Alaska Workers' Compensation Appeals Commission

Stephan C. Mitchell, Appellant, vs. United Parcel Service and Liberty Mutual Fire Insurance Company, Appellees.	Final Decision on Reconsideration Decision No. 312 January 9, 2026 AWCAC Appeal No. 24-007 AWCB Decision No. 24-0009 AWCB Case No. 199523875

Decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 24-0009, issued at Anchorage, Alaska, on February 21, 2024, by southcentral panel members Kathryn Setzer, Chair; Steven Heidemann, Member for Labor; and Robert Weel, Member for Industry.

Appearances: Richard L. Harren, Law Offices of Richard L. Harren, PC, and Michael W. Flanigan, Law Office of Michael W. Flanigan, for appellant, Stephan C. Mitchell; Nora G. Barlow, Barlow Anderson, LLC, for appellees, United Parcel Service and Liberty Mutual Fire Insurance Company.

Commission proceedings: Appeal filed April 22, 2024; briefing completed May 27, 2025; oral argument held on July 18, 2025; Decision No. 312 issued October 13, 2025; order on appellees' motion for reconsideration issued December 11, 2025.

Commissioners: James N. Rhodes, Amy M. Steele, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

Stephan C. Mitchell incurred a back injury in 1995 while he was employed by United Parcel Service (UPS), which is insured by Liberty Mutual Fire Insurance Company. Through its insurer, UPS accepted liability for the injury.

Mr. Mitchell filed claims for temporary total disability (TTD) benefits and for permanent total disability (PTD) benefits effective April 1, 2004, as well as for payment for certain medical care he had obtained at his own expense. Following a hearing, in *Mitchell XVI* the Alaska Workers' Compensation Board (Board) denied payment for the

medical treatment, but awarded TTD benefits related to that surgery, and PTD benefits effective January 28, 2017, with an offset for Social Security benefits.[1]

Mr. Mitchell appealed that decision to the Alaska Workers' Compensation Appeals Commission (Commission), which affirmed the Board's decision,[2] and Mr. Mitchell then appealed the Commission's decision to the Alaska Supreme Court (Supreme Court). The Supreme Court reversed the Commission's decision affirming the Board's denial of PTD effective April 1, 2004, and remanded the case to the Commission with instructions to remand the case to the Board for an award of PTD benefits.[3]

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[1] *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 18-0042 (May 1, 2018) (*Mitchell XVI*). Over the 30 years since his injury, the Board, the Commission, and the Alaska Supreme Court have issued a total of 21 decisions involving his workers' compensation case. *See Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 02-0182 (Sept. 12, 2002) (*Mitchell I*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 02-0195 (Sept. 27, 2002) (*Mitchell II*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 02-0239 (Nov. 21, 2002) (*Mitchell III*); *Mitchell v. United Parcel Serv.*, Alaska Worker's Comp. Bd. Dec. No. 03-0060 (Mar. 18, 2003) (*Mitchell IV*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 05-0224 (Sept. 1, 2005) (*Mitchell V*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 05-0333 (Dec. 20, 2005) (*Mitchell VI*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 06-0024 (Jan. 30, 2006) (*Mitchell VII*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 06-0045 (Feb. 27, 2006) (*Mitchell VIII*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 13-0123 (Oct. 7, 2013) (*Mitchell IX*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 14-0049 (Apr. 7, 2014) (*Mitchell X*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 14-0161 (Dec. 12, 2014) (*Mitchell XI*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 15-0040 (Apr. 9, 2015) (*Mitchell XII*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. 15-0085 (July 22, 2015) (*Mitchell XIII*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 15-0102 (Aug. 20, 2015) (*Mitchell XIV*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 16-0051 (June 28, 2016) (*Mitchell XV*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. App. Comm'n Dec. No. 272 (Dec. 6, 2019) (*Mitchell XVII*); *Mitchell v. United Parcel Serv.*, 498 P.3d 1029 (Alaska 2021) (*Mitchell XVIII*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 23-0046 (Aug. 18, 2023) (*Mitchell XIX*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 24-0009 (Feb. 21, 2024) and Errata (Feb. 22, 2024) (*Mitchell XX*); *Mitchell v. United Parcel Serv.*, Alaska Workers' Comp. Bd. Dec. No. 24-0017 (Mar. 21, 2024) (*Mitchell XXI*).

[2] *Mitchell XVII*.

[3] *Mitchell XVIII*.

Following remand to the Board, Mr. Mitchell filed a claim seeking PTD benefits effective April 1, 2004, pursuant to the Supreme Court's decision, and an adjustment to the PTD compensation rate.[4] In *Mitchell XX*, the Board awarded PTD benefits effective April 1, 2004, but denied a compensation rate adjustment on the basis of the doctrine of *res judicata*.[5]

Mr. Mitchell appeals. We issued a decision vacating the Board's order denying a compensation rate adjustment, and UPS filed a motion for reconsideration. On reconsideration, we again vacate the Board's order, concluding that the doctrine of *res judicata* did not preclude Mr. Mitchell from asserting a claim for a compensation rate adjustment on remand from *Mitchell XVI*.

1. Factual background and proceedings.[6]

Mr. Mitchell injured his back in October, 1995.[7] On October 31, 1995, UPS began paying TTD benefits at the rate of $570.84 per week, based on gross weekly earnings of $880.00, calculated under former AS 23.30.220(a)(4)(A).[8]

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[4] *Mitchell XX* at 7 (No. 25). *See* R. 3636 (Claim for Workers' Compensation Benefits [hereinafter, "Claim"], dated Jan. 21, 2022).

