

Alaska Workers' Compensation Appeals Commission

TC Construction, Inc. and American
Interstate Insurance Company,
Appellants,

vs.

Peter C. Schranz,
Appellee.

Final Decision

Decision No. 277 May 15, 2020

AWCAC Appeal No. 19-019
AWCB Decision No. 19-0097
AWCB Case No. 201814970

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 19-0097, issued at Anchorage, Alaska, on September 26, 2019, by southcentral panel members Jung M. Yeo, Chair, Nancy Shaw, Member for Labor, and Kimberly Ziegler, Member for Industry.

Appearances: Colby J. Smith, Griffin & Smith, for appellants, TC Construction, Inc. and American Interstate Insurance Company; Peter C. Schranz, self-represented appellee.

Commission proceedings: Appeal filed October 9, 2019, with motion for stay; order granting motion for stay issued November 12, 2019; briefing completed February 4, 2020; neither party requested oral argument.

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

By: Deirdre D. Ford, Chair.

1. Introduction.

TC Construction, Inc., insured by American Interstate Insurance Company (TC Construction), hired Peter C. Schranz for construction work at Scammon Bay, Alaska, after he completed a post-hire health questionnaire in which he denied any prior back injuries or surgeries. Following an injury when Mr. Schranz fell from scaffolding and injured his back, it was disclosed that he had misrepresented his pre-existing back condition, including denial of back surgery seven months prior to his employment by TC Construction.

The Alaska Workers' Compensation Board (Board) held a hearing on Mr. Schranz's claim for workers' compensation benefits following the controversion of further benefits

by TC Construction based on AS 23.30.022, which states an injured worker may be denied benefits if the worker knowingly misrepresented his condition on a post-hire questionnaire, and the misrepresentations had a causal connection with the work injury. The Board held that Mr. Schranz was not credible, that he deliberately misrepresented his back condition, and that TC Construction relied on his misrepresentations when it hired him. Nonetheless, the Board found that AS 23.30.022 did not bar Mr. Schranz from workers' compensation benefits because the collapse of the scaffolding had no causal connection to his pre-existing condition.¹

TC Construction timely appealed this decision to the Alaska Workers' Compensation Appeals Commission (Commission). TC Construction also filed a motion to stay the Board's award. After a hearing on November 7, 2019, the Commission granted the stay on November 12, 2019. Neither party requested oral argument following completion of briefing of the issues. The Commission proceeded to decide the issues on the basis of the briefing. The Commission now affirms the Board's decision.

*2. Factual background and proceedings.*²

Peter Schranz has a history of back problems. On August 5, 2017, Mr. Schranz saw Heather R. Martin, N.P., regarding his pre-existing sciatic condition which had been ongoing for about two years.³ Then, on October 4, 2017, Mark E. Flanum, M.D., diagnosed Mr. Schranz with chronic back pain with right-sided sciatica.⁴ Dr. Flanum performed a right L4-5 posterior microdecompression on Mr. Schranz on March 1, 2018.⁵ Mr. Schranz reported to Michael D. Dyches, P.A.C., on June 11, 2018, that he was "very happy with his results" and "has no active back or leg pain." However, he also reported

¹ *Schranz v. TC Construction, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 19-0097 (Sept. 26, 2019)(*Schranz*).

² 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.

³ R. 465 – 466.

⁴ R. 449 – 453.

⁵ R. 187 – 188.

he was having difficulty doing outside work and lifting heavy objects. Mr. Dyches concluded Mr. Schranz could return to work and advised him to “gradually return to usual activities and let pain be his guide.”⁶ The Board found no record in the file that Mr. Schranz obtained a full-duty work release between March 1, 2018, and October 10, 2018.⁷

Mr. Schranz sought employment with TC Construction and on October 10, 2018, TC Construction gave Mr. Schranz a conditional job offer which was contingent on his completion of a post-hire health questionnaire. Mr. Schranz answered “no” to all of the questions in the form. He stated he had never had or been treated for any condition listed in the form, which included “neck or back injury” and “ruptured intervertebral disc (herniated disc in spine),” conditions which Mr. Schranz had suffered from previously, and for which he had been treated. Also, he incorrectly answered he had no prior work restriction. Mr. Schranz dated and signed after the following paragraph in the form: “I hereby certify that I have answered the above questions to the best of my knowledge and the answers are true and complete. I understand that misrepresentation or omission of facts is cause for dismissal and may result in denial of worker’s compensation benefits.”⁸ Based on his answers, TC Construction offered Mr. Schranz a position as a construction worker in Scammon Bay, Alaska.⁹

Mr. Schranz testified he completed the post-hire health questionnaire without reading it. He said he “just answered no to everything” as he normally does. He also testified he knew he “had a surgery for a back injury,” but did not know whether it was a “crushed disk” or “herniated disk.” He did not know whether “mild disk bulging” meant herniated or not.¹⁰ Mr. Schranz graduated from high school in 1987 and spent four to

⁶ R. 406 – 410.

