

# Alaska Workers' Compensation Appeals Commission

Ira Edwards,  
Appellant,

vs.

State of Alaska,  
Appellee.

## Final Decision

Decision No. 301                      March 8, 2023

AWCAC Appeal No. 22-007  
AWCB Decision No. 22-0027  
AWCB Case No. 201019395

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 22-0027, issued at Anchorage, Alaska, on April 22, 2022, by southcentral panel members Kathryn Setzer, Chair, Matthew Barth, Member for Labor, and Sara Faulkner, Member for Industry.

Appearances: Eric Croft, The Croft Law Office, for appellant, Ira Edwards; Treg R. Taylor, Attorney General, and Daniel J. Moxley, Assistant Attorney General, for appellee, State of Alaska.

Commission proceedings: Appeal filed May 20, 2022; briefing completed November 3, 2022; oral argument held on December 20, 2022.

Commissioners: James N. Rhodes, Amy M. Steele, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

### *1. Introduction.*

Ira Edwards was injured and sustained T12 paraplegia with no functional use of his lower extremities on November 18, 2010, while working for the State of Alaska (SOA). On September 1, 2020, Mr. Edwards filed a claim with the Alaska Workers' Compensation Board (Board) requesting "a new truck outfitted with accessibility modifications as a replacement for his current accessible vehicle, with the Board determining the amount of any offset, if applicable, for the value of his current vehicle." The Board, on April 22, 2022, partially granted Mr. Edwards' claim, ordering Mr. Edwards to pay the cost of the truck he selects and ordering SOA to pay for modifications specifically set out in its order.

Mr. Edwards appealed. The Commission reverses and awards Mr. Edwards the benefits he sought.

*2. Factual background and proceedings.*<sup>1</sup>

On November 18, 2010, Mr. Edwards was injured while cutting down a tree when it descended in an unexpected way and fell on him as he was moving away, pinning him to the ground.<sup>2</sup>

On January 21, 2011, Mr. Edwards was prescribed a left side mounted push/rock hand control, a steering knob, and an adapt solutions XL seat to be installed on his "2010 Chevy Silverado 1500 extended cab 4x4."<sup>3</sup> On February 8, 2011, Mike Scheppers, MS OTR/DRS, recommended Mr. Edwards return to independent driving using adaptive equipment, including hand controls and a steering knob.<sup>4</sup> On March 12, 2019, Jared Kirkham, M.D., wrote a letter stating Mr. Edwards has T12 paraplegia with essentially no functional use of his lower extremities and requires the use of a wheelchair for transportation.<sup>5</sup>

On September 1, 2020, Mr. Edwards sought, "A new truck outfitted with accessibility modifications as a replacement for his current accessible vehicle, with the Board determining the amount of any offset, if applicable, for the value of his current vehicle." He requested reimbursement of \$32,147.36.<sup>6</sup> On September 8, 2020, Alaska Stairlift & Elevator, LLC, provided an estimate to install accessibility equipment in a 2021 Chevy Silverado 2500 crew cab totaling \$35,340.00.<sup>7</sup>

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<sup>1</sup> We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

<sup>2</sup> R. 0001.

<sup>3</sup> R. 0594.

<sup>4</sup> R. 0397.

<sup>5</sup> R. 0398.

<sup>6</sup> R. 0224-25.

<sup>7</sup> R. 0320-21.

SOA, on September 21, 2020, contended Mr. Edwards' need for personal transportation preexisted his disability and it supplied Mr. Edwards with modifications to his personal vehicle to accommodate his work-related disability. It contended his work-related disability does not require a specific type of vehicle to accommodate his medical apparatus and denied his disability required SOA to provide a "new truck." SOA contended Mr. Edwards did not present evidence demonstrating his current vehicle was incapable of providing transportation allowing him to accomplish basic and normal activities of daily living or obtaining medical treatment.<sup>8</sup>

