being asserted.[171] Notice pleading does not mean a request for damages or a defense must be specified in full detail, but it does mean that some indication of the request or defense is given to the opposing party. Furthermore, to fail to assert that an employee is seeking a specific benefit is not putting form over substance as contended by Ms. Hickle. It merely allows the employer the ability to prepare a defense. It is reasonable to deny a benefit when the opposing party had no notice of the request and no time to prepare a defense.

Two different penalties are now claimed by Ms. Hickle, but she only requested one in her workers' compensation claim. Furthermore, at hearing Ms. Hickle initially indicated she was seeking a penalty, and the Board found this led all participants to conclude the penalty sought was the AS 23.30.155(e) penalty. Ms. Hickle had an opportunity prior to hearing to specify what penalties she sought and the basis for those penalties. She did not clarify that she sought two distinct penalties. While she did raise the issue in her closing argument, this timing meant that MSBSD had no opportunity to properly form a defense.

In review of the actions taken by MSBSD, it is clear they did not timely file the required reports of injury. Nonetheless, the award of a penalty for this failure is clearly within the discretion of the Board. The statute states that an employer "who fails or refuses to file the report required by (a) of this section within the time required shall [pay the penalty], if so *required by the board. . . .*"[172] The Board chose not to award the penalty for the reasons stated above. The Commission finds the Board did not abuse its discretion.

---

[171] *See, for example, Phillips v. Gieringer,* 108 P.3d 889 (Alaska 2005); *Martin v. Mears,* 602 P.2d 421 (Alaska 1979).

[172] AS 23.30.070(f) (emphasis added).

5. Conclusion.

The Commission REVERSES the Board's finding that Ms. Hickle did not sustain a physical injury and was, thus, entitled to a finding that MSBSD did not rebut the presumption of compensability. However, since she was properly awarded the benefits she would have received under the different analysis, the Commission's decision does not require a remand. In all other aspects, the Commission AFFIRMS the Board's decisions.

Date: *20 December 2019* Alaska Workers' Compensation Appeals Commission

Signed
James N. Rhodes, Appeals Commissioner

Signed
Amy M. Steele, Appeals Commissioner

Signed
Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed 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. 273, issued in the matter of *Matanuska-Susitna Borough School District vs. Donna M. Hickle*, AWCAC Appeal No. 19-004, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on December 20, 2019.

Date: *December 23, 2019*

Signed

K. Morrison, Appeals Commission Clerk