

# Alaska Workers' Compensation Appeals Commission

Matthew L. Rife,  
Appellant,

vs.

B.C. Excavating, LLC and Alaska National  
Insurance Company,  
Appellees.

## Final Decision

Decision No. 274      December 31, 2019

AWCAC Appeal No. 19-002  
AWCB Decision No. 19-0010  
AWCB Case No. 201601856

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 19-0010, issued at Anchorage, Alaska, on January 23, 2019, by southcentral panel members Janel Wright, Chair, Justin Mack, Member for Labor, and Amy Steele, Member for Industry.

Appearances: Matthew L. Rife, self-represented appellant; Michelle M. Meshke, Meshke Paddock & Budzinski, PC, for appellees, B.C. Excavating, LLC and Alaska National Insurance Company.

Commission proceedings: Appeal filed January 30, 2019; briefing completed September 18, 2019; oral argument was not requested by either party.

Commissioners: Michael J. Notar, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

### *1. Introduction.*

Matthew L. Rife seeks workers' compensation benefits for his ongoing back pain which he asserts is the result of two injuries (in 2013 and 2014) while working for B.C. Excavating, LLC, insured by Alaska National Insurance Company (B.C. Excavating).

His claim for benefits was heard by the Alaska Workers' Compensation Board (Board) on November 7, 2018, and the Board denied his claims.<sup>1</sup> The Board denied his motion for reconsideration on January 23, 2019.<sup>2</sup> Mr. Rife timely appealed to the Alaska Workers' Compensation Appeals Commission (Commission). Neither party requested oral argument and his appeal is now decided based on the parties' briefs. The Commission affirms the Board's decisions.

2. *Factual background and proceedings.*<sup>3</sup>

Mr. Rife reported two injuries while working for B.C. Excavating. The first occurred on September 5, 2013, when he fell off a trench box onto an eight-inch dip water line, which was approximately 10 feet deep. The second injury occurred on January 23, 2014, when he was welding a flange onto a lift station in an open excavation.<sup>4</sup>

Prior to his first injury with B.C. Excavating, on April 3, 2012, Mr. Rife saw Alexander Baskous, M.D., who evaluated him as part of a medical surveillance program required under 29 CFR 1910.120(f). Medical surveillance is required for all employees who may be exposed to hazardous substances at or above permissible exposure limits. One of the questions on the evaluation form asked, "Do you currently have any of the following musculoskeletal problems?" Since Mr. Rife did not have back pain, pain or stiffness when he leaned forward or backward at the waist, or any other muscle or skeletal problem that would interfere with using a respirator, he answered "no".<sup>5</sup>

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<sup>1</sup> *Rife v B.C. Excavating, LLC*, Alaska Workers' Comp. Bd. Dec. No. 19-0001 (Jan. 2, 2019)(*Rife IV*). *Rife v. B.C. Excavating, LLC*, Alaska Workers' Comp. App. Comm'n Appeal No. 16-007 Order on Petition for Review (Aug. 26, 2016)(*Rife I*), *Rife v. B.C. Excavating, LLC*, Alaska Workers' Comp. Bd. Dec. No. 18-0061 (June 26, 2018)(*Rife II*), and *Rife v. B.C. Excavating, LLC*, Alaska Workers' Comp. App. Comm'n Appeal No. 18-010 Order on Petition for Review (Sept. 7, 2018)(*Rife III*) are not part of this appeal.

<sup>2</sup> *Rife v. B.C. Excavating, LLC*, Alaska Workers' Comp. Bd. Dec. No. 19-0010 (Jan. 23, 2019)(*Rife V*).

<sup>3</sup> We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

<sup>4</sup> *Rife V* at 2, No. 1.

<sup>5</sup> Exc. 118-121.

On September 11, 2013, Mr. Rife reported to Upshur Spencer, M.D., that he fell about nine or ten feet off a trench box and landed on his right hip and right lower back onto compacted dirt. Mr. Rife had no extremity symptoms, but after 48-72 hours his low back symptoms increased. Mr. Rife complained of right-sided low back pain radiating into the posterior and anterior proximal half of his thigh, but he had no weakness or numbness. Mr. Rife reported he only missed work to attend his doctor's appointment and was not taking pain medication. X-rays were "fairly unremarkable." Dr. Spencer diagnosed lumbago with axial mechanical back pain. His examination revealed no evidence of a neurologic deficit, although he noted Mr. Rife seemed to have a slight leg length discrepancy and spina bifida occulta. Dr. Spencer expected Mr. Rife's symptoms to improve spontaneously with time and did not limit Mr. Rife in any activity. Mr. Rife weighed 240 pounds.<sup>6</sup> Dr. Spencer did not restrict Mr. Rife from working.<sup>7</sup>

On January 27, 2014, Mr. Rife indicated his back pain began one week before, and he questioned whether it was "related to fall 1 yr ago or what." His back started hurting "one day" and got worse and worse over the next few days and he was "not sure what brought on such severe pain."<sup>8</sup> Sports & Spinal Injury Clinic did not restrict Mr. Rife from working.<sup>9</sup>

Mr. Rife next sought care on February 21, 2014, for the low back pain. He reported his lower back was "not feeling good" and had not been good for two months. He believed his pain's initial cause was a "torn muscle." Digital palpation of his spine and extremities revealed the following dysfunctional areas: Occiput, C1, C2, T4, T5, T6, T7, L5, and sacrum. Robert E. Lewis, D.C., treated Mr. Rife on February 21 and 28, 2014,

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<sup>6</sup> Exc. 50-51.

<sup>7</sup> *Id.*

<sup>8</sup> Exc. 59, 60, 122-125.

<sup>9</sup> *Id.*

and diagnosed lumbar subluxation, lumbosacral segmental dysfunction, muscle spasm, and lumbar sprain or strain.<sup>10</sup> Dr. Lewis did not restrict Mr. Rife from working.<sup>11</sup>

The next record of Mr. Rife receiving medical treatment is November 2, 2015, when he received "acute care" for left lumbar, left sacroiliac, and left buttocks dull and aching discomfort. He also complained of cervical, thoracic, pelvic, and sacral pain. Mr. Rife reported he had pain "for about the last three months but has gotten much worse within the last week or so." Kristin E. Grote, D.C., diagnosed segmental and somatic dysfunction of lumbar region. She did not restrict Mr. Rife from working.<sup>12</sup>

Also, on November 2, 2015, Mr. Rife treated for low back pain with Express Care and reported he injured his back "a couple of years ago" and "recently he was picking up a 5 gallon bucket of water and felt his back pop." B. Kirwan Webb, M.D., diagnosed low back strain and prescribed Norco for seven days. Dr. Webb did not restrict Mr. Rife from working.<sup>13</sup> Mr. Rife returned to see Dr. Webb on January 12, 2016. He reported he had pain off and on, but his pain was not "going away." Mr. Rife had no radiation symptoms into his lower extremities. Dr. Webb diagnosed sprain of ligaments of lumbar spine, sequela, prescribed Ultracet for seven days, and referred Mr. Rife to physical therapy.<sup>14</sup>

On January 18, 2016, Mr. Rife returned to Dr. Webb and reported he "never followed up with physical therapy because he didn't know if he could afford the cost and was waiting for Workmen's Comp. to see if they would pay for it." Mr. Rife had no symptoms in his lower extremities. Ultracet was not relieving Mr. Rife's pain and Dr. Webb provided a prescription for Norco. At the same time Dr. Webb educated

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<sup>10</sup> R. 1001-1005.