Mr. Edwards filed two estimates for a new modified 2021 Chevrolet Silverado 2500 HD Crew Cab LTZ. The truck estimates included a diesel engine, engine block heater, dual alternators with a second battery, crew cab, sunroof, deep window tint, technology packages, which included a backup camera and wireless phone system, and heated leather seats. Alaska Sales & Service estimated the truck would cost \$68,874.00 and Alaska Stairlift & Elevators estimated the modifications would cost \$35,340.00, for a total cost of \$104,214.00. Dave Smith Motors estimated the truck would cost \$60,515.60 and Goldenwest Mobility estimated the modifications would cost \$24,824.84, for a total cost of \$85,340.44.<sup>9</sup>

On March 18, 2021, Mr. Edwards testified he has been in a wheelchair since the work injury.<sup>10</sup> He sold his 2005 Chevy Colorado, which had a manual transmission, for \$12,000.00 or \$15,000.00 in 2011 and purchased a 2010 Chevy Silverado 1500 truck for \$37,825.00.<sup>11</sup> SOA paid for the hand controls and a crane with a covered shell.<sup>12</sup> Mr. Edwards' Silverado has over 150,000 miles and has safety issues, including an airbag out in the open.<sup>13</sup> The crane modification does not work all the time so sometimes he

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<sup>8</sup> R. 0239-42.

<sup>9</sup> R. 0317-26.

<sup>10</sup> Ira Edwards Dep., Mar. 18, 2021, at 16:19 – 17:2.

<sup>11</sup> *Id.* at 28:23 – 29:10, 64:13 – 65:11, 66:10-21.

<sup>12</sup> *Id.* at 28:18-24.

<sup>13</sup> *Id.* at 32:17-24.

has to store his wheelchair in the crew cab.<sup>14</sup> Mr. Edwards is looking to purchase a new truck because he has spent a few thousand dollars in repairs last year and he is unable to perform major repairs himself.<sup>15</sup> He uses a truck instead of a van for his activities, including hunting, fishing, gardening, and hauling wood to heat his home.<sup>16</sup> Mr. Edwards needs hands-free controls and Bluetooth for his phone due to his hand controls but that is not working anymore.<sup>17</sup>

Mr. Edwards testified his truck has been in the shop six or seven times in the last few months because the hydraulic lift and fiberglass shell topper, which opens-up like a clam shell and allows the crane to swing out for his wheelchair, has not been closing and was stuck in the open position.<sup>18</sup> The covered shell was damaged three years ago and SOA did not replace it.<sup>19</sup> Mr. Edwards parked in the parking garage at the Atwood Building in downtown Anchorage, and he thought the topper had closed completely after he stored his wheelchair, but it had not as it was still raised up three inches.<sup>20</sup> He drove away and the topper struck the parking garage and was damaged.<sup>21</sup> SOA has not approved replacement of the topper.<sup>22</sup>

When the crane is working, Mr. Edwards puts a plastic bag over the seat cover to keep off road grime, but it still gets on the wheelchair and crane.<sup>23</sup> As a result, he must replace the wheelchair bearings at least once a month, versus once every four or five

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14 Edwards Dep. at 32:25 – 33:10.

15 *Id.* at 33:15 – 34:10.

16 *Id.* at 34:17-21.

17 *Id.* at 35:7-20.

18 *Id.* at 36:14 – 37:8.

19 *Id.* at 29:18-24.

20 *Id.* at 37:9-18.

21 *Id.*

22 *Id.* at 37:19-22.

23 *Id.* at 38:4-8.

years.<sup>24</sup> The crane has been in the shop a lot because it is not designed for exterior use and is supposed to be covered.<sup>25</sup> When the crane is not working, Mr. Edwards takes his wheelchair apart and places it in the crew cab.<sup>26</sup>

Mr. Edwards purchased the 2010 Chevy Silverado because he needed a backup camera, as he could not look over his shoulder anymore, and leather seats, which allow him to slide in and out of the vehicle.<sup>27</sup>

On June 30, 2021, Mr. Edwards' attorney sent a letter to Dr. Kirkham stating:

Mr. Edwards currently drives a 2010 truck with 150,000 miles on it. The age and mileage of the truck means it is starting to have some mechanical difficulties that Mr. Edwards is unable to repair on his own. The truck is modified with hand controls so he can drive it. It also has a crane in the back to load his wheelchair, but the crane has not been working very well recently because it is exposed to the elements. It is exposed to the elements because the hydraulic-lift topper the truck had on it to protect his wheelchair and the crane broke in 2018. This has also led to deterioration of his wheelchair. In addition to these modifications, the truck is outfitted with handsfree controls in the cab that have been malfunctioning as of late.

