

Alaska Workers' Compensation Appeals Commission

Terry M. Parsons,
Appellant,

vs.

Craig City School District and Alaska
Municipal League Joint Insurance
Association,
Appellees.

Final Decision

Decision No. 255 November 26, 2018

AWCAC Appeal No. 18-004
AWCB Decision No. 18-0013
AWCB Case No. 200111621

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 18-0013, issued at Juneau, Alaska, on February 7, 2018, by southern panel members Kathryn Setzer, Chair, Bradley Austin, Member for Labor, and Charles Collins, Member for Industry.

Appearances: Terry M. Parsons, self-represented appellant; Rebecca Holdiman Miller, Holmes Weddle & Barcott, PC, for appellees, Craig City School District and Alaska Municipal League Joint Insurance Association.

Commission proceedings: Appeal filed April 5, 2018; briefing completed September 6, 2018; oral argument was not requested by either party.

Commissioners: James N. Rhodes, Philip E. Ulmer, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

*1. Introduction.*¹

Terry M. Parson (Ms. Parsons) sustained an injury in 2001 while working for Craig City School District (CCSD).² CCSD is insured by Alaska Municipal League Joint Insurance

¹ 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.

² *Parsons v. Craig City Sch. Dist. and Alaska Mun. League Joint Ins. Co.*, Alaska Workers' Comp. Bd. Dec. No. 11-0140 (Sept. 13, 2011)(*Parsons I*).

Company.³ Ms. Parsons filed a workers' compensation claim (WCC) dated November 28, 2001, which CCSD controverted on December 26, 2001. CCSD controverted her claim again on March 19, 2002, following an Employer's Medical Evaluation (EME).⁴

In June 2010, Ms. Parsons filed a new WCC, seeking benefits for medical treatment she asserted was necessitated by her 2001 work injury.⁵ CCSD again controverted the claim and filed a petition to dismiss the WCC based on AS 23.30.110(c) and AS 23.30.105(a).⁶ The Alaska Workers' Compensation Board (Board) denied CCSD's petition to dismiss the claim, but did not award any benefits to Ms. Parsons.⁷ Ms. Parsons appealed the denial of benefits to the Alaska Workers' Compensation Appeals Commission (Commission) and CCSD cross-appealed the denial of its petition to dismiss.⁸ The Commission reversed the Board's denial of the petition to dismiss based on AS 23.30.110(c) and affirmed the Board's denial of any benefits to Ms. Parsons.⁹ Ms. Parsons did not appeal this decision to the Alaska Supreme Court (Court).¹⁰

Ms. Parsons sought to reopen her claim before the Board in a petition dated September 18, 2017.¹¹ CCSD filed another petition to dismiss her claim on October 19, 2017, and a hearing was held on January 9, 2018.¹² The Board granted CCSD's petition

³ *Parsons I.*

⁴ *Parsons v. Craig City Sch. Dist. and Alaska Mun. League Joint Ins. Ass'n*, Alaska Workers' Comp. App. Comm'n Dec. No. 168 (Aug. 30, 2012) (*Parsons II*).

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 19.

¹⁰ Record.

¹¹ *Parsons v. Craig City Sch. Dist. and Alaska Mun. League Joint Ins. Ass'n*, Alaska Workers' Comp. Bd. Dec. No. 18-0013 at 3, No. 5 (Feb. 7, 2018) (*Parsons III*).

¹² *Parsons III* at 1.

to dismiss and denied Ms. Parsons' petition to reopen her claim.¹³ Ms. Parsons timely appealed the denial to the Commission.

In her Statement of Grounds for Appeal and an accompanying Motion which the Commission accepted as part of her Statement of Grounds for Appeal, Ms. Parsons asked the Commission to "give me my benefits" The Commission does not have authority to hear new evidence. The Commission only has authority to review the findings of fact made by the Board to determine whether the Board's decision is supported by substantial evidence in the record as a whole.¹⁴ The Commission now affirms the Board's denial of Ms. Parsons' petition and the Board's granting of CCSD's petition to dismiss her claim, as both decisions are supported by the substantial evidence in the record as a whole.

2. Factual background and proceedings.

Ms. Parsons reported an injury while working for CCSD on June 29, 2001, which happened when she was closing a pull-down attic ladder.¹⁵ The ladder came back down on her, hitting her right arm and chest and knocking her to the floor. She sustained bruises. Soon after the injury, Ms. Parsons began to experience body complaints and symptoms encompassing almost every major part of the body, including pain in her head, neck, shoulders, arms, legs, chest, back, abdomen, pelvis, inflammation throughout her entire body, and diarrhea.¹⁶ She first treated with Christopher Occhino, M.D., on July 9, 2001, who diagnosed "biceps hematoma, rule out nephrolithiasis."¹⁷ He saw her again on July 13, 2001, and released her to work without restrictions on July 16, 2001.¹⁸

¹³ *Parsons III* at 13.