⁷ Exc. 28.

⁸ Hr’g Tr. at 10:5-17, Aug. 27, 2019; R. 26 – 27.

⁹ Exc. 34.

¹⁰ Peter Schranz Dep. at 54:20 – 55:22, May 6, 2019.

five years at the University of Wisconsin, Madison, studying Economics.¹¹ The Board found that he is capable of reading and could understand TC Construction's post-hire health questionnaire.¹²

Stacy Hardon, TC Construction's Office Manager, testified it is the practice of TC Construction to give the post-hire health questionnaire to job applicants to fill out at TC Construction's office.¹³ She specifically remembers Mr. Schranz because he took an unusually long time to complete the form. Ms. Hardon relied on Mr. Schranz's incorrect answers on the form and recommended him to James (Randy) Christianson, TC Construction's owner, to be hired as a construction/carpenter worker in Scammon Bay, Alaska. She would have not recommended Mr. Schranz to be hired for the job if he had disclosed in the form that he had a prior back injury, back limitations, or back surgery in the last seven months. The Board found that Ms. Hardon's reliance on the representations Mr. Schranz made on the health questionnaire was a substantial factor in his being hired by TC Construction.¹⁴

Mr. Schranz underwent a right L4-5 microdecompression on March 1, 2018.¹⁵ Seven months later, on October 10, 2018, TC Construction made a conditional offer of employment to Mr. Schranz. On October 12, 2018, Mr. Schranz arrived at the work site, and worked on that date. He worked on October 13 and 15, 2018, and did not work on October 14, 2018.¹⁶

On October 16, 2018, Mr. Schranz injured his head and back while working for TC Construction when the scaffolding upon which he was standing, collapsed. He fell approximately 10 feet, landed on his feet and hit his head against the scaffolding.

¹¹ Schranz Dep. at 20:11 – 21:5.

¹² Hr'g Tr. at 22:25 – 23:11; *Schranz* at 3, No. 8.

¹³ R. 33.

¹⁴ Hr'g Tr. at 54:23 – 55:7; 58:14 – 59:21, 61:2 – 62:8; R. 033-034; *Schranz* at 3, No. 9.

¹⁵ R. 187 – 188.

¹⁶ Hr'g Tr. at 65:24 – 66:21.

Mr. Schranz worked for two more days after the injury, but when his pain continued to get worse, he left Scammon Bay.¹⁷

Mr. Schranz sought medical treatment and on October 30, 2018, a magnetic resonance imaging (MRI) showed Mr. Schranz's injuries, a very large left lateral recess inferior disc extrusion arising from the L4-5 level, disk space narrowing at L4-5 level, disk desiccation to a lesser extent at L3-4 and L5-S1, and a small central bulge at L5-S1.¹⁸ On October 31, 2018, Dr. Flanum saw Mr. Schranz and diagnosed him with a left hip and left lower extremity contusion, and a lumbar disc herniation with radiculopathy.¹⁹ On November 6, 2018, Dr. Flanum performed a left L4-5 microdecompression on Mr. Schranz.²⁰

On November 12, 2018, Brandy M. Atkins, D.N.P., saw Mr. Schranz and reported he was unable to work through November 20, 2018. Ms. Atkins indicated Mr. Schranz might be able to return to sedentary work on November 21, 2018, and indicated that he would be able to resume regular work after four weeks. Ms. Atkins further noted Mr. Schranz would be able to resume full-duty work on December 19, 2018.²¹

On November 16, 2018, Ms. Atkins reported Mr. Schranz was doing well. Mr. Schranz said his pain decreased by "400%" in his left leg. She placed the following restrictions: no lifting greater than 10 pounds; no bending, twisting, and stooping of the lumbar spine until the six-week mark, after which Mr. Schranz would likely be referred for physical therapy.²²

On December 19, 2018, TC Construction suspended Mr. Schranz's temporary total disability (TTD) benefits based on Ms. Atkins' November 12, 2018, report indicating

¹⁷ Schranz Dep. at 29:2-3, 30:12-14, 33:13-24, 35:14-19.