Because of the age of his truck and the failing modifications to it, Mr. Edwards would like to get a new truck with modifications to make it drivable for him, including hand controls, hands-free capabilities in the cab, a crane to lift his wheelchair, and a hydraulic-lift topper to protect his wheelchair and the crane from the elements.

If you could answer the following question, we would greatly appreciate it. . . .

In your medical opinion, is a new truck modified with the features described a reasonable and necessary medical apparatus, the need for which is substantially caused by Mr. Edwards' work injury?<sup>28</sup>

On August 12, 2021, Dr. Kirkham answered the question:

Mr. Edwards has lower extremity paraplegia. Despite his injury, he is very motivated and has continued to work, exercise, and participate in

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<sup>24</sup> Edwards Dep. at 38:9-15.

<sup>25</sup> *Id.* at 38:19-21.

<sup>26</sup> *Id.* at 38:22 – 39:1.

<sup>27</sup> *Id.* at 67:5-24.

<sup>28</sup> R. 1136.

community activities. In my medical opinion a new truck with the above features is medically necessary to maximize his vocational and avocational pursuits. The substantial cause of the need for the new truck and above features is the work injury of 11/18/2020.<sup>29</sup>

On March 30, 2022, Mr. Edwards testified the 2010 work injury caused him to become a paraplegic and he will be required to use a wheelchair for the rest of his life. Before the work injury, he ran, biked, hiked, hunted, and fished. Mr. Edwards owned a 1997 Toyota Tacoma before he bought a new 2005 Chevy Colorado, which is the vehicle he owned at the time of the injury. He planned to drive the 2005 Chevy Colorado until it broke down. Mr. Edwards sold the 2005 Chevy Colorado in 2011 for about \$12,000.00, and he purchased a new 2010 Chevy Silverado 1500 for about \$37,000.00 after he got out of the hospital. His 2005 Chevy Colorado had a manual transmission which he could not drive after the work injury because he was unable to use his legs to operate the clutch, brake, and accelerator. Hand controls can be added to an automatic transmission vehicle to operate the brake and accelerator. Mr. Edwards purchased the 2010 Chevy Silverado 1500 because it was an automatic and had enough room to fit the hand controls in the cab and his 6'5" frame, which the 2005 Chevy Colorado did not.

When looking at vehicles, Mr. Edwards stated he looked at vans, but he hit his head on the roof due to his height. SOA modified the 2010 Chevy Silverado 1500 to add the hand controls, the hydraulic lift, and fiberglass shell topper to store his wheelchair. He asked the claims adjuster to pay for the 2010 Chevy Silverado, but the claims adjuster refused and told him he had to pay for a new vehicle. Mr. Edwards believes a 2021 Chevy Silverado 2500 will suit his needs better because it can tow more weight than his Silverado 1500. He still bikes, hunts, and fishes but requires a boat, modified bikes, and recreational vehicles to be able to participate in those activities. Mr. Edwards uses the truck to tow the boat, modified bikes, and recreational vehicles but he is unable to participate in those activities in some recreational areas because his Chevy Silverado 1500 cannot safely tow the weight, such as areas with steep hills. Prior to the work injury, Mr. Edwards did not require a boat or recreational vehicles to participate in those activities

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<sup>29</sup> R. 1137.

because he drove close to the location and walked or hiked to the hunting, fishing, or biking site.

Mr. Edwards testified he selected the LTZ trim package because the dealer requires you to select a trim package, and it is the lowest-priced trim package that includes a backup camera and leather seats. Mr. Edwards uses a back-up camera and mirrors on his Chevy Silverado 1500 to safely backup. He needs a backup camera because the work injury injured his neck, and he cannot turn his neck to look over his shoulder. Mr. Edwards must transfer from the wheelchair into the truck and a leather seat permits him to do so and fabric seats do not. He does not require a diesel engine in the truck but noted it got better mileage while towing. Mr. Edwards needs a second alternator and battery to power and operate the modifications to the truck, specifically the hand controls, the lift, and the clam shell topper which stores his wheelchair.

