

## Alaska Workers' Compensation Appeals Commission

Marilyn A. Coppe,  
Appellant,

vs.

Michael A. Bleicher, M.D., Laurie  
Bleicher, M.D., and Liberty Northwest  
Insurance Company,  
Appellees.

### Final Decision

Decision No. 164      August 1, 2012

AWCAC Appeal No. 11-004  
AWCB Decision No. 11-0049  
AWCB Case No. 200324759

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 11-0049, issued at Anchorage on April 21, 2011, by southcentral panel members Deirdre D. Ford, Chair, Patricia Vollendorf, Member for Labor, and Robert Weel, Member for Industry.<sup>1</sup>

Appearances: Marilyn A. Coppe, self-represented appellant; Randall J. Weddle, Holmes Weddle & Barcott, PC, for appellees, Michael A. Bleicher, M.D., Laurie Bleicher, M.D., and Liberty Northwest Insurance Company.

Commission proceedings: Appeal filed May 13, 2011; briefing completed January 12, 2012; oral argument held on May 15, 2012.

Commissioners: David W. Richards, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

### *1. Introduction.*

Appellant, Marilyn A. Coppe (Coppe), was employed as a secretary by appellees, Michael A. Bleicher, M.D., and Laurie Bleicher, M.D. (Bleichers), until October 3, 2003.<sup>2</sup> She filed a report of injury relating to that employment on August 26, 2005,<sup>3</sup> claiming

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<sup>1</sup> See n.5, *infra*.

<sup>2</sup> R. 0001-02. (Coppe listed that date as the last day she was exposed to the injury or disease on her report of injury.)

<sup>3</sup> R. 0001-02.

the building in which she worked for the Bleichers made her ill.<sup>4</sup> Coppe's workers' compensation claim (WCC) went to hearing before the Alaska Workers' Compensation Board (board) on December 1 and 2, 2010.<sup>5</sup> The board denied her claim.<sup>6</sup> Coppe has appealed the board's decision to the Workers' Compensation Appeals Commission (commission). We affirm.

*2. Factual background and proceedings.*

The board made extensive factual findings which, in the interest of brevity, we summarize here. Coppe had a history of low back pain prior to 2003.<sup>7</sup> As for her complaints related to sick building syndrome, including vertigo, nausea, chest pain, and headaches, they became severe in April 2003.<sup>8</sup> In May 2003, Coppe sent a letter to other building occupants asking if they experienced similar symptoms. Three of them responded.<sup>9</sup> The following month, Nortech Environmental & Engineering Consultants

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<sup>4</sup> R. 0002. Throughout this decision the condition will be referred to as "sick building syndrome." Dr. Emil J. Bardana testified the description "sick building syndrome" is defined "as a building in which one or more workers complains of health effects, wherein an investigation takes place[.]" R. 0720 (Mar. 4, 2008, E. Bardana, M.D., Dep. 18:4-6). In making a diagnosis, reliance is placed on the patient's complaints temporally – the complaints arise when in the building and clear up when away from the building. R. 0720 (Mar. 4, 2008, E. Bardana, M.D., Dep. 18:13-15).

<sup>5</sup> See *Marilyn A. Coppe v. Michael A. Bleicher, M.D., and Laurie Bleicher, M.D.*, Alaska Workers' Comp. Bd. Dec. No. 11-0049, 1 (April 21, 2011) (*Coppe*). An errata sheet, dated April 25, 2011, was issued with respect to this decision which has no relevance to the issues presented in this appeal; the errata pertained to a correction as to the board panel industry member, Robert Weel.

<sup>6</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 29.

<sup>7</sup> R. 0117 (April 27, 2007, Coppe Dep. 4:14–5:3).

<sup>8</sup> R. 0117 (April 27, 2007, Coppe Dep. 5:4-18).

<sup>9</sup> R. 0223, 0236, 0344. The respondents indicated that, while they had some symptoms similar to Coppe's, they did not attribute them to the building. R. 0209-11 (Aug. 27, 2007, Newbrough Dep. 6:24–17:8), R. 0226-27 (Aug. 27, 2007, Tanner Dep. 6:25–13:3, R. 0287-90 (Oct. 29, 2007, Guillory-Washington Dep. 30:6–33:11).