[5] *Mitchell XX.*

[6] 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. The parties and the Board are inconsistent in the dates ascribed to many of the documents filed with the Board, sometimes identifying them by the date signed by the filing party, and sometimes by the date filed with the Board or the date served. We refer to documents by the date filed except as otherwise stated.

[7] *Mitchell XX* at 4 (No. 1). *See* R. 1367-68 (Claim, filed Apr. 2, 1999).

[8] *Mitchell XX* at 4 (No. 2). The Board's decision states the compensation rate was $574.84 per week, but this is incorrect. *See* R. 75 (Compensation Report dated Dec. 8, 1995). At the time of Mr. Mitchell's injury, AS 23.30.220(a)(4)(A) provided that if an "employee's earnings are calculated by the . . . hour . . . , the employee's gross weekly earnings are the employee's earnings most favorable to the employee computed by dividing by 13 the employee's earnings, not including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury. . . ." UPS did not identify the dates it used to calculate the gross weekly earnings.

UPS controverted TTD benefits,[9] and on July 28, 2006, Mr. Mitchell filed a claim for TTD benefits from July 31, 2003, and continuing, and medical costs.[10] UPS controverted the claim.[11] On July 31, 2008, Mr. Mitchell filed an amendment adding additional medical costs to his July 28, 2006, claim.[12]

In 2009, the Social Security Administration (SSA) found Mr. Mitchell disabled; he was awarded Social Security disability benefits in the amount of $2,093.10 per month retroactively from April 1, 2004.[13]

On June 14, 2010, Mr. Mitchell filed another amendment to his July 28, 2006, claim, adding a claim for PTD benefits beginning April 1, 2004.[14] UPS controverted the claim for PTD benefits.[15]

In 2014, UPS filed a petition for a Social Security offset in the event Mr. Mitchell obtained PTD benefits.[16] UPS attached no calculations with its request.[17] According to the prehearing conference summary (PHCS) of a conference held on March 27, 2014, at

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[9] *Mitchell IX* at 4 (No. 3). *See* R. 353 (Controversion, dated Sept. 25, 2003).

[10] *Mitchell IX* at 8 (No. 24). *See* R. 716-17 (Claim, dated July 28, 2006).

[11] R. 349 (Controversion, dated Aug. 25, 2006).

[12] *Mitchell IX* at 8 (No. 29). *See* R. 714-15 (Claim, dated July 30, 2008). The claim asserts medical costs "in excess [of $]81,481.64." *Id*. The claim was date-stamped July 31, 2008, by the Board. *Id*. The Board ruled that the purported claim should have been treated as an amendment. *Mitchell IX* at 38-42.

[13] *Mitchell IX* at 10 (No. 42); *Mitchell XVI* at 31 (No. 178). *See* R. 983-87 (SSA decision, dated Mar. 17, 2009); R. 76 (SSA letter, dated May 20, 2009).

[14] *Mitchell IX* at 10 (No. 43). *See* R. 706-07 (Claim, dated June 11, 2010). As it had with respect to the purported claim filed on July 31, 2008, the Board ruled the purported claim should have been treated as an amendment. *See supra*, note 12.

[15] *Mitchell IX* at 10 (No. 44). *See* R. 346 (Controversion, dated July 9, 2010).

[16] Under AS 23.30.225(b), an employer is entitled to an offset equal to the amount by which the sum of an injured worker's weekly Social Security benefit plus the worker's weekly PTD benefit exceeds 80% of the worker's average weekly wage at the time of injury.

[17] *Mitchell XVI* at 36 (No. 219). *See* R. 21967-68 (Petition, dated Mar. 12, 2014).

that conference Mr. Mitchell made an oral amendment to his "July 30, 2006" [sic],[18] claim by adding a compensation rate adjustment.[19] At that same conference, a hearing was scheduled on Mr. Mitchell's amended June 28, 2006, claim.[20] UPS controverted the oral amendment, denying that a compensation rate adjustment was due and asserting that the rate had been properly calculated.[21] As it happened, at the scheduled hearing only three preliminary matters were heard, and neither medical benefits nor the compensation rate adjustment issue was taken up by the Board.[22]

Various disputes regarding evidentiary and other matters occupied the parties for the following two years, resulting in the Board decisions *Mitchell XII-XV*.

In 2016, UPS amended its petition for a Social Security offset by specifying the amount of the offset. Based on a Social Security benefit of $2,093.10 per month ($483.02 per week), a weekly compensation benefit of $570.84, and an average weekly wage of $842.40, UPS requested a $379.94 per week offset.[23]

Mr. Mitchell answered UPS's amended petition for a Social Security offset. He asserted that "[o]nce the carrier accepts its responsibility to pay PPD [sic] . . . legal analysis of the amount of an offset will be ripe." He disputed "the equity of its numbers and calculations" and asserted UPS's calculation of the offset was not in compliance with

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[18] The PHCS refers to a non-existent claim. It identified, and we have found, three claims filed by Mr. Mitchell after *Mitchell VIII* was issued, dated July 28, 2006, July 30, 2008 (filed July 31, 2008), and June 11, 2010 (filed June 14, 2010). *See* R. 8333, notes 10, 12, 14, *supra*. Which of these claims Mr. Mitchell intended to amend is immaterial; pursuant to *Mitchell IX*, the latter two claims are both treated as amendments to the original July 28, 2006, claim, and hence the amendment at the prehearing conference relates back to that claim as well.

[19] R. 8264-67 (Mar. 27, 2024, PHCS).

[20] R. 8265.

[21] R. 25798 (Controversion, dated May, 5, 2014).

[22] *Mitchell XI* at 8-9 (Nos. 34, 35).