Mr. Edwards stated he needs Bluetooth or hands-free controls in the truck because he must use both hands to drive because he uses one hand to operate a hand control to accelerate and brake and the other hand to operate the steering wheel. Mr. Edwards selected the block heater, four-wheel drive, and off-road package because he lives in Alaska, the temperature drops below 20 degrees, and he drives on unpaved roads to participate in recreational activities. He believes four-wheel drive and an off-road package is necessary because his work injuries limit his ability to remove his vehicle from the ditch should he slide off the road and because he often travels on non-paved roads. The hydraulic lift is not designed for exterior use, and it does not always work because it gets covered in road grime. He has had to have the lift repaired several times. When the lift does not work, Mr. Edwards takes his wheelchair apart and places it in the crew cab of his truck. The 2010 Chevy Silverado has suicide doors which make storing his wheelchair in the cab easier. The 2021 Chevy Silverado 2500 does not have suicide doors. Mr. Edwards had to get another wheelchair because his previous wheelchair had more moveable parts and it would break all the time after getting exposed to the road grime while stored in the hydraulic lift in the back of the truck. His new wheelchair has fewer moveable parts and does not break down as small, making storing it in the cab more difficult because it is bigger. Mr. Edwards works full-time for the federal

government and uses his personal vehicle when he needs transportation for work activities because the federal government does not supply modified vehicles to its employees.<sup>30</sup> He stated SOA also did not provide a modified vehicle when he continued working for SOA after the accident.<sup>31</sup>

The Board, in a majority decision, awarded Mr. Edwards modifications to a new truck he purchases himself, including leather seats, hand-free controls, a back-up camera, hand controls for accelerator and brakes, the XL seat, the hydraulic lift with clam shell topper and crane, and auxiliary battery and alternators. The Board ordered SOA to pay for the leather seats, hands-free controls, and a back-up camera only if less expensive through a trim package than if purchased individually. The Board denied his requests for a crew cab, four-wheel drive, off-road package, and engine block heater.<sup>32</sup>

The dissent agreed with the majority that SOA should pay for the leather seats, hands-free controls, back-up camera, auxiliary battery, and alternators asserting these modifications were necessitated by the work injury and thus compensable.<sup>33</sup> The dissent would have also awarded the crew cab, new modified truck, Chevrolet 2500 HD LTZ, four-wheel drive, off-road package, and engine block heater because Mr. Edwards credibly testified to the need for these and SOA did not rebut the presumption because it failed to prove something other than work was the substantial cause of the need.<sup>34</sup>

The dissent also stated that Mr. Edwards testified credibly about the need to replace his current truck and that the increased costs associated with a new modifiable truck are necessitated by the work injury and, thus, SOA is responsible. The dissent however also agreed that the hand-buffed sealant was a separate cost for which

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<sup>30</sup> Hr'g Tr. at 12:21 – 13:7, 14:24 – 17:24, 18:14-19, 19:11-19, 21:17 – 23:5, 24:4-9, 26:14 – 27:7, 27:13 – 29:21, 30:1 – 31:15, 38:12-16, 39:14-18, 40:5 – 41:11, Mar. 30, 2022.

<sup>31</sup> Hr'g Tr. at 39:9-13.

<sup>32</sup> *Edwards* at 16.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 16-17.



Mr. Edwards did not provide an estimate nor show how it was related to the work injury, and, therefore, SOA was not responsible.

### 3. *Standard of review.*

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in light of the record as a whole.<sup>35</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>36</sup> "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."<sup>37</sup> The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.<sup>38</sup> The Board's conclusions with regard to credibility are binding on the Commission since the Board has the sole power to determine credibility of witnesses.<sup>39</sup>

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.<sup>40</sup> Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.<sup>41</sup>

### 4. *Discussion.*

Mr. Edwards asked the Board to require SOA to provide him with a 2021 Chevrolet Silverado 2500 HD LTZ with various modifications. SOA agreed to pay for some

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<sup>35</sup> AS 23.30.128(b).