(Nortech) investigated and issued a report on the indoor air quality at the location in question. Nortech's report did not identify any potential sources of air contaminants.<sup>10</sup>

Coppe saw David Hemry, M.D., a specialist in allergies and asthma, on July 30, 2003. Dr. Hemry found no allergic disease and believed Coppe's symptoms might relate to job stress or depression.<sup>11</sup> She saw Robin Galloway, M.D., on October 3, 2003, Coppe's last day of work for the Bleichers, and again on November 13, 2003.<sup>12</sup> Based on Coppe's representations, Dr. Galloway diagnosed rhinitis and bronchospasm, which she attributed to Coppe's work environment, and on the latter visit she noted depression.<sup>13</sup> On seeing Coppe in December 2003, Dr. Galloway again noted her depression, prescribed Lexapro, and referred Coppe to psychotherapy.<sup>14</sup> When she saw Dr. Galloway in February 2004, Coppe reported improvement, prompting her to discontinue using the Lexapro.<sup>15</sup>

Coppe was tested by Ernest Meinhardt, M.D., for rheumatoid arthritis on August 29, 2005.<sup>16</sup> Coppe saw Jill Gaskill, M.D., on October 25, 2005, for depression and insomnia.<sup>17</sup> Coppe began counseling on November 22, 2005.<sup>18</sup> When Coppe saw Michael Maze, M.D., on November 25, 2005, she denied a family history of psychological problems and reported her own psychological difficulties began in 2003.<sup>19</sup> Dr. Maze diagnosed severe depression and made pharmaceutical recommendations.<sup>20</sup>

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<sup>10</sup> R. 0052-55.

<sup>11</sup> R. 2308-09.

<sup>12</sup> R. 2310, 2314.

<sup>13</sup> *Id.*

<sup>14</sup> R. 2315.

<sup>15</sup> R. 2316.

<sup>16</sup> R. 2323.

<sup>17</sup> R. 2401.

<sup>18</sup> R. 2500-01.

<sup>19</sup> R. 2239.

<sup>20</sup> *Id.*

On January 26, 2006, Coppe was evaluated by Claribel L. K. Tan, M.D. Dr. Tan's impression was nonspecific polyarthralgias with non-restful sleep, fitting a diagnosis of fibromyalgia, mild osteoarthritis of the knees and right shoulder, and sleep disorder likely secondary to stress and underlying depression.<sup>21</sup> She recommended the use of nonsteroidal medications such as Aleve and conditioning exercises.<sup>22</sup> Bryan H. Laycoe, M.D., an orthopedist, performed an employer's medical evaluation (EME) of Coppe on April 15, 2006.<sup>23</sup> He noted Coppe's multiple complaints relating to her back, neck, right arm, knees, ankles, wrists, and hands, as well as recurrent depression.<sup>24</sup> Dr. Laycoe concluded there was no medical cause for her complaints, employment was not a substantial factor in causing her complaints, and recommended that Coppe be treated for depression and a sleep disorder.<sup>25</sup> After seeing Coppe on June 2, 2006, for thermography, Matt Sullivan, M.D., noted that her multiple arthralgias lacked associated thermal findings.<sup>26</sup> Coppe began treating with James J. Pizzadili, D.C., on June 13, 2006.<sup>27</sup> Reporting that she was feeling better and no longer depressed, Coppe discontinued the counseling she was receiving on July 17, 2006.<sup>28</sup>

Eric Goranson, M.D., a psychiatrist, performed an EME on February 12, 2007.<sup>29</sup> He did not diagnose Coppe with depression.<sup>30</sup> Instead, he believed Coppe probably suffered from a somatization disorder.<sup>31</sup> Neurotoxicologist, Gunnar Heuser, M.D., saw

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<sup>21</sup> R. 3198.

<sup>22</sup> *Id.*

<sup>23</sup> R. 2404-15.

<sup>24</sup> R. 2410.

<sup>25</sup> R. 2411-12.

<sup>26</sup> R. 2211.

<sup>27</sup> *See Coppe*, Bd. Dec. No. 11-0049 at 7.

<sup>28</sup> *See id.*

<sup>29</sup> R. 2614-40.

<sup>30</sup> R. 2637-39.

<sup>31</sup> R. 2638 (but noted that malingering and a factitious disorder needed to be ruled out).