<sup>11</sup> *Id.*

<sup>12</sup> R. 1027-1028.

<sup>13</sup> R. 968-969.

<sup>14</sup> R. 966-967.

Mr. Rife on narcotic addiction and advised he would prescribe no additional narcotics.<sup>15</sup> Dr. Webb did not restrict Mr. Rife from working.<sup>16</sup>

The Board found Mr. Rife's excuse to Dr. Webb for not pursuing physical therapy groundless and not credible. On January 12, 2016, Mr. Rife's medical benefits were not controverted and he did not have to wait to see if the workers' compensation insurance carrier would pay for physical therapy.<sup>17</sup>

Moreover, On January 25, 2016, Mr. Rife began physical therapy for lumbar spine strain due to postural dysfunction. With education and implementation of necessary postural changes, Mr. Rife's symptoms were reduced. Mr. Rife was diagnosed with generalized muscle weakness, low back pain, strain of muscle and tendon of back wall of thorax, sequela, with an onset date of November 1, 2015.<sup>18</sup> While attending physical therapy, Mr. Rife was not working because he was attending school to become a civil engineer. He reported the first week of November 2015 he injured his back "again" and was diagnosed with low back strain.<sup>19</sup> The onset of symptoms for which Mr. Rife sought treatment coincided with the most recent lumbar sprain or strain in the record, which was when he picked up a five-gallon bucket of water and felt his back pop.<sup>20</sup>

On February 25, 2016, the claims adjuster, Kymberly LaRose, took a recorded statement from Mr. Rife. At that time, he weighed 250 pounds and stated his lower back hurt. After the September 5, 2013, injury, Mr. Rife went to a physician "to get it looked at because it happened at work." He had an x-ray and was told, "there was nothing, no bones were broken, nothing." Mr. Rife continued to work for B.C. Excavating. He complained that on January 23, 2014, it took him three hours to weld a pipe to a lift station, which was reflected on his timecard. The next day, or the day after that, he was

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<sup>15</sup> R. 964-965.

<sup>16</sup> *Id.*; R. 966, 968.

<sup>17</sup> *Rife V* at 4, No. 13.

<sup>18</sup> R. 958-959.

<sup>19</sup> R. 960-63.

<sup>20</sup> R. 958-963, 814-842; *Rife V* at 5, No. 15.

in bed for three days. It was the most painful thing he had ever experienced. He could not bend over to put his socks on and laid in bed on his back for three days. Prior to leaving Alaska on April 22, 2014, Mr. Rife worked in B.C. Excavating's Anchorage office. He treated with chiropractors in Healy and Anchorage. After leaving Alaska, Mr. Rife did not seek treatment until the fall of 2015. In 2014, while Mr. Rife was in Montana, his back "still kinda bothered me, would kinda come and kinda go, and, uh, it sure as heck wasn't as bad as it was the second time I got hurt when I was in bed for, like, three days. It never hurt as much as bad as that, it was just enough to let you know it was there."

Mr. Rife was working in North Dakota in the summer and fall of 2015, and he said he "was unloading some stuff and I went down to move a deal of water, about 5-gallon thing of water, it was probably about half full I think, went down to pick it up and move it, and I picked it up, and I turned and felt the big wrenching pain go up my back." After his two work injuries, Mr. Rife's back did not hurt him again until the incident lifting water. Mr. Rife later stated, "I was not working for any employer when I was moving a half-empty 5-gallon bucket of water. That was on my own, own deal. I was moving to Butte for school." After Mr. Rife's two work-related injuries, in the summer of 2014, the severity of his pain subsided and no longer necessitated medical treatment. Ms. LaRose advised Mr. Rife that B.C. Excavating had not denied any workers' compensation benefits, had paid all medical bills it had received, and had no basis to deny his claim. Ms. LaRose told Mr. Rife she did have questions about the gap in his treatment from April 2014 to November 2015.<sup>21</sup>

On March 14, 2016, B.C. Excavating denied Mr. Rife retraining benefits, effective February 22, 2016. B.C. Excavating asserted Mr. Rife had not met the criteria to be eligible for a retraining evaluation. B.C. Excavating had not received any medical documentation removing Mr. Rife from work and asserted he effectively removed himself from the workforce when he left his employment with B.C. Excavating in April 2014 for

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<sup>21</sup> R. 814-842.

other occupational opportunities. B.C. Excavating said it had light duty available for their employees with work injuries.<sup>22</sup>

On March 17, 2016, Mr. Rife sought care from an emergency department for low back pain. He reported no recent injury, pain did not radiate to his lower extremities, and a history of "back pain for the last couple of years." Examination revealed full range of motion in all Mr. Rife's major joints and no tenderness to palpation or major deformities. Mr. Rife was prescribed Ultram and Norflex.<sup>23</sup> PA-C Todd D. Mohr did not restrict Mr. Rife from working.<sup>24</sup>

On March 17, 2016, Ms. LaRose notified Edward P. Curry, M.D.'s office that Mr. Rife's claim was open and billable.<sup>25</sup>

On March 29, 2016, Mr. Rife requested a reemployment benefits eligibility evaluation. Mr. Rife was unable to check either of the boxes on the form confirming he had been totally unable to return to his employment for 60 consecutive days or 90 consecutive days. Mr. Rife's marginalia stated, "From 1-16-16 to 3-3-16 I missed 49 days of work due to previous injury."<sup>26</sup>

On April 22, 2016, diagnostic imaging of Mr. Rife's lumbar and thoracic spine revealed normal alignment of his thoracic vertebral bodies and intact intervertebral disc spaces. He had no spinal stenosis or disc herniations. At L4-5, Mr. Rife had mild disc space narrowing with a central disc herniation; however, there was no impingement on the right or left lateral recess. He also had a tiny central disc herniation with slight subligamentous extension at L5-S1. Alignment of his lumbar vertebral bodies was otherwise normal; his remaining disc spaces were intact.<sup>27</sup>

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<sup>22</sup> R. 5.

<sup>23</sup> R. 1012-1017.

<sup>24</sup> *Id.*

<sup>25</sup> R. 1041.

<sup>26</sup> R. 1247.

<sup>27</sup> R. 990.