¹⁴ AS 23.30.008; AS 23.30.128; AS 23.30.122.

¹⁵ *Parsons I* at 3, No. 2.

¹⁶ *Id.*

¹⁷ *Id.*, No. 3.

¹⁸ *Id.*, No. 4.

Ms. Parsons next sought treatment with Michael Melendrez, D.C., on July 23, 2001, who treated her for head, neck, abdomen, arm, and back pain.¹⁹ He released her to return to work without restrictions on the same day.²⁰

Ms. Parsons then began treatment with Robert Crochelt, M.D., who, on August 10, 2001, evaluated her for overall body complaints and symptoms. He did not diagnose any conditions, stating, "There may be a psychological overlay to her response to this illness, ie (sic), a ladder coming out of the ceiling and striking her or there may be other issues at work that I do not understand." According to Dr. Crochelt there was no indication for further investigation.²¹

On August 23, 2001, K. Richey, M.D., treated Ms. Parsons for multiple pains and assessed possible gallbladder disease. He stated, "[s]he thinks that maybe her continued problems are a result of this work injury. Although it is difficult to see how abdominal pains, headache, and neck pains would happen as a result of this."²² Also on August 23, 2001, Deborah Aaron, M.D., treated Ms. Parsons for complaints of a lot of body pain and reported no bruising, swelling, discoloration, or visible deformities and no palpable areas of tenderness. She made no diagnosis. Ms. Parsons requested a total body computerized axial tomography (CT) scan and abdominal ultrasound. Dr. Aaron opined, "I think the likelihood that she had internal injuries is very slim, considering that the ladder struck her against her right upper arm." Nonetheless, Dr. Aaron scheduled an abdominal ultrasound, stating, "This may be of some value in terms of reassurance, although there are no findings on physical examination."²³ On August 24, 2001, Charles Hase, RAD, conducted an abdominal ultrasound and reported a normal ultrasound of the upper abdomen.²⁴ On

¹⁹ *Parsons I* at 3, No. 5.

²⁰ *Id.*, No. 6.

²¹ *Id.*, No. 7.

²² *Id.*, No. 8.

²³ *Id.* at 4, No. 9.

²⁴ *Id.*, No. 10.

August 27, 2001, Dr. Deborah L. Aaron released Ms. Parsons to work on August 24, 2001, without restrictions.²⁵

Ms. Parsons next consulted with Richard W. McGrath, D.O., for another opinion on September 18, 2001. He diagnosed polymyalgia, chronic pain syndrome, and anxiety/depression,²⁶ and on October 8, 2001, treated her for body pain. He related her polymyalgia to her work injury.²⁷ On October 23, 2001, Dr. McGrath again saw Ms. Parsons in follow-up to her body pain and noted decreasing polymyalgia. He diagnosed costochondral inflammation secondary to her work injury.²⁸

On November 6, 2001, urological surgeon Greg Lund, M.D., examined Ms. Parsons for an EME. He stated that other than a biceps hematoma, none of Ms. Parsons' complaints and symptoms were related to her work injury.²⁹ Following this EME, On November 8, 2001, CCSD controverted Ms. Parsons' right to benefits for her abdominal and back pain based on Dr. Lund's report.³⁰

On November 26, 2001, Dr. McGrath treated Ms. Parsons for pain and recommended a CT scan.³¹ On November 30, 2001, Ms. Parsons filed a WCC for temporary total disability (TTD), temporary partial disability (TPD), medical and related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. She reported injuries to her arms, sides, back, hands, abdomen, and upper body.³²

On December 4, 2001, Larkin Breed, M.D., interpreted the CT scan of Ms. Parsons' abdomen and pelvis as showing diffuse fatty infiltration of the liver and previous

²⁵ *Parsons I* at 4, No. 11.

²⁶ *Id.*, No. 12.

²⁷ *Id.*, No. 13.

²⁸ *Id.*, No. 14.

²⁹ *Id.*, No. 15.

³⁰ *Id.*, No. 16.

³¹ *Id.*, No. 17.

³² *Id.* at 4-5, No. 18.

hysterectomy, but it was otherwise negative.³³ On December 12, 2001, Dr. McGrath saw Ms. Parsons in follow-up to her abdominal pain and diagnosed scar tissue of her lower abdomen secondary to her hysterectomy surgery and tear of the scar tissue secondary to her injury.³⁴

On December 28, 2001, CCSD filed a post-claim controversion notice, controverting all benefits except those relating to Ms. Parsons' biceps injury.³⁵

On February 28, 2002, orthopedic surgeon Larry D. Iversen, M.D., general surgeon Howard B. Kellogg, Jr., M.D., and psychiatrist Richard Carter, M.D., examined Ms. Parsons for an EME. Dr. Kellogg diagnosed: 1) contusion of the right biceps tendon, related to Ms. Parsons' work injury but resolved, 2) left wrist contusion, related to the work injury but resolved, and 3) multiple complaints of Ms. Parsons' entire body without objective findings, unrelated to the work injury. Dr. Carter diagnosed histrionic personality traits with somatic focus, unrelated to the work injury. The doctors jointly opined Ms. Parsons was medically stable from her work injury, had no permanent impairment related to the work injury, was not disabled, and recommended no further treatment relating to the work injury.³⁶