[23] *Mitchell XX* at 5 (No. 7). *See* R. 1764-66 (Employer's Amended Petition for Social Security Disability Offset, dated Nov. 23, 2016). It is unclear why the average weekly wage asserted in the petition varied from the average weekly wage stated initially.

Darrow,[24] but did not present an alternative calculation or offer any legal analysis of his various assertions.[25]

On March 3, 2017, Mr. Mitchell claimed additional medical expenses.[26] The claim form includes a checklist of potential benefits; the boxes for PTD and medical costs were checked, and the boxes for TTD and a compensation rate adjustment were not checked.[27] Following a prehearing conference on May 18, 2017, the PHCS identified the issues for hearing as including medical benefits, Mr. Mitchell's March 3, 2017, claim for PTD and TTD benefits, and UPS's November 23, 2016, petition for a Social Security offset.[28] Two subsequent prehearing conference summaries again identified the issues for hearing as including Mr. Mitchell's March 3, 2017, claim for medical costs, PTD, and TTD benefits, and UPS's 2016 petition for a Social Security offset.[29] None of the prehearing conference summaries mentioned Mr. Mitchell's June 28, 2006, claim, the July 31, 2008, and June 14,

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[24] *Darrow v. Alaska Airlines, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 218 (Oct. 13, 2015). The Commission's decision regarding the methodology to be used in calculating the offset was affirmed by the Supreme Court. *Darrow v. Alaska Airlines, Inc.*, 403 P.3d 1116 (Alaska 2017).

[25] *Mitchell XX* at 5 (No. 8). *See* R. 1775-76 (Employee's Answer to Employer's Amended Petition for Social Security Disability Offset, dated Dec. 13, 2016).

[26] *Mitchell XVI* at 48 (No. 264). Although Mr. Mitchell was represented by counsel, his wife had been approved as a non-attorney representative, and she filed the document. R. 1915. The filing, using the Board form for a claim rather than the form for an amendment, bears a handwritten notation "AMEND/ADD $" and states it adds "new medical expenses to existing, open & unresolved claim for unpaid benefits." *Id.* Clearly, the filing was intended as an amendment and should have been treated as such, but the Board, repeating the error identified in *Mitchell IX*, treated it as an independent claim. *See* notes 12, 14, *supra*. UPS filed a petition to strike the March 3, 2017, filing on the ground that Ms. Mitchell had no authority to represent Mr. Mitchell or to make filings on his behalf. R. 1936-38. Mr. Harren apparently ratified the filing. R. 26524.

[27] R. 1915. Also checked were the boxes for unfair or frivolous controversion, transportation costs, interest, attorney fees, and a penalty.

[28] R. 10946-52 (May 18, 2017, PHCS). Also identified as issues for hearing were penalties, interest, and attorney fees.

[29] R. 8489-95 (July 12, 2017, PHCS), *Mitchell XX* at 5 (No. 9); R. 8504-08 (Sept. 11, 2017, PHCS).

2014, written amendments, or his March 27, 2014, oral amendment adding a request for a compensation rate adjustment.

The hearing in *Mitchell XVI* was held on October 4, 2017, and November 21, 2017. Mr. Mitchell filed three briefs for *Mitchell XVI*; UPS filed a single brief. All of the briefs addressed Mr. Mitchell's asserted right to medical benefits for treatment he had obtained at his own expense, and his claim for PTD; none made any mention of UPS's petition for a Social Security offset or of Mr. Mitchell's claim for a compensation rate adjustment.[30] In its preliminary remarks, the Board did not identify a compensation rate adjustment as an issue to be heard; in prehearing comments UPS noted that its petition for a Social Security offset was scheduled to be heard,[31] but none of the testimony or argument at the hearing related to either the Social Security offset or a compensation rate adjustment.

In *Mitchell XVI*, the Board stated that the hearing was on Mr. Mitchell's March 3, 2017, "claims for benefits" and UPS's petition for a Social Security offset.[32] The Board found that Mr. Mitchell was not entitled to medical benefits for the treatment he had obtained at his own expense. The Board ruled that Mr. Mitchell was permanently and totally disabled beginning January 28, 2017.[33] It found UPS had "properly calculated the Social Security disability offset based on the information provided by the parties."[34] The

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[30] *See Mitchell XX* at 5, 6 (Nos. 12, 14, 15). *See* R. 2049-63 (UPS's Hearing Brief, Sept. 28, 2017); R. 2297-443 (Employee's Hearing Brief, Sept. 28, 2017); R. 3140-166 (Employee's Hearing Brief, Dec. 6, 2017). The latter document consists of argument by Mr. Harren and a separate argument, prepared by Ms. Mitchell, titled "Lay Representative's Closing Argument". *Mitchell XX* at 6 (No. 15), at 7 (No. 19). *See also* R. 3288-302 (Closing Argument of Employee Attorney Representative Richard Harren, Jan. 3, 2018). Mr. Mitchell's initial brief asserted that "other issues" would be addressed at the hearing, without identifying what those issues might be. R. 2310.

[31] R. 26525.

[32] *Mitchell XVI* at 1. Two other issues, irrelevant for our purposes, were identified as the subject of the hearing: UPS's March 30, 2017, petition to bar Mr. Mitchell's wife from acting as his representative, and its October 3, 2017, petition to strike an exhibit. *Id.*

[33] *Mitchell XVI* at 109-110.

[34] *Mitchell XVI* at 44 (No. 255). The Board found that "His weekly TTD rate is $570.84." *Id.* at 6 (No. 2). The Board cited to the compensation report as the basis for

Board calculated the amounts due for PTD based on Mr. Mitchell's existing TTD rate as set by UPS.[35] The decision did not address Mr. Mitchell's claim for a compensation rate adjustment.