On April 25, 2016, Mr. Rife again sought treatment in the St. James Healthcare emergency department. He had been sitting at a desk quite a bit for school, was able to ambulate without difficulty, had no weakness, numbness, or tingling, and had lumbar pain “mostly” on the right side. The diagnosis given was chronic low back pain without sciatica.<sup>28</sup> Dr. Lewis did not restrict Mr. Rife from working.<sup>29</sup>

On May 4, 2016, Dr. Curry reviewed Mr. Rife’s magnetic resonance imaging (MRI) and determined he was not a candidate for surgical intervention. He recommended Mr. Rife see a primary care physician or a non-operative spinal provider.<sup>30</sup> Dr. Curry did not restrict Mr. Rife from working.<sup>31</sup>

On August 8, 2016, Mr. Rife again sought treatment from an emergency department and wanted pain medication. The report stated, “[H]e is here for some pain meds and muscle relaxers. He injured his back three years ago in a work related accident and now he can't get the help he needs because the Alaska state insurance won't pay for his injuries.” Mr. Rife said he “can't go to the clinic because the insurance won't pay for it.” Mr. Rife said there was pain to palpation, but was observed getting off the bed without any difficulty and walking throughout the facility without any obvious signs of pain. Mr. Rife was informed he would not be prescribed medication out of the emergency room, but he was given a pain tab prior to discharge.<sup>32</sup> PA Valerie R. Russell did not restrict Mr. Rife from working.<sup>33</sup>

The Board found Mr. Rife’s report to PA Russell that Alaska National Insurance Company would not pay for his injuries was not credible.<sup>34</sup>

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28 R. 996-999.

29 *Id.*

30 Exc. 147.

31 *Id.*

32 R. 1050-1053.

33 *Id.*

34 *Rife IV* at 9, No. 32.

On August 26, 2016, Mr. Rife sought care with James F. Girolami, M.D., for chronic low back pain. Mr. Rife reported he quit working for B.C. Excavating shortly after reporting his January 2014 injury and moved back to Montana in April 2014. He said he had had chronic back pain ever since, with flare-ups that “come and go off and on.” In November 2015, Mr. Rife said he moved to Butte, Montana, to attend school, and was lifting some water bottles and his back pain flared up. After the water bottle lifting incident an MRI was done. Mr. Rife reported the MRI showed he had an L3 herniated disc. He also complained “in the last several months, he has also noticed pain that seems to shoot at times to his lower thoracic area up into the right shoulder, and the abdomen area.” Mr. Rife believed the shooting pains were tied to his back pain. Mr. Rife was working as a civil engineering technician. Dr. Girolami explained, given Mr. Rife’s complaints, his chronic back pain issue was not something appropriately treated in “same day care.” Although further workup was necessary, Dr. Girolami’s initial impressions were: chronic low back pain with patient history of herniated L3 disc; right upper quadrant pain and thoracic pain of unclear etiology; and abnormal liver function studies of unclear etiology. Dr. Girolami noted Mr. Rife was obese. He was given a few Ultram tablets and advised “this is not something we would continue to refill in same day care.” Dr. Girolami also “made it very clear” to Mr. Rife “that we are not going to manage or treat his chronic pain in same day care and this was a one-time prescription for the traMADol, but will not be refilling.”<sup>35</sup> Dr. Girolami did not restrict Mr. Rife from working.<sup>36</sup>

The Board found that Mr. Rife’s recall of his MRI results was not accurate. The April 22, 2016, MRI showed a “tiny central disc herniation with slight subligamentous extension at L5-S1.”<sup>37</sup>

On August 27, 2016, B.C. Excavating scheduled Mr. Rife to attend an employer’s medical evaluation (EME) with Scot A. Youngblood, M.D. Because Mr. Rife did not appear, Dr. Youngblood reviewed the medical record. He diagnosed:

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<sup>35</sup> Exc. 149-152.

<sup>36</sup> *Id.*

<sup>37</sup> *Rife V* at 6, No. 19.

1. Lumbar sprain/strain, without evidence of fracture, dislocation, radiculopathy, myelopathy, or internal derangement, substantially caused by the industrial injury of September 5, 2013, long ago resolved and medically stable.
2. Apparent lumbar strain, without evidence of radiculopathy, myelopathy, or internal derangement, substantially caused by the industrial injury on or about December 10, 2013, long ago resolved and medically stable.
3. Intermittent mechanical low back pain, substantially caused by the claimant's exogenous obesity, physical deconditioning, and intermittent activities, and not substantially caused or permanently aggravated by any industrial injury.
4. Mild lumbar degenerative disc disease, without evidence of significant nerve root impingement, radiculopathy, or myelopathy, substantially caused by the claimant's age, genetics, and exogenous obesity, and not substantially caused or permanently aggravated by any industrial injury, medically stable.
5. Exogenous obesity with a body mass index of 37.7, not substantially caused by any industrial injury, but giving rise to and potentiating any chronic lower back symptomatic condition.
6. Concern for drug seeking behavior expressed in the medical record by multiple providers, not substantially caused or aggravated by any industrial injury.

Dr. Youngblood said all causes of Mr. Rife's "disability or need for medical treatment" included his age, genetics, physical deconditioning, exogenous obesity, and the alleged work injuries of September 5, 2013, and January 24, 2014." However, Mr. Rife's work injuries were not the substantial cause of his "alleged" disability and need for any medical treatment. Mr. Rife's September 5, 2013, lumbar sprain/strain was medically stable on December 5, 2013; his January 24, 2014, lumbar sprain/strain was medically stable on April 24, 2014. Dr. Youngblood added, "It should be noted in the medical record that the claimant has sustained multiple reinjuries of his lower back that are clearly not related to either of the industrial injuries in question." Mr. Rife's medical record contained no objective findings that warranted a permanent partial impairment (PPI) rating; he had no radiating pain, radiculopathy, or myelopathy. The treatment Mr. Rife received in the first three months of each injury was reasonable and necessary; however, any treatment beyond that was neither reasonable nor necessary for his work-related sprain/strain

injuries. Dr. Youngblood said Mr. Rife had chronic mechanical lower back pain aggravated by intermittent activities. Because Mr. Rife was “clearly deconditioned and ha[d] exogenous obesity” no formal treatment other than aerobic conditioning, a self-directed home exercise program, and weight loss was recommended. Neither narcotics nor invasive treatment were reasonable or necessary. Dr. Youngblood recommended no physical restrictions and no work restrictions. He addressed Mr. Rife’s lower right abdominal pain complaints as follows:

It is noted in the medical record that the claimant intermittently complains of right lower abdominal pain. This complaint would not be deemed related to or substantially caused by any industrial injury. A closer review of the medical record does not reveal that this is a prominent symptom, it would not be considered related to any industrial injury.<sup>38</sup>

On September 28, 2016, Kraig A. Ward, M.D., diagnosed straight back syndrome and physical deconditioning. He assured Mr. Rife surgery was not reasonable or necessary, provided low back exercises and prescribed meloxicam.<sup>39</sup> Dr. Ward did not restrict Mr. Rife from working.<sup>40</sup>

On December 7, 2016, Mr. Rife sought treatment from Rachel Day, N.D., a naturopath. She reported:

September of 2013 Matt reports had a fall where he was knocked into a ditch at work 10-12 feet and landed on a metal pipe on the right side of his mid-low back. X-rays were performed at that time at AFOC. Went to the chiropractor and felt like that helped slightly. In January of 2014 he was working at 40-50 below zero welding in a ditch and was inverted laying in the ditch X3 hours and then could not move the following day to get out of the bed. Was bedridden X3-4 days. Took some muscle relaxants but had never been in that much pain. Went to the chiropractor again. Moved to northeastern Montana - continued to have a high level of pain and low mobility. November 2015, 13 months ago - moved down to Butte for school and went to p/u a 1/2 full - 5 gallon bucket of water and his back “went out.” Went to [R]ocky [M]ountain [C]hiropractic and she tried to help. Went to the walk-in clinic and x-rays were performed and pain killers were given. Referred to PT and did as much as he could - seemed like exercises

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<sup>38</sup> Exc. 153-165.