On March 21, 2002, CCSD filed a new controversion, denying all benefits based on the EME report of Drs. Kellogg, Carter, and Iversen.³⁷ CCSD filed additional controversions on September 27, 2010, October 19, 2010, February 7, 2011, and June 10, 2011.³⁸

On January 2, 2003, Molloy Loulie, M.D., interpreted the magnetic resonance imaging (MRI) scan of Ms. Parsons' thoracic spine and the MRI of Ms. Parsons' lumbar spine. The thoracic MRI impression was small 2 mm right paracentral disk protrusion T7-T8 touching the anterior cord. The lumbar MRI impression was minimal central stenosis

³³ *Parsons I* at 5, No. 19.

³⁴ *Id.*, No. 20.

³⁵ *Id.*, No. 21.

³⁶ *Id.*, No. 23.

³⁷ *Id.*, No. 24.

³⁸ *Id.*

primarily due to ligamentum flavum/fact hypertrophy L4-L5 and L5-S1 with AP diameter of the canal 12 mm at these levels.³⁹

On March 20, 2003, Dr. McGrath again evaluated Ms. Parsons and diagnosed recurrent right rib pain with no etiology, and low back pain with negative MRI. Dr. McGrath stated, "she is no longer on state comp claim." Dr. McGrath did not relate Ms. Parsons' diagnoses to her work injury.⁴⁰ On March 23, 2003, Maile J. Roper, D.O., evaluated Ms. Parsons for pain, but offered no diagnosis as he needed to review Ms. Parsons' medical records.⁴¹

On May 7, 2003, Bruce Schwartz, M.D., opined the January 2, 2003, MRIs were not work-related.⁴² On May 23, 2003, Dr. Roper evaluated Ms. Parsons for pain and diagnosed trigger point dysfunction and possible Reflex Sympathetic Dystrophy Syndrome (RSD).⁴³ Dr. Roper next saw Ms. Parsons for pain on May 29, 2003, and diagnosed somatic dysfunction secondary to her work injury in 2001. He stated, "[i]t was noted that she had marked trigger points within the sternocleidomastoid, trapezius and anterior chest wall . . . I definitely feel that these trigger points were set up wit [sic] the original accident at Craig Middle School and that it is possible for her to obtain more relief with subsequent trigger point therapy."⁴⁴ On June 2, 2003, Dr. Roper treated her for muscle spasms.⁴⁵

On May 16, 2006, Dr. McGrath treated Ms. Parsons for back pain and diagnosed mechanical dysfunction and muscle soreness in her mid to low back. Dr. McGrath did not relate Ms. Parsons' complaints to her work injury.⁴⁶ The next treatment with Dr. McGrath

³⁹ *Parsons I* at 6, No. 26.

⁴⁰ *Id.*, No. 27.

⁴¹ *Id.*, No. 28.

⁴² *Id.*, No. 29.

⁴³ *Id.*, No. 30.

⁴⁴ *Id.*, No. 31.

⁴⁵ *Id.*, No. 32.

⁴⁶ *Id.* at 7, No. 33.

was on September 24, 2008, when he saw her again for pain. He diagnosed acute pneumonia and mechanical dysfunction, but did not relate her complaints to her work injury.⁴⁷

On December 14, 2009, Robert Thomas, M.D., treated Ms. Parsons for pain, including right hip pain, and recommended a right hip MRI.⁴⁸ On December 23, 2009, Peter C. Buetow, M.D., interpreted the MRI of her right hip as showing bilateral sacroiliitis.⁴⁹ On February 1, 2010, Dr. Thomas saw her for pain and referred her to Dr. Schwartz for evaluation of sacroiliitis.⁵⁰ Dr. Schwartz saw Ms. Parsons on February 2, 2010, and diagnosed trochanteric bursitis in the hips.⁵¹ On April 16, 2010, Jason Stone, M.D., interpreted the MRI of Ms. Parsons' lumbar spine as showing the presence of bilateral sacroiliitis.⁵² On April 19, 2010, Dr. Schwartz again confirmed the diagnoses of bilateral sacroiliitis,⁵³ and on May 4, 2010, Dr. Thomas treated Ms. Parsons in follow-up to Dr. Schwartz's evaluation. He noted, "she was frustrated that no physician will link the pain with the injury" ⁵⁴

On May 13, 2010, CCSD terminated Ms. Parsons' employment, effective June 3, 2010.⁵⁵

On May 14, 2010, Scott Schultz, M.D., treated Ms. Parsons for abdominal pain and opined, "I do not see any obvious GYN etiology for her pain." He also stated, "In reviewing her prior notes . . . I wonder if this is not related to her trying to blame a chest injury from a ladder falling on her a decade ago of [sic] her subsequent health

⁴⁷ *Parsons I* at 7, No. 34.