Mr. Mitchell appealed *Mitchell XVI* to the Commission stating 19 grounds for appeal, including that the Board erred "in denying medical benefits," "in failing to award PTD prior to January 28, 2017," and "in its calculations of compensation rate . . . and Social Security setoff."[36] His brief mentioned only two issues, however, namely the award of medical benefits and the date of PTD.[37] Mr. Mitchell did not make any argument regarding the compensation rate or the Social Security offset.[38]

In *Mitchell XVII*, the Commission affirmed the Board's decision with respect to the two issues argued by Mr. Mitchell, namely medical benefits and the date of PTD.[39] Mr. Mitchell appealed the Commission's decision to the Supreme Court. In *Mitchell XVIII*, the Supreme Court affirmed the decision with respect to medical benefits and reversed the Commission's conclusion as to the date of PTD. The Supreme Court remanded the case to the Commission with instructions to remand the case to the Board for an award of PTD benefits.[40] The Commission remanded the case to the Board for an award of PTD benefits.[41]

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this finding. It appears that the Board was confirming that UPS had correctly applied the formula for calculating the offset, rather than making a finding of a disputed fact as to the correct TTD rate.

[35] *See Mitchell XVI* at 100-101 (TTD), 110 (PTD).

[36] R. 5030-33 (Notice of Appeal and Statement of Grounds Upon Which the Appeal is Taken, June 25, 2018).

[37] Alaska Workers' Comp. App. Comm'n Appeal No. 18-009, Opening Brief at 1, 34-48.

[38] *Mitchell XX* at 7 (No. 24).

[39] *Mitchell XVII.*

[40] *Mitchell XVIII.*

[41] R. 4729-30 (Order on Remand from the Alaska Supreme Court, Dec. 26, 2021).

Following remand to the Board, Mr. Mitchell filed a new claim for PTD benefits beginning April 1, 2004, stating "Correction/recalculation of [S]ocial [S]ecurity offset and/or compensation rate is necessary in equity."[42] Prior to answering this claim, UPS calculated the amount of additional compensation owed to Mr. Mitchell pursuant to the new PTD date, using the existing compensation rate and Social Security offset, and in February 2022, made payments to Mr. Mitchell of $143,333.11 in additional PTD compensation, plus $89,802.61 in interest on that compensation.[43]

UPS then answered Mr. Mitchell's claim by denying Mr. Mitchell's request for a compensation rate adjustment (without stating a reason) and asserting that the Board "has already determined that the social security offset was properly calculated" in *Mitchell XVI* and Mr. Mitchell failed to appeal the Board's ruling granting UPS's requested offset.[44]

At the hearing on Mr. Mitchell's claim on remand there was no dispute about Mr. Mitchell's entitlement to PTD effective April 1, 2004. Mr. Mitchell argued that he was entitled to a compensation rate adjustment, and he introduced evidence that if he had not been injured and disabled he would have continued working for the same employer in the same capacity, and that his wages would have increased substantially.

In *Mitchell XX*, the Board found that UPS had slightly miscalculated the amount of PTD owed to Mr. Mitchell under the existing compensation rate, and ordered an additional payment of $6,116.39 in past PTD benefits, together with interest.[45] The Board denied Mr. Mitchell's claims for a compensation rate adjustment and a revised Social Security offset, concluding that the issue as to the Social Security offset was ripe when *Mitchell XVI* was decided,[46] there was no new evidence of a mistake that could not previously

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42 R. 3636 (Claim for Workers' Compensation Benefits, Jan. 21, 2022).

43 *Mitchell XX* at 11 (No. 46).

44 R. 3647-48 (Employer's Answer to Employee's Workers' Compensation Claim dated 01/21/22 and Board Served on 01/28/22, Feb. 28, 2022).

45 *See Mitchell XX* at 22-23, 27-29.

46 *See Mitchell XX* at 24-25.

have been submitted that would warrant modification,[47] equity did not preclude the Social Security offset,[48] and *res judicata* barred the compensation rate adjustment claim.[49]

On March 7, 2024, Mr. Mitchell filed a petition for reconsideration.[50] The Board, in *Mitchell XXI*, declined to alter its decision with respect to the compensation rate and Social Security offset.[51] Mr. Mitchell appeals.

2. Standard of review.

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.[52]

3. Discussion.

The Board's decision, and the parties' arguments, revolve around the related doctrines of *res judicata* and the law of the case. Boiled down to its essence, UPS's argument is that because the Social Security offset was identified as an issue for hearing in *Mitchell XVI*, the compensation rate was also at issue (even though a compensation rate adjustment was not expressly identified as an issue), and Mr. Mitchell is therefore barred by the law of the case and *res judicata* from requesting a compensation rate adjustment on remand. Modification was not available, UPS adds, because the evidence Mr. Mitchell presented in *Mitchell XX* could have been presented in *Mitchell XVI*. Mr. Mitchell's response is that the Social Security offset should not have been heard, and modification was available, because the issue of a compensation rate adjustment was not yet ripe, and, in any event, in equity he should be permitted to request a compensation rate adjustment.

Beyond the central question as to whether Mr. Mitchell's failure to raise the issue of a compensation rate adjustment in *Mitchell XVI* precluded him from obtaining an

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47 *See Mitchell XX* at 25-26.

48 *See Mitchell XX* at 27.

49 *See Mitchell XX* at 26.

50 R. 4950.

51 *Mitchell XXI*.

52 AS 23.30.128(b).

adjustment on remand, Mr. Mitchell objects to the Board's rulings with respect to interest and attorney fees.

a. Notice and ripeness.