Coppe on April 3, 2007.<sup>32</sup> He noted that she reported symptoms of impaired memory and cognitive functions, chronic pain and fatigue, shortness of breath, depression, and insomnia.<sup>33</sup> He diagnosed fibromyalgia, found evidence of toxic exposure, and made a tentative finding of sick building syndrome.<sup>34</sup>

Brent T. Burton, M.D., was scheduled to perform an EME in July 2007, but was unable to do so because Coppe failed to appear for it.<sup>35</sup> In lieu of the EME, he reviewed her medical records, concluding that there was no evidence of toxic exposure at work, Coppe's symptoms were psychologically based, and were not work-related.<sup>36</sup> Dr. Burton diagnosed a somatoform disorder.<sup>37</sup> When deposed in March 2008,<sup>38</sup> Dr. Burton testified that Coppe's continued and progressive symptoms, years after she discontinued her employment with the Bleichers, were strong evidence her current condition was not work-related.<sup>39</sup> He also questioned the accuracy of some of the laboratory testing performed on Coppe.<sup>40</sup> At the hearing before the board in December 2010, Dr. Burton testified that Coppe suffered no toxic exposure in connection with her employment for the Bleichers<sup>41</sup> and that fibromyalgia is not caused by toxic exposure.<sup>42</sup> The board noted that Dr. Burton is a Clinical Associate Professor at Oregon Health and

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<sup>32</sup> R. 2701-02.

<sup>33</sup> R. 2701.

<sup>34</sup> R. 2701-02.

<sup>35</sup> R. 2785.

<sup>36</sup> R. 2832.

<sup>37</sup> R. 2827.

<sup>38</sup> R. 0861.

<sup>39</sup> R. 0889-90.

<sup>40</sup> R. 0870-71.

<sup>41</sup> Dec. 2, 2010, Hr'g Tr. 261:19-22 (testifying that even if Coppe's lab results were valid, the levels of various toxins were "not at a concentration that would cause concern about an exposure"); Dec. 2, 2010, Hr'g Tr. 268:8-16 (testifying that Coppe's work environment more likely than not did not contribute to her reported symptoms).

<sup>42</sup> Dec. 2, 2010, Hr'g Tr. 248:24-25, 249:21-23.

Science University, is board certified in occupational medicine, medical toxicology, and emergency medicine, and found him to be a credible witness.<sup>43</sup> Coppe also failed to appear for an EME, scheduled at the same time as Dr. Burton's, to be performed by Dr. Bardana, an allergy and immunology specialist.<sup>44</sup> Dr. Bardana reviewed her medical records, reported her symptoms were subjective, and found no evidence of allergy or toxic reactions associated with her work for the Bleichers.<sup>45</sup> The board found Dr. Bardana to be a credible witness.<sup>46</sup>

On September 20, 2007, Dr. Pizzadili wrote that he was treating Coppe for toxic exposure and that multiple diagnostic testing indicated she was suffering from the effects of sick building syndrome and toxic encephalopathy, and a few weeks later filed a detailed report contradicting Dr. Bardana's conclusions.<sup>47</sup> After reviewing additional records and Nortech's 2003 report, Dr. Burton issued a supplemental report in which he concluded there were no indicia of Coppe having suffered a toxic or allergenic exposure and there were no significant defects in the building's heating and air conditioning systems.<sup>48</sup> He expressed his opinion that sick building syndrome was not an accepted medical diagnosis<sup>49</sup> and concluded that Coppe had a somatoform disorder, which Dr. Burton characterized as "a psychological condition manifest[ed] b[y] the expression of symptoms that do not correspond with objective findings and arise from an erroneous belief system."<sup>50</sup> Dr. Heuser evaluated Coppe on February 9, 2009, concluding that she suffered from sick building syndrome.<sup>51</sup> He diagnosed Coppe with

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<sup>43</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 9, 11.

<sup>44</sup> R. 2840.

<sup>45</sup> R. 2887. See *Coppe*, Bd. Dec. No. 11-0049 at 9-10.

<sup>46</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 10.

<sup>47</sup> R. 2920-21, 3183-88.

<sup>48</sup> R. 3191-95.

<sup>49</sup> R. 3192-93.

<sup>50</sup> R. 3194.