⁴⁸ *Id.*, No. 35.

⁴⁹ *Id.*, No. 36.

⁵⁰ *Id.*, No. 37.

⁵¹ *Id.*, No. 38.

⁵² *Id.*, No. 39.

⁵³ *Id.*, No. 40.

⁵⁴ *Id.*, No. 41.

⁵⁵ *Id.*, No. 42.

problems.”⁵⁶ Ms. Parsons again saw Dr. Thomas on June 24, 2010, for follow-up care. He made no diagnosis and stated, “She also, once again, is asking for me to write down that the fall was the cause of her hip pain . . . and back pain and for her general feeling poorly. I have declined to do this.” Ms. Parsons asked to be referred to a rheumatologist and Dr. Thomas referred her to Sanjay Garg, M.D.⁵⁷

On August 17, 2010, Dr. Garg evaluated Ms. Parsons for possible spondyloarthropathy and diagnosed undifferentiated spondyloarthropathy. He opined Ms. Parsons’ work injury did not cause her current inflammatory spondyloarthropathy and also opined Ms. Parsons did not have any disability related to her condition.⁵⁸

On September 2, 2010, Ms. Parsons filed another WCC relating to her June 29, 2001, work injury, which was amended on April 14, 2011. She requested TTD, TPD, permanent total disability, permanent partial impairment, and medical benefits along with related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. Ms. Parsons reported complaints and symptoms of body inflammation, and injuries to her arms, chest, head, right side, legs, and shoulders.⁵⁹

On November 10, 2010, Ms. Parsons filed and served an affidavit of readiness for hearing (ARH).⁶⁰

On January 13, 2011, Lance N. Brigham, M.D. (orthopedic surgeon), Howard B. Kellogg, Jr., M.D. (general surgeon), and Richard Carter, M.D. (psychiatrist), examined Ms. Parsons for another EME. Their diagnoses included: 1) low back sprain related to work injury, resolved, 2) right biceps contusion and left forearm contusion, related to work injury, resolved, 3) chest contusion, related to work injury, resolved, 4) complaints of cervical and right upper arm pain with non-physiologic findings, unrelated to work injury, 5) x-rays and MRI showing sclerosis of bilateral sacroiliac joints, 6) cholecystectomy, not work related,

⁵⁶ *Parsons I* at 7, No. 43.

⁵⁷ *Id.* at 7-8, No. 44.

⁵⁸ *Id.* at 8, No. 45.

⁵⁹ *Id.*, No. 46.

⁶⁰ *Id.*, No. 47.

7) severe pain behavior unrelated to any medical condition, 8) multiple abdominal complaints without objective findings, unrelated to work injury, and 9) major depressive episode. Drs. Brigham, Kellogg, and Carter stated there was no objective evidence to support any diagnosis other than marked pain behavior without any positive orthopedic or neurologic findings, and opined Ms. Parsons had been medically stable with regard to her diagnosed conditions since February 28, 2002. Drs. Brigham, Kellogg, and Carter recommended no further treatment and found no restrictions to Ms. Parsons' return to work as a custodian.⁶¹

Ms. Parsons failed to file any other documents with the Board between November 30, 2001, and September 2, 2010, when she filed a new WCC. The Board found she made no attempt to prosecute her case between November 30, 2001, and September 2, 2010.⁶² Ms. Parsons testified she had not suffered any new work injury since June 29, 2001, and her pain complaints remained essentially the same, except for an increase in pain severity. In 2010, her symptoms reached the point where she could no longer control them with medication and conservative treatment, according to her medical records. Ms. Parsons stated, "My pains were basically the same, but they just got worse, and there were more of the pains. I had more issues with my symptoms."⁶³

Ms. Parsons continued to work full time for CCSD from the date of her injury until June 2010, when she was terminated. Her job duties included basic cleaning such as vacuuming, sweeping, mopping, dusting, stripping and waxing floors, and "whatever [she] saw that needed doing."⁶⁴ Ms. Parsons also operated Jo-Jo's Cleaning Service as a sole proprietor from 2004 through early January 2011. Her work consisted of cleaning commercial businesses, including a Wells Fargo Bank, a post office, a float plane building, and some restaurants.⁶⁵

⁶¹ *Parsons I* at 8, No. 48.

⁶² *Id.* at 9, No. 49.

⁶³ *Id.*, No. 50.

⁶⁴ *Id.*, No. 51.

⁶⁵ *Id.*, No. 52.