<sup>36</sup> *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>37</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984)).

<sup>38</sup> AS 23.30.122.

<sup>39</sup> AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

<sup>40</sup> AS 23.30.128(b).

<sup>41</sup> *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985).

modifications but declared the others were not necessitated by the work injury, but rather by Mr. Edwards' recreational activities and thus not compensable. Both parties asserted the Commission's decision in *Warnke-Green v. Pro West Contractors, LLC* supported their position.<sup>42</sup>

The Commission, in *Warnke-Green*, concluded that the term "apparatus" in AS 23.30.095(a) was broad enough to encompass mechanisms such as wheelchairs and vehicles that the "nature of the injury . . . requires. . ."<sup>43</sup> The Commission further stated that a modified vehicle provides the mobility for accomplishing the basic activities of daily living. While non-injured workers provide for their own transportation, the worker injured through his employment may require very different or more expensive mechanisms of transportation. In *Warnke-Green*, the Commission ordered that the "increased costs associated with the purchase of a modifiable motor vehicle and any necessary modifications which will enable [the injured worker] to use the motor vehicle are encompassed in the language 'apparatus' and, thus, are compensable medical benefits under the Act."<sup>44</sup> *Warnke-Green* specifically ordered the purchase of a *modifiable* vehicle.

*a. Is SOA obligated to provide a modifiable vehicle to Mr. Edwards?*

The Alaska Workers' Compensation Act (Act) presumes, in absence of substantial evidence to the contrary, that an injury has occurred within the course and scope of employment and is compensable.<sup>45</sup> This is known as the presumption of compensability and applies to most requests for medical equipment and medical apparatus.<sup>46</sup> The presumption is raised when the injured worker seeks some benefit denied by the employer. The claimant need only adduce some minimal relevant evidence to establish

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<sup>42</sup> *Warnke-Green v. Pro West Contractors, LLC*, Alaska Workers' Comp. App. Comm'n Dec. No. 235 (June 26, 2017) (*Warnke-Green*).

<sup>43</sup> AS 23.30.095.

<sup>44</sup> *Warnke-Green* at 16.

<sup>45</sup> AS 23.30.120(a).

<sup>46</sup> *See, e.g., Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996); *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286 (Alaska 1991); *Warnke-Green*, App. Comm'n Dec. No. 235.

the preliminary link between work and the benefit sought.<sup>47</sup> In medically complex cases medical testimony or evidence may be needed, but in less complex cases lay testimony may be sufficient.<sup>48</sup> Once the presumption has been established by the injured worker, the employer must rebut the presumption with substantial evidence that the work injury is not responsible for the medical benefits sought.<sup>49</sup> That is, the employer must show that something other than work is responsible or that work did not and could not have caused the need for the benefits sought.<sup>50</sup>

Mr. Edwards raised the presumption of compensability with his testimony that he required a vehicle which could be modified with hand controls, a crew cab to store his belongings including his wheelchair, an engine block heater, towing capacity for his recreational vehicles, an off-road package, a back-up camera, leather seats, auxiliary alternators and batteries to power the hand controls and the hydraulic lift, a clam shell topper with crane for his wheelchair, and four-wheel drive. He presented the 2011 letter from Craig Hospital and from Mr. Scheppers about the need from hand controls for driving, and the 2019 letter from Dr. Kirkham about his T12 paraplegia, lack of use of his lower extremities, and his use of a wheelchair.

Dr. Kirkham, on August 12, 2021, in response to a question from Mr. Edwards' attorney, stated:

Mr. Edwards has lower extremity paraplegia. Despite his injury, he is very motivated and has contrived to work, exercise and participate in community activities. In my medical opinion, a new truck with the above features is medically necessary to maximize his vocational and avocational pursuits. The substantial cause of the need for the new truck and above features is the work injury of 11/18/2010.<sup>51</sup>

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<sup>47</sup> See, *McGahuey v. Whitestone Logging, Inc.*, 262 P. 3d 613, 620 (Alaska 2011).

<sup>48</sup> See, *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985).

<sup>49</sup> *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016).