<sup>39</sup> Exc. 166-171.

<sup>40</sup> *Id.*

were making it worse. Finished school and moved to [R]ound-up for work. Went into Billings Clinic August 2016 - wanted to get set up with a PCP - 8-9 times higher ferritin levels than normal; went through 3-4 blood panels. He reports being a carrier for hemochromatosis. Saw a gastroenterologist - he wanted to perform a liver biopsy. Saw Dr. Ward the spine doctor and discussed the MRI - the 2 lower discs are gone and the other is severely herniated - was prescribed meloxicam. . . . Working in Lewistown for the past 2 months. Saw Dr. Ward's assistant this week and no plan was given according to Matthew. . . . Symptoms: 1st symptoms lower to mid back was painful w/ muscle spasms up to below the right shoulder blade and radiates down to his stomach. Since the summer and early fall having radiation down the left lateral thigh and down right lateral thigh to the ball of the foot. A few times when he can walk normal; then he can fall to his knees d/t pain, no loss of bowel or bladder function. Feels good at 220#. He has gained 40# since the accident.

Mr. Rife's past medical history was low back pain due to bulging discs, osteoarthritis, and loss of disc height.<sup>41</sup> Dr. Day did not restrict Mr. Rife from working.<sup>42</sup>

On December 27, 2016, Mr. Rife sought treatment with Patricia Holl, D.C. She reported:

[I]n September of 2013 he fell putting a water line in at work. He landed on a metal pipe after falling 12-13 feet. He got up, finished working that day and went to the orthopedic clinic in Anchorage and had xrays taken and was told nothing was broken. He was sore but kept working and saw a chiropractor a few times. In January of 2014 he was welding while inverted in temps of 40-50 below. He woke the next day and couldn't move. He stayed in bed for 3 days. He subsequently moved back to Montana in 2014 and re-injured his back last winter. He reports he's been "dismissed" after seeing numerous doctors. In January of 2016 he filed a worker's comp case. In April he saw a doctor in Butte who had an MRI of the lumbar spine, which revealed a disc herniation. In August of 2016 the case was dismissed. He saw a Same Day Care doctor and got pain meds and muscle relaxants. Since August until now, he's been to Billings Clinic about a dozen times and only gets medications, no treatment. He decided to see Dr. Day for weight loss. He is currently experiencing low back pain with associated radicular symptoms down both legs. Pain radiates to the right side of his ribs and up to his shoulder blades. Last Saturday his pain was so bad he went to the ER and got a prescription for hydrocodone and steroid dose pack. He reports he spent the past two days in bed.

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<sup>41</sup> R. 1073-1077.

<sup>42</sup> *Id.*

Dr. Holl found Mr. Rife overweight and diagnosed “other intervertebral disc displacement, lumbar region”; low back pain; and other muscle spasm.<sup>43</sup> She did not restrict him from work.<sup>44</sup>

On December 27, 2016, Robert Renjel, IMR, evaluated Mr. Rife’s acute chronic low back pain exacerbation. His back pain was “likely mechanical.” Weight loss was encouraged and Mr. Rife was referred to anesthesiology for an epidural steroid injection. At Mr. Rife’s request, a referral to neurosurgery would also be made.<sup>45</sup> IMR Renjel did not restrict Mr. Rife from working.<sup>46</sup>

On March 31, 2018, Mr. Rife attended an EME with James R. Schwartz, M.D. Mr. Rife said he moved to Alturas, California, from Billings, Montana, in November 2017, began working fulltime for the National Forest Service, and remained in his position doing office work. Mr. Rife was 5'11" tall and weighed 260 pounds. Dr. Schwartz reviewed the April 22, 2016, thoracic and lumbar spine MRIs. He said the thoracic MRI showed degenerative disc disease, T8-T9 disc space dehydration, and posterior protrusions. The lumbar MRI, which Dr. Schwartz said was “a quite abbreviated study,” and showed L4-5 and L5-S1 dehydration with a central disc protrusion at L4-5, midline protrusion, no significant amount of stenosis and no neural foraminal stenosis. Dr. Schwartz diagnosed chronic lumbar degenerative disc disease and acute traumatic injuries in September 2013 and January 2014, which were soft tissue lumbosacral strains, resolved. Dr. Schwartz concluded:

Acute traumatic injuries in September of 2013 and January of 2014 appear to be essentially soft tissue lumbosacral strains. The history as he relates it is one of chronic low back pain, unrelated to a specific anatomic injury. Certainly, treatment is appropriate, but given the rather patchy history and patchy medical treatment, I would not relate this to any structural injury sustained in the September 2013 incident. I would call this a lumbosacral strain with resolution over the following several months, as at the visit with

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<sup>43</sup> R. 1070-1071.

<sup>44</sup> *Id.*

<sup>45</sup> R. 1083-187.

<sup>46</sup> *Id.*

the chiropractor at that time, the examinee related that his back pain had started several weeks before without an inciting incident.

I do not see that the present symptoms are related to an injury. His present symptoms are related to chronic low back pain. There is some mild to moderate nonphysiologic pain behavior. He fills out a Pain Disability Questionnaire, scoring which is 136. This is a score that essentially means that he is totally physically disabled and in dire need of significant pain medication. This alone is significant nonphysiologic pain symptomatology.

Dr. Schwartz recommended a treatment regimen, which "should consist of therapy, hamstring stretch, physical conditioning, nonsteroidal anti-inflammatories, and perhaps a mild muscle relaxant. All of this treatment needs to be on a consistent basis." He attributed the substantial cause of Mr. Rife's need for medical treatment to his chronic lumbar degenerative disc disease, which was not posttraumatic. Dr. Schwartz said the work trauma Mr. Rife described was a soft tissue injury, which resolved over several months. After three months post injury, work was no longer the substantial cause of Mr. Rife's need for medical treatment. Dr. Schwartz "determined this by the fact that [Mr. Rife] continued to work for several days after the injury and after being seen and treated without a significant amount of pain medication he continued to work." Dr. Schwartz said this is indicative of a soft tissue injury and acknowledged Mr. Rife's work was relatively strenuous and appeared to be uninterrupted by his back pain complaints. Dr. Schwartz found Mr. Rife's 2013 work-related soft tissue injury medically stable by January 2014, with no permanent partial impairment. Mr. Rife could do medium category work, "has no physical restrictions imposed on him at the present time, nor are there any self-imposed" and the injuries of September 5, 2013, or January 24, 2014, are not a substantial cause of any physical restrictions.<sup>47</sup>

On June 7, 2018, Carla Cordova-Eduave, PA-C, wrote a letter on Mr. Rife's behalf. She said, "When he does not have flare ups, he is okay to drive and operate machinery."<sup>48</sup>

On September 3, 2018, Mr. Rife requested permanent total disability (PTD) and PPI benefits, a compensation rate adjustment, an order B.C. Excavating unfairly or

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<sup>47</sup> Exc. 182-197.