¹⁸ R. 396 – 397.

¹⁹ R. 157 – 158.

²⁰ R. 127 – 129.

²¹ R. 126. (The Commission notes that per AS 23.30.185, Mr. Schranz was not entitled to temporary total disability benefits after reaching medical stability, as indicated by the release to return to his usual work.)

²² R. 369 – 370.

Mr. Schranz would be able to resume full-duty work on December 19, 2018. From October 19, 2018, through December 18, 2018, TC Construction paid \$2,310.00 in TTD benefits, based on a weekly rate of \$266.00. The last TTD payment was due on December 21, 2018. Mr. Schranz's entitlement to TTD ended when he was released to return to his usual employment which Ms. Atkins indicated was December 19, 2018.²³

On March 6, 2019, Mr. Schranz reported he had left-sided radicular symptoms. Dr. Flanum noted Mr. Schranz had normal strength in all myotomes, but some subjectively decreased light touch on the dorsum of the left foot. Dr. Flanum ordered an MRI to see whether he had a recurrent disc herniation.²⁴ The MRI on March 7, 2019, showed no appreciable recurrent disk herniation at the microdecompression site at L4-5 to explain Mr. Schranz's symptoms. The lumbar spine appeared stable.²⁵

On March 11, 2019, Mr. Schranz reported his pain was getting steadily worse; he was having difficulty sleeping and felt unable to work. Dr. Flanum opined decompression surgery would not be useful because there was only minimal scar tissue around his nerve roots. Mr. Schranz was reluctant to follow Dr. Flanum's recommendation for physical therapy and epidural steroid injections as he had not benefited from those treatments in the past. Dr. Flanum suggested the only surgical option left would be a fusion, but Mr. Schranz would need to be tobacco free. Dr. Flanum indicated that Mr. Schranz would not have been able to resume his normal work duties between December 19, 2018, and March 11, 2019.²⁶

There is no evidence indicating Mr. Schranz was, at the time of Dr. Flanum's recommendations, tobacco free.²⁷ There is no evidence indicating Mr. Schranz sought

²³ R. 13, 19, 23 – 24; AS 23.30.185.

²⁴ R. 121 – 122.

²⁵ R. 360 – 361.

²⁶ R. 119 – 120.

²⁷ *Schranz* at 5, No. 23.

treatment for his work injury after his March 11, 2019, visit with Dr. Flanum.²⁸ On March 22, 2019, Mr. Schranz claimed TTD benefits.²⁹

On April 10, 2019, TC Construction denied TTD benefits based on Ms. Atkins' opinion on November 12, 2018, that Mr. Schranz could resume full-duty work on December 19, 2018.³⁰ Ms. Atkins works with Dr. Flanum as a Nurse Practitioner.³¹

On July 11, 2019, R. David Bauer, M.D., saw Mr. Schranz for an employer's medical evaluation (EME) and diagnosed him with disk herniation at left L4-5 which was substantially caused by the October 16, 2018, injury and was surgically repaired. He opined the October 16, 2018, injury was the substantial cause for the need for medical treatment, and the disability Mr. Schranz had between his surgery and his release to full-duty on December 19, 2018.³² The Board noted that Dr. Bauer did not elaborate why he determined Mr. Schranz's disability ended on December 19, 2018, and assumed he based his opinion on Ms. Atkins' November 12, 2018, report.³³ Dr. Bauer further opined the October 16, 2018, injury was an acute condition, which did not aggravate the pre-existing condition. However, in his view, it was not the substantial cause of Mr. Schranz's ongoing need for treatment and disability. Mr. Schranz was medically stable as of March 7, 2019, with a four percent whole person impairment resulting from the October 16, 2018, injury.³⁴

On July 29, 2019, TC Construction controverted TTD benefits based on Dr. Bauer's EME and Mr. Schranz's false statements in the post-hire health questionnaire. This is the first and only controversion notice filed with the Division of Workers' Compensation (Division) for this claim. The Board reached the conclusion that TC Construction should

²⁸ *Schranz* at 5, No. 24.

²⁹ R. 35.

³⁰ *Schranz* at 5 – 6, No. 26.

³¹ R. 126.

³² Exc. 13 – 31.

³³ *Schranz* at 6, No. 27.