<sup>51</sup> R. 3362-69.

toxic encephalopathy, fibromyalgia, depression and a sleep disorder.<sup>52</sup> The board ordered Coppe to attend a second independent medical evaluation (SIME), to be performed by Thomas G. Martin, M.D., a toxicologist, and later issued another order that Dr. Martin perform a records review, which he did on April 30, 2010.<sup>53</sup> He concluded that Coppe did not suffer any injury from any workplace chemical or biological toxin exposure, nor was any pre-existing condition aggravated or accelerated by her work for the Bleichers.<sup>54</sup> Dr. Martin attributed Coppe's complaints to an underlying somatization disorder.<sup>55</sup> Dr. Burton concurred with Dr. Martin's opinions.<sup>56</sup> The board found Dr. Martin to be a credible witness.<sup>57</sup>

At the December 2010, hearing, testifying in person were Coppe, Coppe's husband, Dr. Michael Bleicher, Dr. Burton, and Dr. Pizzadili.<sup>58</sup> The board accorded Dr. Pizzadili's testimony less weight because toxicology is outside his area of expertise and because of his reliance on Coppe's representations as part of the basis for his opinions.<sup>59</sup> In due course following the hearing, the board issued its decision in which the board members concluded that 1) Coppe did not sustain a work injury in the course and scope of her employment with the Bleichers, and 2) Coppe was not entitled to any benefits. Coppe appeals.

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<sup>52</sup> R. 3369. (He also diagnosed orthopedic problems but did not attribute those problems to the toxic work environment.)

<sup>53</sup> R. 3440, 5051.

<sup>54</sup> R. 3449-52.

<sup>55</sup> R. 3452.

<sup>56</sup> *See Coppe*, Bd. Dec. No. 11-0049 at 8.

<sup>57</sup> *See id.* at 13.

<sup>58</sup> *See id.* at 8-9, 14-16.

<sup>59</sup> *See id.* at 16.

### 3. *Standard of review.*

The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record.<sup>60</sup> The board has the sole power to determine the credibility of witnesses and findings in that respect are binding on the commission.<sup>61</sup> Similarly, findings by the board in terms of the weight to be accorded testimony are conclusive.<sup>62</sup> We exercise our independent judgment when reviewing questions of law and procedure.<sup>63</sup>

### 4. *Discussion.*

Stated simply, the central issues in this appeal are the compensability of Coppe's claim relating to sick building syndrome and any resultant disability. Our analysis follows.

#### *a. Coppe waived or abandoned certain issues due to inadequate briefing.*

In addition to her primary claim that the building in which she worked for the Bleichers made her sick, in her briefing to the commission, Coppe also made reference to certain orthopedic complaints<sup>64</sup> and exposure to cigarette smoke.<sup>65</sup> However, as argued by the Bleichers,<sup>66</sup> Coppe's briefing was inadequate in these and other respects. In an appeal involving an individual identified as A.H., a *pro se* appellant like Coppe, the Alaska Supreme Court (supreme court) noted:

The quality of her briefing greatly impairs any viable arguments she may have, as well as this court's ability to deal with the issues presented. A.H. presents arguments that may have validity. However, the majority of the

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<sup>60</sup> Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>61</sup> *See* AS 23.30.122 and .128(b).

<sup>62</sup> *See* AS 23.30.122 and *Rockstad v. Chugach Eareckson Support Services, et al.*, Alaska Workers' Comp. App. Comm'n Dec. No. 140, 26 n.193 (Nov. 5, 2010).

<sup>63</sup> *See* AS 23.30.128(b).

<sup>64</sup> Appellant's Am. Br. 4-6, 17.

<sup>65</sup> Appellant's Am. Br. 3, 16, 24.

<sup>66</sup> Appellees' Br. 8-9.

fifty-six issues she raises are waived due to inadequate briefing. Throughout most of the briefs A.H. provides no citation of legal authority, and in the vast majority of instances her arguments are cursory and undeveloped. “[W]here a point is given only cursory statement in the argument portion of a brief, the point will not be considered on appeal.”<sup>67</sup>

Here, the commission is in the same position as the supreme court was in *A.H. v. W.P.* Initially, we note that forty-six pages of Coppe’s fifty-two page opening brief are consumed by her discussion of the facts, whereas, approximately four pages are devoted to her legal arguments and string citations to general legal principles of questionable relevance. While Coppe’s arguments may have some validity, as in *A.H. v. W.P.*, the quality of her briefing impairs our ability to understand her cursory or vague arguments, particularly with respect to any orthopedic issues, or exposure to cigarette smoke. Accordingly, due to inadequate briefing, we deem the orthopedic and cigarette smoke inhalation issues waived or abandoned.

*b. The board did not ignore or overlook evidence.*

In her briefing, Coppe asserts that the board ignored or overlooked certain evidence.<sup>68</sup> As pointed out in the Bleichers’ briefing,<sup>69</sup> this argument is unsupported by legal authority and unfounded. The evidence the board allegedly ignored was not, as Coppe asserts, certain medical evidence. On the contrary, Coppe’s subjective statements to certain medical providers were not discussed by the board in its decision, but the medical evidence itself was. Consequently, we see no validity to Coppe’s argument that the board ignored evidence.