<sup>50</sup> *Id.*

<sup>51</sup> R. 1137.

The modifications identified in the question included hand controls, crane for loading the wheelchair, hydraulic lift topper to protect the wheelchair, and hands-free capabilities in the cab.<sup>52</sup>

SOA presented no documentation that a new vehicle was unnecessary or that the other accessories were unrelated to the work injury. SOA argued instead that everyone in Alaska could use a block heater, four-wheel drive, crew cab, and off-road package for his recreational activities. SOA also contended the law did not require the purchase of a modifiable vehicle and, even if it did, since Mr. Edwards did not present a bill for it in 2011 it did not owe him for the vehicle. SOA did not rebut the presumption with substantial evidence because it presented no evidence, and it was incorrect in its interpretation of the law regarding its obligation to provide a modifiable vehicle to Mr. Edwards.

SOA offered no medical evidence or other testimony to rebut the presumption. SOA did not rebut the presumption as to the reasonableness of the purchase of the Chevrolet Silverado 2500 with four-wheel drive, as it presented no evidence that another vehicle which would accommodate Mr. Edwards' needs was available at a cheaper price. It presented no evidence Mr. Edwards did not need an extended cab, four-wheel drive, and block heater.

Both the majority and dissent found Mr. Edwards to be credible in his testimony. The dissent emphasized it found Mr. Edwards credible in his testimony as to his needs and the reasons for the specific modifications and extras he needed. SOA presented no evidence to contradict his testimony.

Mr. Edwards was employed by SOA at the time of his injury. There is no dispute the injury occurred within the course and scope of his employment, and that his paraplegia is the result of the work injury. In 2011, his therapist and his doctor recommended hand controls for driving and stated he was wheelchair bound.<sup>53</sup> Mr. Edwards testified SOA, through its adjuster, verbally told him it would not provide a

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<sup>52</sup> R. 1136.

<sup>53</sup> R. 0397-98.

vehicle which could be modified for hand controls, but SOA agreed to pay for the modifications once he purchased the modifiable vehicle in 2011.<sup>54</sup> In 2020, Mr. Edwards asked SOA to purchase a new truck outfitted with accessibility modifications to replace his current truck.<sup>55</sup> SOA again denied its obligation to purchase a new truck, but did agree to pay for some of the modifications.<sup>56</sup>

SOA is obligated to provide medical treatment and apparatus required by the nature of Mr. Edwards' injury.<sup>57</sup> This obligation includes a vehicle that is modifiable for hand controls since Mr. Edwards has no ability to use his legs. At the time of the injury Mr. Edwards owned a 2005 Colorado with a manual transmission. This vehicle could not be modified to operate with hand controls because it was a manual transmission. Mr. Edwards cannot use his legs due to the work injury, so he requires a vehicle that can be modified for hand controls. A manual transmission requires use of both legs to work the clutch, brake, and gas pedals. An automatic transmission can be modified to hand controls. Mr. Edwards required a vehicle that could be so modified. SOA was obligated to provide Mr. Edwards with a vehicle which could have been modified. It erroneously told him it did not have to purchase such a vehicle.

In 2011, the value of Mr. Edwards' vehicle at that time could have been contributed to the cost for purchasing a vehicle which could be modified. Instead, SOA required Mr. Edwards to purchase his own vehicle, and SOA merely paid for the modifications. In its brief to the Commission, SOA admitted that *Warnke-Green* requires it to provide a vehicle that is modifiable.<sup>58</sup> SOA misreads *Warnke-Green* when it contends the decision does not require the employer to pay for a modifiable vehicle. *Warnke-Green* does require the injured worker to contribute to this cost, and Mr. Edwards offered the \$12,000.00, he received for the 2005 Colorado. However, SOA was wrong when it

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<sup>54</sup> Edwards Dep. at 29:18-22.

<sup>55</sup> R. 0224.

<sup>56</sup> R. 0239-42.

<sup>57</sup> AS 23.30.095(a).