<sup>48</sup> Exc. 61.

frivolously denied his claim, a seventy percent weekly stipend, and penalty and interest. Mr. Rife said, "Actions of operator (Aaron Bartel 9-5-13) caused myself to fall into trench box. I fell about 10', lower back hit iron pipe. On 1-23-14 I was welding in ditch (Glitter Gulch, AK). Next days couldn't move in bed." Mr. Rife said he filed the claim because, "Injuries sustained while working for BC Excavating and BC Leasing are life long, my condition has gotten worse and severely negatively effects my current job at Forest Service to a point of possibly losing job due to medical issues with previous injuries at BC Ex."<sup>49</sup>

On September 5, 2018, PA-C Cordova-Eduave confirmed Mr. Rife had been a patient at Spine Nevada since May 9, 2018, and his diagnoses were low back pain, radiculopathy lumbar region, skin paresthesia, sacrococcygeal disorders, and pain in thoracic spine. PA-C Cordova-Eduave said, "This patient is able to perform all of his job duties, however, he has increased symptoms once the weather changes to cold temperatures. It would be beneficial for him to work in a warm climate in order to perform all daily functions of living without increased pain."<sup>50</sup> PA-C Cordova-Eduave did not restrict Mr. Rife from work.<sup>51</sup>

Mr. Rife attached only page two of a multiple page, undated form to his brief. The form does not identify when or whether the form was completed on Mr. Rife's behalf; however, the Board assumed it was completed on his behalf. It states, "Approximate date condition commenced" was 2013. "Probable duration of condition" states, "intermittent, life long." The record does not identify the "condition," who has the condition, or the individual authoring responses to the form's questions. The form's paragraph three states, "Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions." It then asks, "Is the employee unable to perform

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<sup>49</sup> Exc. 1.

<sup>50</sup> Exc. 63.

<sup>51</sup> Exc. 61, 63.

any of his/her job functions due to the condition.” The check-marked response is “No.” The form does not identify the employer or the employee. The author completing the form notes, “Difficulty bending, lifting, climbing in/out truck.” Paragraph four requests, “Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave,” to which the response is, “patient reports intermittent episodes of ‘back going out’ which makes basic ADLs difficult and painful. Episodes last 2 hours – 1 week making time off specifications hard to gauge.”<sup>52</sup>

The Board found this form supported the opinions of Drs. Schwartz and Youngblood that Mr. Rife experiences episodic low back pain aggravated by intermittent activities.<sup>53</sup>

Ms. LaRose testified at hearing. She recorded an interview with Mr. Rife on February 25, 2016, and asked him if he had any injuries other than those on September 5, 2013, and January 23, 2014. Mr. Rife told Ms. LaRose he was working in North Dakota in the summer and fall of 2015, when he had to move a five-gallon water bottle and reinjured himself.<sup>54</sup>

Mr. Rife testified at hearing. It had been five years since his injuries and his condition continued to get worse. In April 2014, he left B.C. Excavating and moved from Alaska to Montana where he had a job as an excavator. From January 16, 2016, until March 3, 2016, he lived in Butte, Montana, and was off work while attending college to obtain his civil engineering degree. He did not miss any work after his September 5, 2013, injury and only three days after the January 23, 2014, injury. After completing school, he lived in Roundup, Montana, and worked as a civil engineer tech for National Resources Conservation. He now works as a civil engineer tech for the National Forest Service and has held this position since November 25, 2017. He sought PTD benefits because “to him, it is PTD.” He had to submit a letter to his current employer to get a position in a warmer climate because when the weather is cold, his back pain increases

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<sup>52</sup> R. 656.

<sup>53</sup> *Rife V* at 9, No. 29.

<sup>54</sup> Hr’g Tr. at 33:19 – 34:5, 35:10 – 36:7, Nov. 7, 2018.

and he misses work. Based upon Yellowstone Naturopathic Clinic's records, he believes "arthritis can be caused by massive amounts of inflammation caused by an injury."<sup>55</sup>

B.C. Excavating took Dr. Youngblood's deposition on November 20, 2018, because Mr. Rife requested the right to cross-examine Dr. Youngblood. However, Mr. Rife did not appear nor did he participate telephonically in the deposition. Dr. Youngblood did not have an opportunity to examine Mr. Rife on August 27, 2016, because he did not present for his evaluation. Therefore, B.C. Excavating requested Dr. Youngblood review all Mr. Rife's medical records up to August 27, 2016. Prior to his deposition, Dr. Youngblood was provided additional medical records, including Dr. Schwartz's EME report. Dr. Youngblood diagnosed Mr. Rife with a lumbar sprain/strain without evidence of fracture, dislocation, radiculopathy, myelopathy, or internal derangement. Mr. Rife's April 22, 2016, thoracic MRI was completely normal. The lumbar MRI showed Mr. Rife had lower lumbar spine, L5-S1, degenerative changes. The L5-S1 disc had a central posterior disc protrusion with some disc water content loss; it also had a central posterior protrusion. There was no impingement or compression or even contact with any of Mr. Rife's nerve elements. There is no way to tell from the April 22, 2016, MRI how or when the disc protrusions came about; however, there was no fracture or dislocation. There was no severe injury and "common things being common, on a more probable than not basis, this is from just the natural aging process." Mr. Rife's body mass index ranged from 33 up to 40, which is either obese or extremely obese according to the Centers for Disease Control. Degenerative disc disease is associated with aging, "especially in the setting of obesity." Mr. Rife's first work injury was a sprain/strain because Mr. Rife fell; and his second one was a strain because Mr. Rife was welding pipe on his back for a prolonged time, which caused no trauma. Soft tissue injuries resolve, heal, and are medically stable three months post injury. It can happen before that, but generally, it takes three months for soft tissue injuries to completely heal. Dr. Youngblood found no evidence Mr. Rife was disabled from working during the first three months after

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<sup>55</sup> Hr'g Tr. at 27:4-6, 27:17 – 29:14, 30:24 – 31:12, 31:23 – 32:7, 32:24 – 33:3, 41:7-13, 42:21 – 43:21, 63:19-25.

either work injury. Mr. Rife continued to work full-time on a regular basis without any restrictions and no medical provider placed him on any work restrictions. No lasting effect from strains or sprains is expected, nor is a permanent partial impairment. Dr. Youngblood reviewed Mr. Rife's medical records after August 27, 2016, which did not change his August 27, 2016, opinions.

And I should also say that Dr. Schwartz, in my mind, after reading his report, he essentially agrees that these were soft tissue sprains and strains and should have resolved within a few months after the injury. . . . [I]f you look throughout the medical record, it's not just the two independent medical evaluations, but if you look at Dr. Upshur Spencer's evaluation just six days after his first injury, or even Dr. [K]raig Ward on September 28, 2016, who is – he is a physical medicine and rehabilitation specialist. He saw Mr. Rife and essentially said the same thing that we all were saying, which is that this is – he had a low back strain. He has mechanical back pain, and he recommended physical conditioning and therapy and exercises, but no surgery.