*c. There was no challenge on appeal of the board’s decision that Coppe’s claim was not barred under AS 23.30.100.*

AS 23.30.100(a) states: “Notice of injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death[.]” AS 23.30.100(d) provides:

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<sup>67</sup> *A.H. v. W.P.*, 896 P.2d 240, 243 (Alaska 1995) (quoting *Adamson v. University of Alaska*, 819 P.2d 886, 889 n.3 (Alaska 1991)).

<sup>68</sup> Appellant’s Am. Br. 6, 9.

<sup>69</sup> Appellees’ Br. 10-12.

(d) Failure to give notice does not bar a claim under this chapter

(1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

AS 23.30.120(a) reads in relevant part: “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 within the provisions of this chapter; [and] (2) sufficient notice of the claim has been given[.]”

The board discussed the thirty-day notice of injury requirement set forth in AS 23.30.100(a).<sup>70</sup> Recognizing that late notice does not necessarily bar a claim under that statute, the board ruled that Coppe’s late notice was excused under AS 23.30.100(d)(1).<sup>71</sup> There is substantial evidence in the record that the Bleichers knew of Coppe’s assertion that the building was making her sick back in 2003.<sup>72</sup> On appeal, the Bleichers did not contest this conclusion by the board.

*d. Any issue whether the presumption of compensability applied to Coppe’s WCC was rendered moot.*

Even though Coppe’s claim was not barred because of the late notice, the board stated:

[T]he late notice means [Coppe] does not enjoy the benefit of the presumption of compensability found in AS 23.30.120 which states it is presumed an injury occurred within the course and scope of employment. Since [Coppe] does not have the presumption of compensability, the normal presumption analysis is not applicable. [Coppe] bears the burden of proving by a preponderance of the evidence her ongoing complaints arose out of and in the course and scope of her employment.<sup>73</sup>

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<sup>70</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 25.

<sup>71</sup> See *id.* at 26.

<sup>72</sup> See *id.*

<sup>73</sup> *Coppe*, Bd. Dec. No. 11-0049 at 26.

Nevertheless, as it did on another occasion,<sup>74</sup> the board proceeded with its analysis as if the presumption of compensability applied to the claim,<sup>75</sup> thus making it unnecessary for the commission to pass judgment on whether it was error for the board to hold that the presumption was inapplicable. In effect, the issue was mooted.

*e. Applying the presumption of compensability analysis, the board was correct in ruling that Coppe had not proved her claim by a preponderance of the evidence.*

The presumption of compensability applies to every element of a factual determination relative to a workers' compensation claim.<sup>76</sup> Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable.<sup>77</sup> To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment.<sup>78</sup> If the employee establishes this preliminary link, the presumption may be overcome if the employer presents substantial evidence that the injury was not work-related.<sup>79</sup> Presentation of a qualified expert's opinion that employment was probably not a substantial factor in causing the disability suffices for this purpose.<sup>80</sup> Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at this point.<sup>81</sup> If the

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<sup>74</sup> See *McGaughey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011).

<sup>75</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 26-29.

<sup>76</sup> See *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 861 (Alaska 2010).

<sup>77</sup> See, e.g., *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996).

<sup>78</sup> See, e.g., *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999).

<sup>79</sup> See *Tolbert*, 973 P.2d at 611 (explaining that to rebut the presumption "an employer must present substantial evidence that either (1) provides an alternative explanation which, if accepted, would *exclude* work-related factors as a substantial cause of the disability; or (2) directly eliminates *any reasonable possibility* that employment was a factor in causing the disability.") (italics in original, footnote omitted); *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978).

<sup>80</sup> See, e.g., *Big K Grocery v. Gibson*, 836 P.2d 941, 942 (Alaska 1992).

<sup>81</sup> See, e.g., *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

board finds that the employer's evidence is sufficient to rebut the presumption of compensability, it drops out and the employee must prove his or her case by a preponderance of the evidence.<sup>82</sup> This means that the employee must "induce a belief" in the minds of the board members that the facts being asserted are probably true.<sup>83</sup> At this point, the board weighs the evidence, determines what inferences to draw from the evidence, and considers the question of credibility.