Ms. Parsons identified Dr. Garg as the physician most knowledgeable about her condition, because he practices in rheumatology, the specialization Ms. Parsons contended is most relevant to her condition.⁶⁶ Ms. Parsons explained she did not timely file an ARH because she believed she did everything she was supposed to do to prosecute her claim, including filing a claim and seeking treatment.⁶⁷ Ms. Parsons contended her ongoing complaints and symptoms were the direct result of her work injury because her symptoms did not begin until after her work injury.⁶⁸

At the hearing on August 16, 2011, Marla Anderson testified as a witness for Ms. Parsons, and CCSD cross-examined her about her account of Ms. Parsons' 2001 work injury.⁶⁹

The Board's decision, issued September 13, 2011, held Ms. Parsons' claim was not denied under AS 23.30.110(c), but her 2001 work injury was not a substantial factor in her past and current need for medical treatment for her ongoing complaints and symptoms.⁷⁰ Ms. Parsons did not seek either reconsideration or modification of this decision, but she did appeal it to the Commission. The Commission reversed the order in *Parsons I* denying CCSD's petition to dismiss her claim under AS 23.30.110(c) and affirmed the Board's order denying Ms. Parsons' claim for benefits.⁷¹ Ms. Parsons did not appeal this decision to the Court.

On September 18, 2017, Ms. Parsons requested her claim be reopened in a letter stating:

I wrote a letter a while back. And your office gave me a certain amount of time before closing my case. I couldn't get my info [sic] in time because of the stress and also sickness and meds [sic], I was on. The meds [sic] took

⁶⁶ *Parsons I* at 9, No. 53.

⁶⁷ *Id.*, No. 54.

⁶⁸ *Id.*, No. 56.

⁶⁹ *Parsons III* at 3, No. 2.

⁷⁰ *Parsons I*.

⁷¹ *Parsons II*.

their toll on me Please help me reopen my case. So I can live the rest of life with the help I deserved a long time ago.⁷²

On October 11, 2017, Ms. Parsons filed a June 7, 2010, notarized letter from Marla Anderson. In her letter, Ms. Anderson said she witnessed Ms. Parsons' 2001 work injury and provided her account of the incident.⁷³

On October 17, 2017, a Board Designee explained the deadlines to request reconsideration or modification of a Board decision and order, to request Commission reconsideration of a previous Commission decision, and to appeal a Commission decision to the Court. Ms. Parsons stated her September 18, 2017, letter asked the Board to reopen her case because her fibromyalgia was caused by the 2001 work injury and disabled her. The Board Designee treated Ms. Parsons' September 18, 2017, letter as a petition and informed the parties that only a Board hearing could decide the petition.⁷⁴

On October 19, 2017, CCSD requested dismissal of Ms. Parsons' September 18, 2017, petition.⁷⁵

On October 30, 2017, Ms. Parsons stated:

I've been seen by numerous doctors and taken lots of medicines. Chiropractor Melendrea 7/23/01, Dr. Roper 29, 2003 [sic] diagnosed trigger points set up by accident. And Doctor Roper was giving me cortisone shots. Just like I am getting now, from my now treating [orthopedic] doctor Cape Fear [orthopedics]. Also I'm having to still see [a] rheumatology doctor because of accident. Wide spread nerve damage fibromyalgia which is noted from time again from doctors I'd seen along the way. The accident caused nerve damage [and] inflammation in my body, which I'll always have to take medicine for I am asking the labor board to please open up my case. Cymbalta was medicine I took that caused me so many problems. I couldn't think right. I was put on disability on 12-01-2012. I have harassment case also, in my opinion!⁷⁶

On November 8, 2017, Ms. Parsons stated in another letter:

⁷² *Parsons III* at 3, No. 5.

⁷³ *Id.* at 4, No. 6.

⁷⁴ *Id.*, No. 7.

⁷⁵ *Id.*, No. 8.

⁷⁶ *Id.*, No. 9.

I wouldn't have taken Cymbalta if not for pain I was in from accident. Also it was impossible for me to focus on case in 2011 [because] I was at my worse mentally and physically also financially not able. I wrote the letter for help thinking I was, when I got answer back for system I fell to pieces, my brain turned off all contact Please open my case and give me my benefits that I deserve.⁷⁷

The parties agreed to an oral hearing on January 9, 2018, on Ms. Parsons' September 18, 2017, petition and CCSD's October 19, 2017, petition.⁷⁸ On December 15, 2017, Ms. Parsons filed a witness list which included the name, mailing address, and telephone number for a non-party witness, Marla Anderson, but did not include a brief description of the subject matter and substance of her expected testimony.⁷⁹ On December 15, 2017, Ms. Parsons filed another copy of the same June 7, 2010, notarized statement by Marla Anderson.⁸⁰ On the same day, Ms. Parsons also filed, but did not serve, a medical summary along with 62 pages of medical records. On the medical summary form, Ms. Parsons listed medical records from 2001, 2002, and 2003 that were already in the record and medical records from 2012 and 2017 which were not in the record nor in the attached pages of medical records. The 62 pages of medical records included the following medical records:

On April 22, 2014, Ms. Parsons reported bilateral hip pain with an onset of February 22, 2014. Douglas McFarlane, M.D. diagnosed bilateral trochanteric bursitis and low back pain with intermittent sciatica. Dr. McFarlane prescribed physical therapy and Mobic.⁸¹

On May 15, 20, 22, 27 and 29, 2014 and June 3, 5, 10 and 12, 2014, Ms. Parsons underwent physical therapy.⁸²

On September 28, 2017, Ms. Parsons visited Gary L. Aldrich, PA-C for right hip pain.⁸³

⁷⁷ *Parsons III* at 3, No. 10.