We turn first to Mr. Mitchell's arguments that the Board's decision in *Mitchell XVI* establishing a Social Security offset does not bar him from asserting a claim on remand for a compensation rate adjustment, because a compensation rate adjustment was not identified as an issue for the *Mitchell XVI* hearing and because that issue was not ripe.

8 AAC 45.065(c) provides that the PHCS "governs the issues and the course of the hearing." The claim form that was at issue in the *Mitchell XVI* hearing did not assert a right to a compensation rate adjustment, and the box on that form for an adjustment was not marked.[53] Consistent with that claim form, none of the PHCSs for the *Mitchell XVI* hearing mentioned a compensation rate adjustment as a subject for the hearing.[54] UPS argues that "while the compensation rate adjustment was not included as a specific issue [in the *Mitchell XVI* PHCS], the history of [Mr. Mitchell's] claims and [UPS's] Petition [for a Social Security offset] established that Mr. Mitchell was aware that the Petition [for a Social Security offset] would establish [Mr. Mitchell's] PTD compensation rate with an offset. . . ."[55] In response, Mr. Mitchell argues that by identifying the issue for the *Mitchell XVI* hearing as PTD, with no mention of a compensation rate adjustment, the PHCS precluded litigation of the compensation rate adjustment at the *Mitchell XVI* hearing.[56] He asserts that his failure to address the compensation rate adjustment at the *Mitchell XVI* hearing was consistent with the absence of any reference to that issue in the PHCS, and with his position that it was premature to determine the Social Security offset before ruling on his request for PTD (because the compensation rate, in his view, depends on the date of disability).[57]

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53 R. 1915.

54 R. 8489-95, 8504-08, 10946-52.

55 Appellees' Brief at 12.

56 Appellant's Reply at 2.

57 Appellant's Reply at 2-6.

The Supreme Court has ruled that a PHCS identifying the merits of a claim for compensation as an issue for hearing is adequate notice that all the substantive elements of compensability are at issue in the hearing.[58] But the compensation rate is not a substantive element of compensability, and therefore the failure to identify a compensation rate adjustment in the PHCS as an issue means that, for purposes of the hearing on Mr. Mitchell's PTD claim, UPS was not on notice that a compensation rate adjustment was at issue, had Mr. Mitchell attempted to pursue that issue as part of his claim for PTD benefits at the *Mitchell XVI* hearing.[59] However, for purposes of UPS's petition for a Social Security offset, because the compensation rate is a component of the mathematical formula for establishing a Social Security offset,[60] identifying the offset as an issue for the *Mitchell XVI* hearing necessarily meant that the compensation rate was potentially at issue, and therefore UPS was on notice that in response to UPS's petition for a Social Security offset, Mr. Mitchell could contest the compensation rate that had been set by UPS. We conclude that 8 AAC 45.065(c) did not preclude Mr. Mitchell from litigating the compensation rate at the *Mitchell XVI* hearing as a defense to UPS's petition for a Social Security offset. But at the same time, 8 AAC 45.065(c) precluded him, absent UPS's consent, from pursuing his pending claim for a compensation rate adjustment at the *Mitchell XVI* hearing. The question before us is whether having failed at the *Mitchell XVI* hearing to contest the compensation rate for purposes of the offset or to request UPS's consent to litigating his pending claim for a compensation rate adjustment, Mr. Mitchell is barred from pursuing a claim for a compensation rate adjustment on remand. The answer to that question is governed by the doctrines of the law of the case and *res judicata*, which we address below.

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[58] *See Alaska State Comm'n for Human Rights v. United Physical Therapy*, 484 P.3d 599, 607 (Alaska 2021).

[59] We observe that this does not mean that Mr. Mitchell was, as he argues, precluded from requesting a compensation rate adjustment at the *Mitchell XVI* hearing. Rather it means that UPS could have asserted the lack of notice under 8 AAC 45.065(c) to prevent him from doing so.

[60] *See* note 16, *supra*.

Mr. Mitchell's other objection to hearing the Social Security offset issue in *Mitchell XVI* rests on his contention that the issue was not ripe, because the compensation rate is a movable target that varies with the date of disability and the date of his disability had not yet been established. Mr. Mitchell's argument that the compensation rate is a movable target rests on his contentions that (1) the compensation rate should have been determined under AS 23.30.220(a)(10),[61] rather than under former AS 23.30.220(a)(4)(A), (2) under AS 23.30.220(a)(10) the compensation rate would have incorporated changes in wage levels (and in his potential earnings had he continued in his prior employment) as of the date of disability, and that (3) the maximum compensation rate varies annually pursuant to AS 23.30.175(a).[62]

In support of his argument that the compensation rate varies with the date of disability, Mr. Mitchell asserts that *Darrow*[63] mandates the use of AS 23.30.220(a)(10) when, as in this case, there is a lengthy gap between the date of injury and the date of disability,[64] and *Crider*[65] and *Hewing*[66] mandate that "a workers' compensation . . . benefit must be adjusted to reflect inflation. . . ."[67] The cited cases do not support his argument. In *Darrow*, the use of AS 23.30.220(a)(10) was the result of a stipulation by the parties, and nothing in the Supreme Court's decision suggests the use of that subdivision in calculating the gross weekly wage was mandatory or even correct. Under AS 23.30.220(a)(10), the Board can set a compensation rate that is different from the

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61 AS 23.30.220(a)(10) provides that "if . . . the board determines that the calculation of the employee's gross weekly earnings under (1)-(7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability. . . ."

62 Appellant's Reply at 3-5.

63 *Alaska Airlines, Inc. v. Darrow*, 403 P.3d 1116 (Alaska 2017).