³⁴ Exc. 13 – 31.

have filed a controversion notice with the Division and sent it to Mr. Schranz in December 2018 when TC Construction terminated TTD based on Ms. Atkins' report that Mr. Schranz could return to his usual and customary work as of December 19, 2018.³⁵

The Board also reached a conclusion that, in general, medical providers do not refer a spinal injury patient to physical therapy and release him or her to full-duty construction work at the same time; however, the Board did not identify either a medical report or expert opinion in support of this conclusion.³⁶ The Board further concluded that after a lumbar decompression surgery, most patients are released to work after four to six weeks if their job is not too strenuous; again the Board cited neither to a medical report or an expert opinion in support of this conclusion.³⁷ Dr. Flanum, on March 11, 2019, did indicate that Mr. Schranz should not have been released to his usual work between the surgery in November 2018 and March 11, 2019.³⁸ The Board did not state that it based its opinion on Dr. Flanum's March 2019 statement that referenced when Mr. Schranz would reach medical stability.

The Board found Mr. Schranz was not credible as his answers were false and evasive. He read TC Construction's post-hire health questionnaire and intentionally provided false statements regarding his physical condition to obtain employment with TC Construction.³⁹ Credibility findings are binding on the Commission.⁴⁰

The Board held that there was no causal connection between Mr. Schranz's false statements regarding his physical condition in the post-hire health questionnaire and his October 16, 2018, work injury. The Board reasoned that Mr. Schranz's pre-existing back condition did not cause the scaffolding to collapse and his pre-existing back condition did not cause his fall. Rather he fell ten feet from a collapsing scaffold. The Board found his

³⁵ *Schranz* at 6, No. 28.

³⁶ *Id.*, No. 29.

³⁷ *Id.*, No. 30.

³⁸ R. 529.

³⁹ *Schranz* at 4, No. 10.

⁴⁰ AS 23.30.128(b).

pre-existing back condition and his lying about it did not cause the scaffolding to collapse, the resulting fall, or the subsequent work injury.⁴¹

TC Construction timely filed its appeal with the Commission.

3. Standard of review.

The Board's findings of fact shall be upheld by the Commission if supported by substantial evidence in light of the record as a whole.⁴² "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴³ "The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."⁴⁴ On questions of law and procedure, the Commission does not defer to the Board's conclusions; rather, it exercises its independent judgment.⁴⁵ In assessing the weight to be given to witnesses' testimony, including medical testimony and reports, the Board's decisions are conclusive, even if the evidence is conflicting or there is the potential of arriving at contrary conclusions.⁴⁶ Moreover, "[t]he Board has the sole power to determine the credibility of a witness."⁴⁷ The Board's findings regarding the credibility of witness testimony are binding on the Commission.⁴⁸

4. Discussion.

The Board held that under AS 23.30.022, TC Construction had to show not only that Mr. Schranz had lied on his post-hire health questionnaire, but also that the accident

⁴¹ *Schranz* at 13.

⁴² AS 23.30128(b).

⁴³ *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

⁴⁴ *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, 1188-89 (Alaska 1984).

⁴⁵ AS 23.30.128(b).

⁴⁶ AS 23.30.122.

⁴⁷ *Id.*

⁴⁸ AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139, 146-147 (Alaska 2013).

in which he was injured was causally connected to the misrepresentations on the post-hire questionnaire. TC Construction contends that the statute does not discuss the mechanism of injury. Therefore, TC Construction contends that since Mr. Schranz would not have been hired but for the misrepresentations, the misrepresentations and the reliance thereon are sufficient to demonstrate the causal relationship between the deliberate misrepresentations and the work injury.

a. Interpretation of causal connection in AS 23.30.022.

The Alaska Workers' Compensation Act (Act) provides that an employer may require an employee to complete a health questionnaire after a conditional offer of employment. AS 23.30.022 states in full:

An employee who knowingly makes a false statement in writing as to the employee's physical condition in response to a medical inquiry, or in a medical examination, after a conditional offer of employment may not receive benefits under this chapter if

(1) the employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

(2) there was a causal connection between the false representation and the injury to the employee.⁴⁹

The Alaska Supreme Court (Court), in *Robinett v. Enserch Alaska Construction*, stated that AS 23.30.022 essentially codified what it calls the "Larson test" for analyzing an employee's responses to an employer's questionnaire, but added that the statute only applied to injuries occurring after 1988.⁵⁰ The court did not elaborate or discuss what was meant by "causal connection."

An analysis of statutory language starts from the premise that all language in the statute is there for a reason.⁵¹ The statute lays out specific conditions for denying an injured worker benefits when the worker lies on the post-offer/pre-placement health questionnaire. The requirements are laid out as separate analyses.