⁷⁸ *Id.*, No. 11.

⁷⁹ *Id.* at 5, No. 12.

⁸⁰ *Id.*, No. 13.

⁸¹ *Id.*, No. 14.

⁸² *Id.*

⁸³ *Id.*

On October 25, 2017, Ms. Parsons followed up with Kyle M. Fox, PA-C for right hip pain. She received a cortisone injection for trochanteric bursitis.⁸⁴

On December 15, 2017, a workers' compensation technician emailed CCSD a copy of Ms. Parsons' filings for hearing, including her witness list and December 15, 2017, medical summary.⁸⁵

At hearing on January 9, 2018, Ms. Parsons asserted she expected Marla Anderson to testify regarding the content of her June 7, 2010, notarized statement. She further contended the record contained evidence proving the 2001 work injury is a substantial factor in her past and current need for medical treatment for her ongoing complaints and symptoms.⁸⁶ Ms. Parsons testified she was seeking justice for her denied claim for her 2001 work injury, and that she was still receiving the same medical treatment for the same complaints caused by the 2001 work injury. However, she acknowledged she had no new opinion relating her past and current need for medical treatment to the 2001 work injury. Ms. Parsons testified the stress of the 2001 work injury, the abusive work environment she experienced while working for CCSD, and the medication she was on to treat the 2001 work injury, all prevented her from timely petitioning for modification or reconsideration of *Parsons I*.⁸⁷ The Board denied her petition to reopen her claim and granted CCSD's petition to dismiss her claim.⁸⁸ Ms. Parsons timely appealed this decision 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.⁸⁹ On questions of law and procedure, the Commission does not defer to the Board's

⁸⁴ *Parsons III* at 14.

⁸⁵ *Id.*, No. 15.

⁸⁶ *Id.* at 5-6, No. 16.

⁸⁷ *Id.* at 6, No. 17.

⁸⁸ *Parsons III*.

⁸⁹ AS 23.30.128(b).

conclusions, but rather exercises its independent judgment. "In reviewing questions of law and procedure, the commission shall exercise its independent judgment."⁹⁰ The Board's findings of credibility are binding on the Commission because the Board "has the sole power to determine the credibility of a witness."⁹¹ Such a determination by the Board is conclusive "even if the evidence is conflicting or susceptible to contrary conclusions."⁹²

4. *Discussion.*

a. *Do the doctrines of res judicata and collateral estoppel bar Ms. Parsons' claim?*

The Board, in *Parsons III*, denied Ms. Parsons' 2017 petition to reopen her WCC, in part, based on the doctrine of res judicata. The Court has held that the doctrine of res judicata applies to workers' compensation cases, although less rigidly than in other proceedings.⁹³ The principles of res judicata "preclude a subsequent suit 'between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit."⁹⁴ Before res judicata may be applied, it is necessary to ascertain if "(1) the prior judgment was a final judgment on the merits, (2) a court of competent jurisdiction rendered the prior judgment, and (3) the same cause of action and same parties . . . were involved in both suits."⁹⁵

In September 2011, the Board heard Ms. Parsons' claim for medical benefits she asserted arose out of her 2001 injury while working for CCSD.⁹⁶ She presented medical records from 2001 to 2010 for the Board's consideration and she testified. Her witness, Marla Anderson, also testified about the accident and was cross-examined. Ms. Parsons

⁹⁰ AS 23.30.128(b).

⁹¹ AS 23.30.122.

⁹² *Id.*

⁹³ *Robertson v. American Mech., Inc.*, 54 P.3d 777, 779-780 (Alaska 2002), citing *McKean v. Municipality of Anchorage*, 783 P.2d 1169, 1171 (Alaska 1989).

⁹⁴ *Id.* at 780.

⁹⁵ *Id.*, citing *Tope v. Christianson*, 959 P.2d 1240, 1243 (Alaska 1998).

⁹⁶ *Parsons I.*

alleged that the records from several doctors supported her claim that her ongoing pain complaints derived from her 2001 injury when an attic ladder fell, hitting her right arm and chest, and knocking her to the floor. The Board applied the three-step presumption analysis to her claim. The presumption is that “a claim for compensation under this chapter . . . is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes within the provisions of this chapter”⁹⁷ The Board found that Ms. Parsons raised the presumption of compensability through the records of her treating physicians, Drs. McGrath and Roper.

