

**Case:** *James E. Smith vs. Anchorage School District*, Alaska Workers' Comp. App. Comm'n Dec. No. 050 (July 25, 2007)

**Facts:** The employee was kicked in the groin in 1990, and received no further treatment for the injury after 1990. In 2004, he sought benefits for bilateral hip replacement surgery, contending that his hip condition was a result of the 1990 injury. His treating Veterans Affairs doctor for the hip condition, Dr. Laufer, was legally unable to provide an opinion on causation. The employer's medical evaluator, Dr. Brooks, concluded that the groin injury and hip condition were unrelated. Moreover, Dr. Laufer referred the employee to Dr. Moore who agreed with Dr. Brooks.

The board concluded that the employee had not attached the presumption of compensability because, due to the complexity of his condition and the lapse of time between the 1990 injury and 2001 symptoms, medical evidence was necessary and the employee had none. The board also concluded that even if the presumption attached, the employer rebutted it with two doctors' opinions and the employee did not prove his claim by a preponderance of the evidence because he had no medical evidence connecting his hip condition to the work injury. The employee appealed, arguing that the decision lacks substantial evidence. In addition, the employee argues that he was entitled to a second independent medical evaluation (SIME) when he asked for one at the hearing because Dr. Laufer could not provide an opinion on causation.

**Applicable law:** When Smith was injured, AS 23.30.095(k) provided that in the event of a "medical dispute regarding determinations of causation . . . between the employee's attending physician and the employer's independent medical evaluation, a second independent medical evaluation shall be conducted by a physician or physicians selected by the board[.]"

AS 23.30.110(g) on SIMEs ordered in the board's discretion.

Presumption of compensability, AS 23.30.120(a). In claims based on "highly technical medical considerations," medical evidence is often necessary to make the preliminary link to attach the presumption, *e.g.*, *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312 (Alaska 1981).

AS 23.30.010 (before amended in 2005), as interpreted by case law, workers' compensation liability was imposed whenever employment is established as *a* causal factor in the disability. A 'causal factor' is a legal cause if it is *a* substantial factor in bringing about the harm at issue.

**Issues:** Did board have substantial evidence to conclude that the work-related kick to the groin in 1990 was a substantial factor in the employee's need for bilateral hip replacement in 2004? Did the board properly deny an SIME?

**Holding/analysis:** The commission concluded that the board was not required to order an SIME because no dispute between physicians was established. The employee argued that Dr. Brooks' opinion had inconsistencies and that Dr. Moore's opinion was unreliable because he did not look at the employee's X-rays. The commission rejected his arguments because statute clearly required a dispute between the employer's and

employee's doctors to order an SIME; inconsistencies in or unreliability of a doctor's opinion goes to evaluating the weight of the opinion but does not establish a medical dispute. Moreover, Dr. Moore's opinion qualified as an opinion from the employee's attending doctor because it was a result of a valid referral from Dr. Laufer and nothing in Dr. Laufer's records indicated that he rejected the opinion. Smith also could have exercised his right to change treating doctors to obtain an opinion but he did not so.

The board did not abuse its discretion in not ordering an SIME under AS 23.30.110(g) because it had sufficient evidence, medical records and Dr. Brooks' testimony at hearing, to render its decision. "The board was able to trace when Smith's complaints arose, to establish when a diagnosis was made, to have a record history of physical and medical condition over time, to have the condition of avascular necrosis explained, and to have expert opinion presented." Dec. No. 050 at 14.

Finally, the commission concluded that the board had substantial evidence, the two doctors' opinions, to support its decision that the 1990 injury was not a substantial factor in bringing about the hip problems.

**Note:** Dr. Moore's letter was missing from the board's record on appeal to the commission. The commission evaluated the appeal nevertheless because the opinion was in the parties' excerpts, the parties did not dispute its contents, and the board chair certified that the opinion was part of the board's record at the hearing.