⁴⁹ AS 23.30.022.

⁵⁰ *Robinett v. Enserch Alaska Constr.*, 804 P.2d 725, 727-728 (Alaska 1990).

⁵¹ *See, e.g., Alaska Airlines, Inc. v. Darrow*, 403 P.3d 1116, 1127 (Alaska 2017).

First, the employer must have relied on the misrepresentations and this reliance was a substantial factor in the hiring of the employee. Here, there is no question Mr. Schranz lied on his post-offer, pre-hire questionnaire. He admitted he answered “no” to all the questions and completed and signed the form without reading it. He knew he had had back surgery seven months earlier. Further, Ms. Hardon testified it took him an unusually long time to fill out the questionnaire which the Board found is indicative that he actually read it and knowingly answered the questions falsely. Moreover, the Board found him not credible and that finding, as mentioned previously, is binding on the Commission.

Ms. Hardon and Mr. Christianson both testified that they relied on Mr. Schranz’s assertion that his answers were true and complete. Ms. Hardon relied on his answers when she recommended him to Mr. Christianson for hiring. Mr. Christianson hired Mr. Schranz for work as a construction worker at Scammon Bay which he would not have done had he known Mr. Schranz had back surgery seven months previous to his date of hire. TC Construction relied, to their detriment, on the false statements when it hired Mr. Schranz and those false statements were the substantial factor in his being hired. Thus, the first requirement in AS 23.30.022 is fully met.

However, the second requirement is that there must be “a causal connection between the false representation and the injury to the employee.” If the legislature felt that the false statements by a prospective employee on a post-hire health questionnaire, and reliance on the false statements by the employer were sufficient to deny an injured worker benefits, then the legislature would not have added subsection (2) to the statute. The language in subsection (2) is explicit and is an additional requirement to be met before the injured worker is denied benefits. The language requires “a causal connection between the false representation and the injury to the employee.”⁵² This additional language has specific meaning, and was purposely written in to AS 23.30.022 to add a requirement to be considered before denying a claim.

⁵² AS 23.30.022.

Because workers' compensation is a no-fault system, the causal connection needed in workers' compensation is different from the proximate cause needed in a tort context, which is a fault-based context. According to Larson, courts in jurisdictions with statutes similar to Alaska have awarded benefits to the injured worker where the pre-existing condition did not have a role in causing the new injury.⁵³ For instance, in South Carolina, the court awarded benefits because there was no showing the prior back injury contributed to the second injury and the employee would have suffered some injury in the work accident even if he had no prior back injury.⁵⁴

In Minnesota, the court looked at the cause of the injury and noted that any employee would have been injured in the fall whether the employee had a pre-existing injury.⁵⁵ A Florida worker was injured when sheet rock fell on him. The court said that the pre-existing injury played no role in the accident and, thus, the false statements did not bar the claim.⁵⁶ Similarly, a Delaware court held that there must be an actual causal connection between the lies and the injury.⁵⁷

While it might be argued that common sense would dictate that the causal connection is related to the employer's reliance on an employee's false statements and representations, that he was physically able to perform a certain job, here, this is clearly not the case. The proximate cause would be that the employee lied on the questionnaire, the misstatements led directly to the employer's hiring of the employee, which led to the employee being placed in a position of potential harm. But for the false statements, the

⁵³ 5 Larson, *Larson's Workers' Compensation*, Section 66.04 at 66-30 – 66-31 (2017).

⁵⁴ *Vines v. Champion Bldg. Prods.*, 315 S.C. 13, 431 S.E.2d 585 (S.C. 1993).

⁵⁵ *Jewison v. Frerichs Constr.*, 434 N.W.2d 259 (Minn. 1989).

⁵⁶ *Johnson v. Bender Constr. Co.*, 538 So.2d 1305 (Fla. Dist. Ct. App. 1989).

⁵⁷ *Mountaire of Delmara, Inc. v. Glacken*, 487 A.2d 1137 (Del. 1984).

employee would not have been on the job site and, thus, would not have been injured. However, the statute requires more.⁵⁸

Here, Mr. Schranz was an employee in the course and scope of his employment on the employer's work site when he was injured. The causal connection required by statute is an actual relationship between the false statement and the injury itself. His prior back injuries did not cause or precipitate the scaffolding collapse. The injury suffered on October 16, 2018, is at the same level as the back surgery seven months earlier, but this injury was an acute injury, per Dr. Bauer, the EME physician. Any employee of TC Construction could have been on the scaffolding at the time of its collapse and there would have been no question about the compensability of any other employee's claimed injury. The legislature required a causal connection, beyond the falsehoods on the health questionnaire before an employer could deny compensability. This causal connection is more than the employee's false statements on the health questionnaire. Here, Mr. Schranz's lies on the health questionnaire did not lead to the scaffolding collapse. There is no causal connection.