The Board then found that CCSD rebutted the presumption through the opinions of the EME physicians, Drs. Lund, Kellogg, Carter, and Brigham, along with the opinions of several of Ms. Parsons’ treating doctors including Drs. Richey, Schwartz, Schultz, Garg, and Thomas. The Board found the EME physicians opined that there was no objective evidence to support any diagnosis other than a bruising of her right upper arm and left forearm, a chest contusion, and a low back strain from the 2001 work injury, all of which had resolved by February 22, 2002. These physicians also provided an alternative explanation for her ongoing complaints: “sclerosis of bilateral sacroiliac joints, possibly indicating ankylosing spondylitis.”⁹⁸ The Board found this evidence sufficient to rebut the presumption of compensability.

Once the presumption is rebutted with substantial evidence, which is viewed in isolation and without a determination of credibility, Ms. Parsons needed to prove her claim by a preponderance of the evidence. The Board found she was unable to do so, by pointing to evidence showing that most of her treating doctors, along with the EME doctors, found the work injury was not a substantial factor in her current complaints.⁹⁹ The Board also decided that the statute of limitations in AS 23.30.110(c) and AS 23.30.105(a) did not bar her claim, although her claim was not compensable.

⁹⁷ AS 23.30.120(a).

⁹⁸ *Parsons I* at 19.

⁹⁹ *Id.*, at 20.

Ms. Parsons appealed this 2011 decision to the Commission which, in August 2012, affirmed the Board on the finding that her claim was not compensable, but reversed the Board on the question of whether her claim was barred by AS 23.30.110(c). The Commission found her claim was barred by AS 23.30.110(c).¹⁰⁰ Ms. Parsons did not appeal the Commission's decision to the Court. Thus, both the Board's order and the Commission's decision were final.

In 2017, Ms. Parsons wrote the Board a letter seeking to reopen her 2001 work injury. The Board chose to accept her letter as a petition to reopen her 2001 work injury. Ms. Parsons stated in part:

I wrote a letter a while back. And your office gave me a certain amount of time before closing my case. I couldn't get my info [sic] in time because of the stress and also sickness and meds [sic], I was on. The meds [sic] took their toll on me Please help me reopen my case. So I can live the rest of life with the help I deserved a long time ago.¹⁰¹

The Board heard her petition, along with CCSD's petition to dismiss Ms. Parsons' September 18, 2017, petition, on January 9, 2018. The Board, in denying Ms. Parsons' petition, noted that the issues she raised were the same ones which had been addressed in its 2011 decision. She raised no new issues for hearing nor did she offer any new medical evidence showing the 2011 decision was in error. Ms. Parsons had not timely requested modification of the Board's 2011 decision nor did she appeal the Commission's 2012 decision. Thus, the 2011 decision was final on the merits of her claim.

The elements of res judicata are applicable to Ms. Parsons' petition in 2017 to reopen her WCC claim and bar reopening her claim to new litigation. The Board, by statute, has the authority for hearing a dispute of a workers' compensation claim.¹⁰² The Board held a full and fair hearing in 2011, at which Ms. Parsons and her witness, Ms. Anderson, testified and Ms. Anderson was cross-examined. The Board reviewed and evaluated Ms. Parsons' medical records and made findings of fact which were reliable and

¹⁰⁰ *Parsons II* at 19.

¹⁰¹ *Parsons III* at 3, No. 5.

¹⁰² AS 23.30.001; AS 23.30.005.

relevant. The Board issued a final decision on the merits of her claim on September 13, 2011, and denied her claim. The parties before the Board in the 2011 hearing were Ms. Parsons and CCSD and these were the same parties in the 2017 matter. Ms. Parsons is now seeking medical benefits she contends arise out of the 2001 work injury against the same party, CCSD, although she admits she has no new medical evidence linking her current symptoms to her 2001 work injury.

Substantial evidence in the record supports the Board's finding that Ms. Parsons' new claim is barred under the doctrine of res judicata. The doctrine of res judicata applies to her 2017 petition and the Board properly denied her petition.

b. Is the Board's denial of Ms. Parsons' petition to reopen her claim supported by substantial evidence in the record?

The Board accepted Ms. Parsons' letter of September 18, 2017, as a petition to reopen her claim for benefits arising out of her 2001 work injury. In this letter she asserts her diagnosis of fibromyalgia was caused by the 2001 work injury. Ms. Parsons submitted a few new medical reports with her 2017 letter. These new medicals included:

On April 22, 2014, Ms. Parsons reported bilateral hip pain with an onset of February 22, 2014. Douglas McFarlane, M.D. diagnosed bilateral trochanteric bursitis and low back pain with intermittent sciatica. Dr. McFarlane prescribed physical therapy and Mobic.¹⁰³

On May 15, 20, 22, 27 and 29, 2014 and June 3, 5, 10 and 12, 2014, Ms. Parsons underwent physical therapy.¹⁰⁴

On September 28, 2017, Ms. Parsons visited Gary L. Aldrich, PA-C for right hip pain.¹⁰⁵