64 *See* Appellant's Brief at 12-13.

65 *Fairbanks N. Star Borough Sch. Dist. v. Crider*, 736 P.2d 770 (Alaksa 1987).

66 *Hewing v. Peter Kiewit & Sons*, 586 P.2d 182 (Alaska 1978).

67 Appellant's Brief at 13.

rate that existed at the time of the injury as determined under AS 23.30.220(a)(4), but it is "the nature of the employee's work, work history, and resulting disability," not the date of disability, that controls the rate.[68] As for *Crider* and *Hewing*, they concern permanent partial impairment benefits determined under AS 23.30.190, not the PTD compensation rate, and they were interpreting a version of AS 23.30.190 that was no longer in effect when Mr. Mitchell was injured.[69] We therefore reject Mr. Mitchell's argument that the offset issue was not ripe.[70]

b. Res judicata and law of the case.

The doctrine of *res judicata* governs the "limitations on the opportunity in a second action to litigate claims or issues that were litigated, or could have been litigated, in a prior action."[71] In *Robertson*, the Supreme Court applied conventional rules of *res judicata* in a workers' compensation proceeding to bar an injured worker from bringing a second claim for the same benefit from the same injury after final judgment on the first claim.[72] Because *Mitchell XX* is not a second proceeding following a final judgment, but rather a continuation on remand from the Supreme Court of the same case that was the

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[68] The Supreme Court has indicated that when an injured worker is employed for a lengthy period of time after the injury before becoming disabled (unlike Mr. Mitchell), the use of AS 23.30.220(a)(10) is likely appropriate. *See*, *e.g.*, *Peck v. Alaska Aeronautical, Inc.*, 756 P.2d 282 (Alaska 1988); *Johnson v. RCA-OMS, Inc.*, 681 P.2d 905 (Alaska 1982). The Supreme Court has never held that similar reasoning applies to a worker who (like Mr. Mitchell) did not return to work for a significant period of time after his injury. *Mumby v. State, Supplemental Fund* (Alaska Mem. Op.) 1994 WL 16459424 (June 22, 1994) ("Unearned projected future earnings have never served as a basis for awarding disability benefits.").

[69] *See* ch. 79, SLA 1988.

[70] The other asserted variable, the maximum compensation rate, does not vary with the date of disability, even though it is adjusted annually. The maximum rate is "120 percent of the average weekly wage . . . applicable on the date of injury. . . ." AS 23.30.175(a). Under the plain language of the statute, the maximum rate does not vary with the date of disability, but rather with the date of the injury.

[71] Restatement of Judgments (2d), Scope Note.

[72] *Robertson v. American Mech., Inc.*, 54 P.3d 777, 780 (Alaska 2002).

subject of *Mitchell XVI*, the doctrine of *res judicata* is not directly applicable.[73] However, on remand from an appeal the doctrine of law of the case prevents a party on remand from raising legal issues (and related issues) that were decided in the appeal[74] and, as UPS pointed out in requesting reconsideration, issues that could have been appealed, but were not.[75] But the law of the case doctrine does not apply in the context of a remand from an appeal where a particular legal issue was not decided either in the trial court[76] or on appeal.[77] By definition, the law of the case doctrine establishes prior rulings as the law of the case: absent a ruling on an issue, there is no law of the case on that issue. In this case, Mr. Mitchell's pending claim for a compensation rate adjustment was not ruled on either before the Board in *Mitchell XVI* or in the appeal from that decision. Hence, the doctrine of law of the case does not preclude Mr. Mitchell from pursuing that claim on remand.[78]

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[73] Mr. Mitchell filed a second claim for PTD and a compensation rate adjustment after remand. However, that claim was filed in the same case that was pending prior to the appeal. In effect, the second claim (as it pertains to the compensation rate adjustment) was a written renewal of his initial verbal claim at the March 27, 2014, prehearing conference. *See supra*, note 19. Hence, it is the doctrine of the law of the case, not *res judicata*, that directly applies.

[74] *Wolff v. Arctic Bowl, Inc.*, 560 P.2d 758, 763 (Alaska 1977).

[75] Motion for Reconsideration at 4-6. *See*, *Beal v. Beal*, 209 P.3d 1012, 1017 (Alaska 2009).

[76] As the Supreme Court stated in *Beal*, it is "the trial court's rulings on the non-appealed issues [that] may become the law of the case. . . ." *Id.*, 209 P. 3d at 2017. *See also*, *Dunlap v. Dunlap*, 131 P.3d 471, 475-476 (Alaska 2006) (law of the case "is . . . applicable to issues that have been fully litigated in the superior court and as to which no timely appeal has been made.") (emphasis added).

[77] *See*, *e.g.*, *Hurd v. State*, 107 P.3d 314, 327-28 (Alaska App. 2005) (law of the case doctrine "limits the parties' right to re-open previously decided issues; it does not address the question of whether parties can take advantage of subsequent stages of the litigation to raise previously undecided claims.").

[78] To the extent it can be argued that the Board's order establishing a compensation rate in *Mitchell XVI* constitutes a ruling on his claim for a compensation rate adjustment for purposes of the law of the case, the Board's order did not preclude further litigation regarding the rate under the doctrine of *res judicata*. *See infra*, pp. 16-

Although this case was on remand, and the rule of *res judicata* is therefore not directly applicable, the Supreme Court's decision in *Carlson* effectively grafts the claim splitting rule of *res judicata* into the context of proceedings on remand.[79] Following the *Carlson* approach, we conclude that in proceedings on remand in a workers' compensation case, a party may not raise a claim that the party could have, but did not, raise in the appeal,[80] if, under the conventional claim splitting rules of *res judicata*, the party could not have raised that issue in a second proceeding after a final judgment.