So I think that if you look across the continuum of the medical record and history, most experts in orthopedics or in physical rehabilitation are saying the same thing. . . . That these were – these were soft tissue sprains and strains, that they should have gotten better and resolved, quite frankly, within a few months after the injury, and he's otherwise deconditioned, obese and -- and the way it was going forward should be to address those problems and not – and certainly no one at any point has found any indication for either injections or surgery.

Dr. Youngblood did not doubt Mr. Rife has pain symptoms; however, he noted Mr. Rife's low back complaints over the years since his first injury have had a “waxing and waning nature,” which “actually goes along with the natural history of low back pain.” Low back pain is the second leading cause for primary care appointments after the common cold. It is very common for people to aggravate their low back, especially if they are deconditioned and also obese. Low back pain aggravated by weather changes would be surprising. Dr. Youngblood “actually never heard that.” There is a cold-weather and weather changes relation to the onset of more symptoms in arthritic joints, but

typically in peripheral joints, the hands, knees, or ankles. Increased symptoms in the back or hip would not be expected at decreased temperatures.<sup>56</sup>

In his petition for reconsideration, Mr. Rife contended the April 3, 2012, medical surveillance program report by Dr. Baskous, was “obviously ignored by the AWCB, the verbatim in the report was not included in the final decision.” Mr. Rife argued “The medical exam results that I submitted explicitly indicated that I had no back/spine injury and that I was in great health.” He asserted:

Obviously, the finding by the IMEs that the injuries would not last long is laughable. These injuries are everlasting, and obviously the medical documentation I have presented to the AWCB support this as well. The medical documentation that was submitted to the AWCB support life-long, debilitating, permanently disabling injuries.<sup>57</sup>

The Board found that Dr. Baskous did not treat Mr. Rife either before or after his work injuries, nor did Dr. Baskous offer an opinion on the substantial cause of Mr. Rife’s disability or need for medical treatment. The medical surveillance program report provided relevant information that on April 3, 2012, by Mr. Rife’s own report, he had no back pain or skeletal problems. However, Dr. Baskous did not take imaging studies and had no way of knowing if Mr. Rife had any disc degeneration on April 3, 2012. The report focused on whether Mr. Rife “currently” had back pain, which on April 3, 2012, he did not.<sup>58</sup>

The Board found Dr. Youngblood’s opinion clearly explained Mr. Rife’s treatment history, which corresponded to waxing and waning low back pain, the nature of which was lumbosacral sprains or strains aggravated by intermittent activities, and Mr. Rife’s exogenous obesity and physical deconditioned state. The Board found Dr. Youngblood to be credible and gave his opinions great weight.<sup>59</sup>

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<sup>56</sup> Scot Alan Youngblood, M.D., Dep. at 3:8-22, 4:19 – 5:19, 5:21 – 7:11, 7:15-21, 7:24 – 10:10, 10:16 – 11:17, Nov. 20, 2018.

<sup>57</sup> *Rife V* at 2, No. 2.

<sup>58</sup> *Id.* at 3, No. 4.

<sup>59</sup> *Id.* at 7, No. 22.

Dr. Schwartz and Dr. Youngblood concurred that both Mr. Rife's work injuries were soft tissue sprains or strains. The Board found that Dr. Schwartz's opinion, like Dr. Youngblood's, was entitled to be given weight because he, like Dr. Youngblood, was able to clearly explain Mr. Rife's work-related lumbosacral strains were acute traumatic injuries and the continuing treatment over the years has been "patchy," which was indicative of recurrent strains mentioned by Dr. Youngblood as chronic mechanical lower back pain aggravated by intermittent activities.<sup>60</sup>

The Board further found that no medical provider who has treated Mr. Rife's low back pain had restricted him from work.<sup>61</sup>

Mr. Rife used the excuse that the workers' compensation carrier had denied him benefits for his noncompliance with medical directives and for seeking pain medication from providers and emergency departments. The Board noted that when Mr. Rife used this excuse, B.C. Excavating had not filed a controversion denying Mr. Rife any benefits other than reemployment benefits, and his entitlement to medical and indemnity benefits remained open. The Board held that Mr. Rife was misrepresenting his claim's status and was not credible.<sup>62</sup>

On January 2, 2019, *Rife IV* was issued. It made the following conclusions of law:

- 1) Employee's injuries while working for Employer are not the substantial cause of disability or need for medical treatment.
- 2) Employee is not entitled to PPI benefits.
- 3) Employee is not entitled to a compensation rate adjustment.
- 4) Employee is not entitled to a weekly stipend.
- 5) Employee is not entitled to penalty and interest.
- 6) Employer did not unfairly or frivolously controvert Employee's claim.<sup>63</sup>

On January 14, 2019, Mr. Rife timely requested reconsideration of *Rife IV*. He contended B.C. Excavating denied him access to medical care and "after this injury," he

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<sup>60</sup> *Rife V* at 8, No. 26.

<sup>61</sup> *Id.* at 9, No. 30.

<sup>62</sup> *Id.*, No. 31.

<sup>63</sup> *Rife IV* at 34.

“experienced a diminished quality of life and work.” Mr. Rife contended *Rife IV* ignored the medical surveillance program report by Dr. Baskous, which was evidence he had “no back/spine injury” and “was in great health.” Mr. Rife contended the medical documentation he provided supports his claim that the work injuries have caused life-long, debilitating, and permanently disabling injuries.<sup>64</sup> The Board reviewed its decision in *Rife IV* and declined to reconsider it. Mr. Rife timely appealed to the Commission.

### 3. *Standard of review.*

The Board’s findings of fact shall be upheld by the Commission on review if the Board’s findings are supported by substantial evidence in light of the record as a whole.<sup>65</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>66</sup> “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.”<sup>67</sup> The weight given to witnesses’ testimony, including medical testimony and reports, is the Board’s decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.<sup>68</sup> On questions of law and procedure, the Commission does not defer to the Board’s conclusions, but rather exercises its independent judgment.<sup>69</sup> 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.<sup>70</sup>

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<sup>64</sup> *Rife V* at 10, No. 33

<sup>65</sup> AS 23.30.128(b).

<sup>66</sup> *See, e.g., Norcon, Inc. v. Alaska Workers’ Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>67</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers’ Comp. App. Comm’n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984).

<sup>68</sup> AS 23.30.122.

<sup>69</sup> AS 23.30.128(b).

<sup>70</sup> AS 23.30.122; AS 23.30.128(b).

Furthermore, the Commission's decision is based on the record before the Board, the briefs of the parties, and oral argument, if made, before the Commission. The Commission does not accept or review new evidence.<sup>71</sup>

*4. Discussion.*

Mr. Rife requested the Commission reverse the Board's two decisions because he still has low back pain and will have low back pain his whole life, and, therefore, his condition is permanent and is totally disabling.