On October 25, 2017, Ms. Parsons followed up with Kyle M. Fox, PA-C for right hip pain. She received a cortisone injection for trochanteric bursitis.¹⁰⁶

None of these medical reports related her current complaints to the original injury in 2001. Moreover, at hearing Ms. Parsons admitted she had no new medical evidence

¹⁰³ *Parsons III* at 5, No. 14.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

relating her past and current need for treatment to the 2001 work injury.¹⁰⁷ Furthermore, the record is replete with instances where Ms. Parsons asked various doctors to relate her current complaints to the work injury and most of her treating doctors indicated they could not do so.¹⁰⁸

The Board, in its 2011 decision, found Ms. Parsons had not proved her need for ongoing medical treatment arose out of her 2001 work injury. The Commission affirmed that decision finding it was supported by substantial evidence in the record as a whole. The Commission's decision is now law of the case and controls all litigation in this matter after 2012. "The law of the case doctrine . . . generally 'prohibits the reconsideration of issues which have been adjudicated in a previous appeal in the same case Previous decisions on such issues . . . became 'law of the case' and should not be reconsidered"¹⁰⁹ Ms. Parsons admitted at hearing in 2018 she had no new medical evidence relating her current symptoms and complaints to the 2001 work injury.

The Board's decision denying her petition to reopen her claim is also supported by substantial evidence in the record as a whole. Ms. Parsons provided no new medical records supporting her contention nor did she provide any evidence of any reason why she had been unable to prosecute her claim in a timely fashion, other than her opinion she had done all she needed to do and that her pain interfered with her ability to follow her claim in a timely and productive manner. The substantial evidence in the record as a whole supports the Board's dismissal of her petition.

c. Was the Board's exclusion of the testimony of Ms. Anderson proper?

Ms. Parsons sought to include the June 7, 2010, notarized statement by Ms. Marla Anderson into the evidence in the 2018 hearing. CCSD objected to its inclusion asserting Ms. Parsons' witness list had not conformed to 8 AAC 45.112, because Ms. Parsons failed

¹⁰⁷ *Parsons III* at 6, No. 17.

¹⁰⁸ *See, Parsons II* at 17.

¹⁰⁹ *Beal v. Beal*, 209 P.3d 1012, 1016-1017 (Alaska 2009) citing *State, Commercial Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 873-74 (Alaska 2003) (quoting *Wolff v. Arctic Bowl, Inc.*, 560 P.2d 758, 763 (Alaska 1977)).

to include a description of what Ms. Anderson's testimony would be. Moreover, the statement offered no new evidence and Ms. Anderson had been cross-examined at the 2011 hearing about the content. The statement merely described the accident in 2001 which CCSD did not contest had occurred. The statement provided no support regarding Ms. Parsons' need for ongoing medical evidence as a result of that injury.

The Board discussed that while it had authority to waive strict requirements with its regulations, the situation at hand did not require it to do so. The Board further found that manifest injustice would not occur if Ms. Anderson's testimony was excluded. Specifically, the Board found that Ms. Anderson had testified at the 2011 hearing and her notarized statement was part of the record for that hearing. Moreover, Ms. Anderson had been cross-examined at the hearing. Her statement provided an account of Ms. Parsons' accident only. CCSD did not dispute the accident had occurred. Ms. Parsons was now seeking medical treatment she alleged arose out of that accident. Ms. Anderson could shed no light on Ms. Parsons' need for medical treatment which was, in this matter, dependent on medical opinions of which there were numerous reports from both treating doctors and employer's physicians. Ms. Anderson's testimony would have been duplicative and was unnecessary. Repetitious evidence may be excluded.¹¹⁰

Discovery issues are reviewed under an abuse of discretion standard.¹¹¹ The issue before the Board was the need for ongoing medical treatment. The record supports the findings of the Board that Ms. Anderson's testimony would not have provided any information pertinent to the need, or lack thereof, for ongoing medical treatment as a result of the 2001 injury. Her testimony was also unduly repetitious as it had already been heard by the Board at the 2011 hearing. The Board did not abuse its discretion when it excluded Ms. Anderson from testifying at the 2018 hearing. The Board's decision is supported by the record as a whole.

¹¹⁰ 8 AAC 45.120(e).

¹¹¹ AS 23.30.108(c).

5. *Conclusion.*

The Board's decision is AFFIRMED.

Date: 26 November 2018

Alaska Workers' Compensation Appeals Commission



Signed

James N. Rhodes, Appeals Commissioner

Signed

Philip E. Ulmer, Appeals Commissioner

Signed

Deirdre D. Ford, Chair

APPEAL PROCEDURES

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

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

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

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 255, issued in the matter of *Terry M. Parsons vs. Craig City School District and Alaska Municipal League Joint Insurance Association*, AWCAC Appeal No. 18-004, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on November 26, 2018.

Date: November 29, 2018



Signed

K. Morrison, Appeals Commission Clerk