The doctrine of *res judicata* consists of two related legal rules. The first is the rule against claim splitting: a judgment in favor of the plaintiff extinguishes the claim, which is merged into the judgment, and in an action on the judgment the defendant may not assert any defense that might have been raised in the prior action; a judgment in favor of the defendant extinguishes the claim and bars a subsequent action on that claim (claim preclusion).[81] The second is the rule of collateral estoppel: a judgment is conclusive, in a subsequent action between the same parties, of an issue that was actually litigated and determined in the prior action, if the determination was essential to the judgment (issue preclusion).[82]

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17. A ruling that is not binding for purposes of *res judicata* is plainly not binding for purposes of the law of the case.

[79] *Hurd v. State*, 107 P.3d 314, 327-28 (Alaska App. 2005). *See, State, Com. Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 873-74 (Alaska 2003).

[80] It is a well-established general rule that a party may not raise on appeal an issue that was not raised in the trial court. *See*, *e.g.*, *Brandon v. Corrections Corp. of America*, 28 P.3d 269, 280 (Alaska 2001); *B.B. v. D.D.*, 18 P.3d 1210, 1214 (Alaska 2001); *Padgett v. Theus*, 484 P.2d 697, 700 (Alaska 1971); *Lumberman's Mut. Cas. Co.* v. *Continental Cas. Co.*, 387 P.2d 109 (Alaska 1963). We will assume, for purposes of our discussion, that Mr. Mitchell could have asserted a right to a compensation rate adjustment in his prior appeal to the Commission, even though that issue had not been identified for hearing, neither party mentioned it at the hearing, and the Board did not address it, but we do not thereby endorse the view that a party may raise on appeal an issue that was not first presented to the Board for decision.

[81] Restatement of Judgments (2d) §§17(1)-(2), 18, 19, 24.

[82] *Bignell v. Wise Mech. Contractors*, 720 P.2d 490, 494 (Alaska 1986); Restatement of Judgments (2d) §§17(3), 27.

To the extent that the Board's decision is based on collateral estoppel, or issue preclusion,[83] the issues of the appropriate compensation rate and of the Social Security offset were never actually litigated: UPS paid compensation based on its own calculations of the compensation rate and the Social Security offset, and while Mr. Mitchell objected to the latter calculation prior to the *Mitchell XVI* hearing, he did not present any argument or evidence at the hearing on that issue. He did not assert a fact-based objection to the compensation rate calculation until filing a post-hearing petition, which was rejected on grounds unrelated to its merits.[84] UPS's calculation of the compensation rate was uncontested, for purposes of the Social Security offset. If an issue has not been contested and determined by the fact finder, further litigation of that issue is not precluded by collateral estoppel,[85] because a "judgement is not conclusive in a subsequent action as to issues which might have been but were not litigated and determined in the prior action."[86]

But UPS does not rely on collateral estoppel. Rather, UPS relies on claim preclusion. UPS argues that because it successfully petitioned for a Social Security offset in *Mitchell XVI*, and Mr. Mitchell did not contest the compensation rate that UPS had been

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[83] It is not clear which aspect of *res judicata* the Board viewed as appliable. The decision characterizes the issues of the proper compensation rate and Social Security offset as "already decided [in *Mitchell XVI*] after they were properly identified and noticed . . . and he was provided an opportunity to litigate." *Mitchell XX* at 25. But while the "opportunity to litigate" may be sufficient to bar consideration of a claim, under the rules of merger and bar, it is not equivalent to "actually litigated" ("already decided") for purposes of collateral estoppel as to a particular factual issue. *See generally*, *Tolstrup v. Miller*, 726 P.2d 1304 (Alaska 1986); (judgment by stipulation is preclusive as to other claims that might have been raised in the prior lawsuit); *Strong v. Sullivan*, 435 P.3d 872 (Alaska 2018) (dismissal by stipulation does not have preclusive effect on factual issues).

[84] *See Mitchell XX* at 6 (No. 17), 7 (No. 18); R. 3611-13, 3621, 3586-610.

[85] *See Janjua v. Neufeld*, 933 F.3d 1061, 1066 (9th Cir. 2019), *citing* 18 Moore's Federal Practice §132.03(2)(a) ("The 'actually litigated' requirement simply requires the issue to have been raised, contested by the parties, submitted for determination by the court, and determined.").

[86] Restatement of Judgments (2d) §27, comment e. *See McDonald v. Rock & Dirt Env't, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 310, at 15, note 80 (2025), citing *Wall v. Stinson*, 983 P.2d 736, 740 (Alaska 1999).

paying in response to that petition or on appeal, Mr. Mitchell is precluded from pursuing a claim for a compensation rate adjustment on remand.[87]

UPS was the party who requested a Social Security offset. As the successful petitioner, UPS is, for purposes of *res judicata*, in effect a successful plaintiff on its claim. The rules of merger state that when a plaintiff prevails on a claim, (1) the plaintiff may not thereafter bring an action for the same claim or any part of it (but may pursue an action on the judgment), and (2) the defendant, in an action on the judgment, may not assert any defenses that were, or might have been, raised in the first action.[88] Mr. Mitchell's claim for a compensation rate adjustment is not being raised as a defense to a petition by UPS to enforce the Board's order on remand from *Mitchell XVI*. It is, rather, his own independent claim. The rule of *res judicata* applicable in the analogous situation in a civil action is that when a party fails to interpose a counterclaim (*e.g.*, Mr. Mitchell's claim for a compensation rate adjustment), the party is barred from asserting that claim in a subsequent action "if the relationship between the counterclaim and the plaintiff's claim [UPS's petition for an offset] is such that successful prosecution of the second action would . . . impair rights established in the initial action."[89] In this case, Mr. Mitchell did "interpose a counterclaim": prior to the hearing in *Mitchell XVI*, he had asserted a claim for a compensation rate adjustment. Accordingly, we do not see that the rules of merger and bar preclude further litigation on Mr. Mitchell's pending claim for a compensation rate adjustment, despite UPS's prior successful petition for a Social Security offset.[90]

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[87] Appellees' Brief at 13-14.