<sup>58</sup> See Appellee's Brief at 14.

required him to buy the modifiable vehicle and contribute only the costs of the modifications. The Board also erred when it said SOA only needed to pay for the “increased costs associated” with certain specified modifications to a “truck [Mr. Edwards] purchases with his own funds.”<sup>59</sup>

Now Mr. Edwards needs a new vehicle. His proffered testimony is that the current truck has 150,000 miles on it and has started to need lots of repairs. He uses the truck in his work as well as for his subsistence and recreational activities. He still needs a vehicle which can be modified for hand controls. SOA says it is only obligated to provide certain modifications, and Mr. Edwards is still responsible for the cost of the basic vehicle and any other modifications or accessories he wants, regardless of whether these are necessitated by the work injury.

SOA owed Mr. Edwards a modifiable vehicle in 2011 which it incorrectly declined to provide to him. It owed him a modifiable vehicle because the vehicle he owned at the time of injury could not be modified for hand controls. The work injury created the necessity for the hand controls. After the verbal denial by SOA, he bought his own vehicle. SOA did provide the necessary modifications.

Now that 2010 Chevy Silverado 1500 truck needs to be replaced. SOA provided no evidence this was not true. So, the presumption of compensability, unrebutted by SOA, is that Mr. Edwards requires a new 2021 Chevy Silverado 2500 crew cab vehicle which must be modified for his needs. If SOA had bought the modifiable vehicle in 2011, Mr. Edwards would have been required to contribute to the purchase the value he received for his 2005 Chevy Colorado, approximately \$12,000.00 to \$15,000.00. Since Mr. Edwards bought the 2011 Chevy Silverado 1500 truck himself, SOA is not due any credit for its current value. SOA may be credited with the estimated \$12,000.00 to \$15,000.00 Mr. Edwards received for the 2005 Chevy Colorado it would have received in 2011 had it acted responsibly and purchased the 2010 Chevy Silverado. Now, SOA must purchase and modify a 2021 Chevy Silverado 2500 crew cab (or more appropriately the current model). Mr. Edwards is entitled to the value of the 2011 Chevy Silverado 1500

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<sup>59</sup> *Edwards* at 16.

truck he purchased less the credit to SOA of \$12,000.00 to \$15,000.00 for the value of the 2005 Chevy Colorado he sold in 2011 to purchase a modifiable vehicle.

In addition, SOA contends that it should not pay for certain modifications that are mainly intended to enable Mr. Edwards to participate in subsistence hunting and fishing and in various recreational activities. However, keeping fit mentally and physically is critical to the continued good health of an injured worker. Providing these modifications comes well within the parameters of "apparatus for the period which the nature of the injury . . . requires."<sup>60</sup>

The Board properly found, and the dissent agreed, that Mr. Edwards did not demonstrate that hand-buffed sealant was necessitated by the injury and provided no estimate of the cost. Therefore, SOA should not be required to pay for this cost.

Mr. Edwards is an amazing man. Despite his severe injury paralyzing him from the waist down he continues to work full-time, participates in various sports, supports charitable works, and leads a full and productive life. He should be encouraged in these activities.

*b. Penalty.*

Mr. Edwards, in his points on appeal at Number 4, raises the question of a penalty because SOA never issued a controversion in 2011 denying Mr. Edwards a modifiable vehicle. However, Mr. Edwards did not brief this issue and it is deemed waived.

*5. Conclusion and order.*

SOA is obligated to provide Mr. Edwards with a 2021 Chevy Silverado 2500 truck with a crew cab and with the requested modifications and accessories. Mr. Edwards will contribute the value of the unmodifiable Chevy Colorado (estimated to be \$12,000.00 –

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<sup>60</sup> AS 23.30.095(a).

\$15,000.00) owned at the time of injury towards the purchase of the 2021 Chevy Silverado 2500 with the requested modifications. The decision of the Board is REVERSED.

Date: 8 March 2023 Alaska Workers' Compensation Appeals Commission



*Signed*

James N. Rhodes, Appeals Commissioner

*Signed*

Amy M. Steele, 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. 301 issued in the matter of *Ira Edwards v. State of Alaska*, AWCAC Appeal No. 22-007, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on March 8, 2023.

Date: March 13, 2023



*Signed*

K. Morrison, Appeals Commission Clerk