The Board's finding is affirmed.

b. Termination of TTD due to medical stability is required by statute and benefits must be terminated by law.

The Act defines TTD. "In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability."⁵⁹ The Act defines medical stability as "the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to

⁵⁸ The Commission acknowledges that, at face value, it is unfair to place on the employer the burden of a worker's compensation injury when the employer took the requisite steps to ensure it hired healthy employees. Nonetheless, the statute requires more than false statements. It requires a causal connection between the injury and the false statements.

⁵⁹ AS 23.30.185.

result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time. . . .”⁶⁰

The Court has stated that a physician’s report that the injured worker is able to return to work is sufficient to support the termination of TTD.⁶¹ TC Construction terminated TTD when it received Ms. Atkins’ report that Mr. Schranz would be able to return to full-duty as of December 19, 2018.

AS 23.30.185 states that TTD ceases when the employee reaches medical stability. AS 23.30.155(e), on which the Board relied, only refers to TTD that is payable. Since Ms. Atkins stated Mr. Schranz could return to his usual work in December 2018, no TTD was payable after December 19, 2018. Ms. Atkins’ opinion was not contradicted by Dr. Flanum until March 2019.⁶²

No controversion was needed because his treating medical provider released him to work. AS 23.30.155(c) requires a report to the Division when benefits are “increased, decreased, suspended, terminated, resumed, or changed in type.”⁶³ AS 23.30.155(e) requires a penalty when “any installment of compensation payable without an award is not paid within seven days after it becomes due. . . .”⁶⁴ The Board was in error when it stated a controversion was needed in December 2018.⁶⁵

When Ms. Atkins stated in her November 2018 report that Mr. Schranz would be able to return to his usual and customary work by December 19, 2018, his entitlement to TTD ceased automatically by operation of statute. “Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.”⁶⁶

⁶⁰ AS 23.30.395(28).

⁶¹ *Grove v. Alaska Constr. and Erectors*, 948 P.2d 454 (Alaska 1997).

⁶² AS 23.30.185; AS 23.30.155(c) and (e).

⁶³ AS 23.30.155(c).

⁶⁴ AS 23.30.155(e).

⁶⁵ AS 23.30.185; AS 23.30.155(c) and (e).

⁶⁶ AS 23.30.185.

This language requires an automatic cessation of payment of TTD. The Court, in *Bailey v. Litwin Corporation*, stated that ability to return to work, even without the words “medical stability,” is sufficient to warrant cessation of TTD.⁶⁷ Ms. Atkins’ opinion that Mr. Schranz was released to return to his usual work as of December 19, 2018, was not contradicted by Dr. Flanum (in whose office Ms. Atkins worked) until March 2019. At that time Dr. Flanum stated that based on the imaging and Mr. Schranz’s complaints, Mr. Schranz would not have been able to return to his normal duties “from the time of his microdiscectomy last fall through today’s date [March 11, 2019].”⁶⁸

However, since Mr. Schranz was unrepresented at that time, it would have been prudent for TC Construction to have advised him as to the reason for the termination of benefits. He would then have been able to contact his medical providers, as he did in March 2019 when Dr. Flanum stated he was not able to return to work in December 2018.

Based on the new medical record from Dr. Flanum, the Board correctly determined Mr. Schranz was entitled to TTD from December 19, 2018, through March 11, 2019. The Board chose to rely on the March 2019 report from Dr. Flanum over the EME report from Dr. Bauer. This is within the Board’s authority. The Board’s decision awarding Mr. Schranz the additional TTD is affirmed as supported by substantial evidence in the record as a whole.

⁶⁷ *Bailey v. Litwin Corp.*, 713 P.2d 249, 253 (Alaska 1986).

⁶⁸ R. 529.

5. *Conclusion.*

The Board's decision is AFFIRMED.

Date: 15 May 2020 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).

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 and the correction of a typographical error, this is a full and correct copy of Final Decision No. 277, issued in the matter of *TC Construction, Inc. and American Interstate Insurance Company v. Peter C. Schranz*, AWCAC Appeal No. 19-019, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on May 15, 2020.

Date: May 18, 2020



Signed

K. Morrison, Appeals Commission Clerk