B.C. Excavating asserts the Board's decisions are supported by substantial evidence in the record as a whole and, thus, must be affirmed on appeal. Additionally, B.C. Excavating contends Mr. Rife's arguments are based on a logical fallacy known as *post hoc, ergo propter hoc*. In English this means "after this, therefore because of this." Mr. Rife contends he sustained two injuries while working for B.C. Excavating: a strain/sprain in 2013, and a sprain to his low back in 2014. He further contends all of his later back symptoms are directly and substantially the result of the work injuries because he had no complaints prior to these injuries as supported by the pre-employment medical examination by Dr. Baskous.

The Commission reviews the Board's decision to determine if it is supported by substantial evidence in the record as a whole. Findings of credibility by the Board are binding on the Commission.

*a. The Board's findings on credibility are binding on the Commission.*

In reviewing a decision by the Board, the Commission is bound by the Board's findings of credibility.<sup>72</sup> The Board "has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony . . . , is conclusive even if the evidence is conflicting or susceptible to contrary conclusions."<sup>73</sup>

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<sup>71</sup> AS 23.30.128(a).

<sup>72</sup> AS 23.30.128(b).

<sup>73</sup> AS 23.30.120.

In *Sosa de Rosario v. Chenega Lodging*, the Alaska Supreme Court (Court) held that the language in AS 23.30.128(b) means “that the Commission must follow the Board’s credibility determination. ‘Bind’ means “[t]o impose one or more legal duties on (a person or institution. . . .”<sup>74</sup> Moreover, the Board is entitled to elect to rely on one opinion rather than another.<sup>75</sup>

Here, the Board specifically found Dr. Youngblood and Dr. Schwartz to be credible. The Board gave the most weight to the opinion of Dr. Youngblood. He stated Mr. Rife’s low back pain was aggravated by his deconditioning and obesity. The deconditioning and obesity were the substantial cause of his need for medical treatment. Dr. Schwartz provided an alternative explanation for Mr. Rife’s back pain, specifically his degenerative disc disease. The Board relied on his opinion, in part, because it was consistent with that of Dr. Youngblood. Both doctors had all of Mr. Rife’s medical records in front of them to review. Dr. Schwartz was able to examine Mr. Rife in person. Both doctors’ opinions regarding the causes for Mr. Rife’s back pain were in agreement. Both doctors concurred that the 2013 and 2014 work injuries were not the substantial cause of Mr. Rife’s waxing and waning low back pain.

In addition to finding Drs. Youngblood and Schwartz credible, the Board also found Mr. Rife not credible in several instances. First, the Board found inconsistencies in his testimony about how the January 2014 injury occurred and determined he was not credible.<sup>76</sup> The Board also found Mr. Rife not credible after he told various doctors he could not get medical treatment from workers compensation at a time when his claim was open and billable.<sup>77</sup>

Based on the statute and the *Sosa de Rosario* decision, these findings of credibility regarding the testimony and opinions Drs. Youngblood and Schwartz and the lack of

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<sup>74</sup> *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139, 146 (Alaska 2013).

<sup>75</sup> *Id.*

<sup>76</sup> *Rife IV* at 28.

<sup>77</sup> *Rife V* at 9, No. 31.

credibility on the part of Mr. Rife, are binding on the Commission. There is no basis to challenge these findings. The Board's findings of credibility are affirmed.

*b. Substantial evidence supports the Board's decision.*

On appeal the Commission reviews the Board's decision to see if the findings of fact are supported by substantial evidence in light of the record as a whole.<sup>78</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>79</sup> Included in the determination of substantial evidence are the Board's findings of credibility outlined above.

When an injured worker files a claim for benefits, the presumption of compensability in AS 23.30.120 applies. "In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes with the provisions of this chapter. . . ."<sup>80</sup> A three-part test is applied to this presumption to ascertain if the claim is compensable.

At the first step, the injured worker must present some evidence to establish the connection between the employee's work and the compensation, including medical benefits, the employee seeks.<sup>81</sup> This preliminary link was established here by Mr. Rife based on his testimony, without regard to credibility. He testified that he had no prior back pain and he has had continuing back pain since the January 2014 incident.<sup>82</sup> His testimony is supported by his seeking medical treatment from Dr. Spenser in September 2013, a few days after his injury, and from Dr. Lewis in January 2014.<sup>83</sup> Based on this evidence, Mr. Rife raised the presumption his claim was compensable.

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<sup>78</sup> AS 23.30.128(b).

<sup>79</sup> *Miller v. ITT Arctic Servs.*, 577 P.2d 1044 (Alaska 1978; *Safeway, Inc. v. Mackey*, 965 P2d 22 (Alaska 1998).

<sup>80</sup> AS 23.30.120(a).

<sup>81</sup> *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999).

<sup>82</sup> *Rife IV* at 27.

<sup>83</sup> *Id.* at 4, Nos. 3 and 5.

Having raised the presumption his claim was compensable, Mr. Rife's employer, B.C. Excavating, had to rebut the presumption with substantial evidence. B.C. Excavating relied on the EME reports and testimony of Drs. Youngblood and Schwartz to rebut the presumption of compensability. This evidence is looked at in isolation and without regard to findings of credibility.<sup>84</sup> These doctors ruled out work as the substantial cause of Mr. Rife's current back complaints and provided an alternative explanation for the back problems. They both asserted Mr. Rife's back injuries with B.C. Excavating each resolved within three months as both were soft tissue injuries. His current back complaints are the result of degenerative disc disease which is not posttraumatic and are aggravated by his deconditioning and his obesity. Both Drs. Youngblood and Schwartz are the kind of experts an employer may rely on to rebut the presumption of compensability when, as here, they each ruled out work as the substantial cause and each provided an alternative explanation for the waxing and waning of back complaints.<sup>85</sup>

When the employer rebuts the presumption of compensability the burden returns to the employee to prove the employee's claim by a preponderance of the evidence.<sup>86</sup> Mr. Rife was obligated to produce sufficient medical evidence to demonstrate his work with B.C. Excavating was the substantial cause of his current symptoms. He relied mainly on the medical report of Dr. Baskous in 2012 showing he had no back symptoms at that time. To him, that shows that all of his current symptoms must be the result of the two work injuries. However, Dr. Baskous only asked if he had back pain on the day of the appointment and did not take any diagnostic films showing the status of his back at that time.

Moreover, the Board, which does weigh credibility at this stage of the analysis, found Mr. Rife's "veracity" to be suspect and he was not credible in his reports to his

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<sup>84</sup> *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016); *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985).

<sup>85</sup> *Id.* at 919.

<sup>86</sup> *Anchorage Roofing Co. v. Gonzales*, 507 P.2d 501 (Alaska 1973); *Wade v. Anchorage School Dist.*, 741 P.2d 634 (Alaska 1987).

doctors. For instance, on January 27, 2014, he did not mention a work injury. He stated he was “not sure what brought on such severe pain.”<sup>87</sup> When he returned to seek medical treatment on February 21, 2014, he asserted back pain for two months.