First, the board found that Coppe had attached the presumption through her testimony, the testimony of her husband, and the testimony of Dr. Pizzadili, that her employment was a substantial factor in causing her disability and need for medical treatment.<sup>84</sup> We concur. Second, the board found that the presumption was rebutted. It noted that Drs. Burton, Bardana, and Goranson all asserted that the building in which Coppe worked for the Bleichers did not cause her complaints because there was no credible evidence that she was exposed to any toxic substances while working there. In the language of such cases as *Tolbert*<sup>85</sup> and *Big K Grocery*,<sup>86</sup> the board found that these experts' opinions eliminated any reasonable possibility that employment was a factor in causing Coppe's disability. We agree that this is substantial evidence rebutting the presumption.

Ultimately, the board reasoned that whether the presumption was rebutted or inapplicable, it was incumbent on Coppe to prove her claim by a preponderance of the evidence, which she failed to do. In the board's view, the credible evidence presented was that: 1) Nortech found no air contaminants in the building in 2003; 2) other employees were not affected by the air in the building, contrary to Coppe's assertion that they were; and 3) the opinions provided by the EME doctors and the SIME doctor

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<sup>82</sup> See *Miller*, 577 P.2d at 1046.

<sup>83</sup> See *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

<sup>84</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 26-27.

<sup>85</sup> See n.79, *supra*.

<sup>86</sup> See n.80, *supra*.

were more persuasive.<sup>87</sup> The toxicologists, Drs. Burton and Martin, after reviewing the available evidence, both concluded that the building did not expose Coppe to any toxic substances.<sup>88</sup> In contrast, the board attached less weight to the opinions of Dr. Pizzadili and Dr. Heuser because they relied to a significant extent on Coppe's inaccurate representations that the building also made some of her co-workers ill.<sup>89</sup> Together with Dr. Pizzadili's lack of expertise in toxicology<sup>90</sup> and the unreliable test results provided to Dr. Heuser,<sup>91</sup> it was reasonable for the board to question the reliability of their evidence. Given that the board's credibility findings are binding and its weight findings are conclusive,<sup>92</sup> the commission concludes that there was substantial evidence that Coppe did not meet her burden of proving her claim by a preponderance of the evidence.

Following similar reasoning, the board concluded that Coppe was not permanently and totally disabled, initially noting that the preponderance of the evidence was that Coppe did not suffer an injury on the job.<sup>93</sup> The board went on to indicate that the lack of a reference from the Bleichers could not constitute permanent and total disability as a result of a work injury. On the contrary, as the board pointed out, permanent and total disability is "the inability because of injuries to perform services."<sup>94</sup> "The lack of a job reference does not equate to being physically unable to work."<sup>95</sup> In the exercise of our independent judgment, we agree with the board's legal conclusion in this respect.

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<sup>87</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 27-28.

<sup>88</sup> See *id.* at 28.

<sup>89</sup> See *id.*

<sup>90</sup> See *id.* at 16.

<sup>91</sup> See *id.* at 28.

<sup>92</sup> See n.61 and n.62, *supra*.

<sup>93</sup> See *Coppe*, Bd. Dec. No. 11-0049 at 28.

<sup>94</sup> See *id.* at 29 (quoting, *e.g.*, *J. B. Warrack Co. v. Roan*, 418 P.2d 986, 988 (Alaska 1966)).

<sup>95</sup> *Coppe*, Bd. Dec. No. 11-0049 at 29.

5. *Conclusion.*

For the reasons stated, we AFFIRM the board's decision.

Date: 1 August 2012

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



*Signed*

\_\_\_\_\_  
David W. Richards, Appeals Commissioner

*Signed*

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S. T. Hagedorn, Appeals Commissioner

*Signed*

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Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission affirms the board's decision. The commission's decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).<sup>96</sup> For the date of distribution, see the box below.

Effective, November 7, 2005, proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed<sup>97</sup> and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission is not a party.

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<sup>96</sup> A party has 30 days after the distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was distributed by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

**Additional Time After Service or Distribution by Mail.**

Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

<sup>97</sup> *See id.*

You may wish to consider consulting with legal counsel before filing an appeal. 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

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### RECONSIDERATION

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this final decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. 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 the Final Decision No. 164 issued in the matter of *Marilyn A. Coppe v. Michael A. Bleicher, M.D., Laurie Bleicher, M.D., and Liberty Northwest Insurance Co.*, AWCAC Appeal No. 11-004, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 1, 2012.

Date: August 7, 2012



*Signed*

B. Ward, Appeals Commission Clerk