The Board, as is its prerogative, found the opinions of Drs. Youngblood and Schwartz to be the more persuasive medical opinions. Both doctors had Mr. Rife’s complete medical records to review and Dr. Schwartz also examined Mr. Rife.<sup>88</sup> Moreover, none of the many physicians Mr. Rife saw for medical treatment between 2013 and 2019 specifically connected his problems to his work with B.C. Excavating, and none restricted him from working. Dr. Youngblood agreed Mr. Rife’s symptoms waxed and waned which corroborated his opinion that the low back pain was due to deconditioning and obesity, and these two factors were the substantial cause of any ongoing back problems. Dr. Schwartz reviewed the April 2016 MRI, which showed no significant amount of stenosis and no neural foraminal stenosis. He concurred the 2013 and 2014 work injuries were soft tissue injuries which resolved. He also related ongoing problems to Mr. Rife’s degenerative disc disease which was not posttraumatic. Furthermore, both doctors noted that Mr. Rife worked following both injuries and continues to be gainfully employed. Mr. Rife has not documented any time loss as a result of his back complaints.

The Board has the right and prerogative to choose the doctors upon which to rely in reaching a decision. The Board chose to rely on the opinions of Drs. Youngblood and Schwartz. These opinions are substantial evidence in the record as a whole to support the Board’s decision. Mr. Rife was unable to prove his claim by a preponderance of the evidence.

*1. Medical benefits.*

Mr. Rife was unable to prove his entitlement to medical benefits by a preponderance of the evidence produced. He has no evidence his current need for medical treatment relates to his work injuries in 2013 and 2014. Mr. Rife points to the

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<sup>87</sup> *Rife IV* at 4, No. 5; 4-5, No. 7.

<sup>88</sup> Mr. Rife failed to attend the EME scheduled on August 27, 2016, so Dr. Youngblood had no opportunity to examine him. See, *Rife IV* at 10, No. 35.

medical records from PA-C Cordova-Eduave to support his claim for ongoing medical events. However, these records only reflect that when his back flares up he may not be able to drive or operate machinery. Moreover, PA-C Cordova-Eduave did not identify the 2013 and 2014 injuries with B.C. Excavating as the substantial cause of this need for medical treatment. Nor does the form seeking a duty station in a warmer climate with the National Forest Service support Mr. Rife's claim. The form does not identify the condition necessitating the request nor does it discuss anything other than the possible need for time loss when his back goes out. This is not the kind of evidence that is helpful to an evaluation of Mr. Rife's claim. Since Mr. Rife is unable to prove his work with B.C. Excavating is the substantial cause of his current need for medical treatment, the Board properly denied his claim for ongoing medical treatment.

Moreover, the Court and the Commission have previously rejected the use of *post hoc, ergo propter hoc*, as a basis for workers' compensation cases. In *Lindhag v. State, Dept. of Natural Resources*, the Court rejected just such an argument and stated more proof was needed.<sup>89</sup> In *Abonce v. Yardarm Knot Fisheries*, the Commission relied on the Court's rejection of the argument that because someone was fine before the work injury, the work injury was the cause of the disability.<sup>90</sup> Like the Court, the Commission requested proof of a causal relationship. Mr. Rife is unable to make the necessary causal connection and so his claim fails.

## 2. *Permanent total disability benefits.*

An employee is entitled to PTD benefits when his total disability is "adjudged to be permanent."<sup>91</sup> Disability is defined by the Alaska Workers' Compensation Act (Act) as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury. . . ."<sup>92</sup> Mr. Rife currently works full-time for the National Forest Service.

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<sup>89</sup> *Lindhag v. State, Dep't of Natural Resources*, 123 P.3d 948 (Alaska 2005).

<sup>90</sup> *Abonce v. Yardarm Knot Fisheries, LLC*, Alaska Workers' Comp. App. Comm'n Dec. No. 111 (June 17, 2009).

<sup>91</sup> AS 23.30.180(a).

<sup>92</sup> AS 23.30.395(16).

He has produced no medical record that he has a disability precluding him from working. The fact that Mr. Rife believes his condition is permanent is not enough for an award of PTD. There is no basis for an award of PTD.

*3. Temporary total disability benefits.*

The same arguments outlined above also support the Board's finding that Mr. Rife is not entitled to temporary total disability benefits (TTD). Mr. Rife did not miss any time from work at the time of either the 2013 injury or the 2014 injury. There is no evidence to support a claim for TTD.

*4. Reemployment benefits.*

Mr. Rife also claims reemployment benefits under AS 23.30.041(k), but he is not eligible for retraining benefits. First, the statute requires an injured worker to be out of the work force for 60 consecutive days. Mr. Rife requested an eligibility evaluation claiming he had missed 49 days of work.<sup>93</sup> B.C. Excavating did not agree to an evaluation because Mr. Rife voluntarily left employment with B.C. Excavating, and had he needed accommodation for work restrictions, B.C. Excavating asserted it would have been able to provide same. B.C. Excavating also pointed out that Mr. Rife was working in the office when he quit his job and moved out of state. Furthermore, Mr. Rife now works for the National Forest Service, indicating that he has the capabilities to work. No doctor has indicated he cannot perform jobs he held within 10 years before his injury. There is no basis for an award of reemployment benefits.<sup>94</sup>

*5. Compensation rate adjustment.*

Mr. Rife agreed no formal compensation rate was ever established because no physician ever restricted him from working. Therefore, he cannot attach the presumption of compensability to his claim for a compensation rate adjustment. The Board properly denied this claim.

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<sup>93</sup> There is no evidence, other than Mr. Rife's statement, that he missed any work as a result of either the 2013 or 2014 injury. There are no medical reports taking Mr. Rife off work for any reason.

<sup>94</sup> R. 5.

*6. Penalties and interest.*

Mr. Rife contends he is owed penalties for failure by B.C. Excavating to pay benefits. However, the Board awarded no benefits and, therefore, he is not entitled to any penalties or interest. Moreover, all the controversions files by B.C. Excavating were filed in good faith and based on evidence in hand.<sup>95</sup>

*7. Request for \$14,000,000.00.*

Mr. Rife also requests \$14,000,000.00, contending B.C. Excavating did not respond to his settlement offer and this non response is an indication of acceptance. However, the Act is a statutory scheme which supersedes the common law with regard to work place injuries. The Act controls the process and the kinds of benefits an injured worker may receive. Mr. Rife's alleged offer does not come within the parameters of the Act, therefore, it is not valid. He is not entitled to this payment.

*5. Conclusion.*

The Board's decisions are AFFIRMED.

Date: 31 December 2019 Alaska Workers' Compensation Appeals Commission



*Signed*

\_\_\_\_\_  
Michael J. Notar, Appeals Commissioner

*Signed*

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

*Signed*

\_\_\_\_\_  
Deirdre D. Ford, Chair

APPEAL PROCEDURES

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

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<sup>95</sup> See, *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992).

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. 274, issued in the matter of *Matthew L. Rife vs. B.C. Excavating, LLC and Alaska National Insurance Company*, AWCAC Appeal No. 19-002, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on December 31, 2019.

Date: January 3, 2020



*Signed*

K. Morrison, Appeals Commission Clerk