[88] Restatement of Judgments (2d) §18. This was the basis for the Supreme Court's ruling in *Carlson*: a party prevailed on appeal on an issue that it had lost in the trial court, and the Supreme Court ruled that the opposing party could not, on remand, raise a defense that it had not previously asserted.

[89] Restatement of Judgments (2d) §22(2)(b).

[90] We speak here of claim preclusion. Of course, the prior judgment would have preclusive effects on particular factual issues actually litigated in *Mitchell XVI*. The compensation rate, however, was not actually litigated.

UPS argues on reconsideration that to permit a party to avoid *res judicata* simply by pleading a counterclaim is to exalt form over substance.[91] UPS asserts that "under *Sengupta*[92]. . . a party must litigate a claim or defense when it has the opportunity to do so, or be forever barred – regardless of whether the party formally pleaded it. What matters is whether the party prosecuted the issue to judgment, not whether the party filed a pleading."[93]

We observe that UPS's argument that a party must "prosecute . . . the issue to judgment" is on its face mistaken. If a party must "prosecute . . . the issue to judgment" in the first action, then we are not talking about an issue that could have been, but was not, litigated in the first action. If a party "prosecutes the issue to judgment," then the judgment on that issue is binding, on that there is no dispute. In this case, however, Mr. Mitchell's claim for a compensation rate adjustment was, as UPS recognizes, "not at issue in *Mitchell XVI*"[94] and the Board issued no ruling on the claim.

Moreover, we do not read *Sengupta*[i] as UPS does. In *Sengupta*, the plaintiff had been terminated from his position as a professor at the University of Alaska Fairbanks. He challenged his dismissal in an administrative proceeding, which resulted in a decision upholding the termination based on a number of factual findings. The plaintiff's appeal from that decision was ultimately dismissed. The plaintiff subsequently brought a civil action based on 42 U.S.C. §1983, alleging violations of his right to free speech. The superior court dismissed that claim based on *res judicata*, and the Supreme Court affirmed.

Sengupta recognizes that a foregone counterclaim or a claim that a plaintiff "failed to bring . . . in the original proceeding" is barred by *res judicata*.[95] However, the central issue on appeal was "whether the current and earlier dispute [were] about the same

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91 Motion at 6-7.

92 *Sengupta v. Univ. of Alaska*, 21 P.3d 1240 (Alaska 2001).

93 Motion at 7.

94 Motion at 6.

95 *Sengupta*, 21 P.3d at 1251.

cause of action."[96] The court concluded that since a violation of free speech rights would have been a defense to termination, the §1983 free speech action arose "out of the same cause of action as his foregone counterclaim or defense."[97] The court went on to consider whether Mr. Sengupta had a full and fair opportunity to assert the free speech claim in the termination proceeding, and concluded he did.[98]

We agree with UPS that Mr. Mitchell's claim for a compensation rate adjustment arises out of the same constellation of facts that he could have asserted as a defense to UPS's petition for an offset, and that he had a full and fair opportunity to litigate those facts in *Mitchell XVI* in connection with UPS's petition for an offset. But the reason we do not afford *res judicata* to bar further litigation of his right to a compensation rate adjustment is that Mr. Mitchell had filed a claim for a compensation rate adjustment prior to the *Mitchell XVI* hearing, and that claim was never ruled on. UPS asserts that filing a claim was insufficient, but Restatement of Judgments (2d) §22(2) provides that a party need only "interpose" a claim to avoid the bar and nothing in *Sengupta* addresses whether to "interpose" a claim, a party must do anything more than to plead it. In any event, as UPS recognizes, Mr. Mitchell did interpose his claim, unlike the party in *Sengupta*.[99] *Sengupta* is not on point.

While the general rule of *res judicata* against claim splitting is applicable to workers' compensation proceedings,[100] it is not applied as rigidly as in civil proceedings.[101]

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96 *Sengupta*, 21 P.3d at 1251.

97 *Sengupta*, 21 P.3d at 1253.

98 *Sengupta*, 21 P.3d at 1253-1254.

99 "[U]nlike the party in *Sengupta*, Mitchell did interpose a counterclaim, which was not at issue in *Mitchell XVI*." Motion at 6.

100 *Robertson v. American Mech.*, 54 P.3d 777, 780 (Alaska 2002).

101 *Id.*, 54 P.3d at 779-780, citing *McKean v. Mun. of Anchorage*, 789 P.2d 1169, 1171 (Alaska 1989). We have previously noted the tension between the rule of *res judicata* and the fact that under the statutory scheme applicable to workers' compensation cases, an injured worker may bring different claims at different times, depending on a variety of factors. *See Alaska Airlines* v. *Nickerson*, Alaska Workers' Comp. App. Comm'n Dec. No. 21 at 13, note 70 (2006).

Furthermore, the legislative intent is that "workers' compensation cases shall be decided on their merits except where otherwise provided by statute."[102] In addition, judicial economy in this case would be well served by a remand of Mr. Mitchell's claim for a compensation rate adjustment, because Mr. Mitchell has already presented his evidence and argument on that issue, and all that remains is for the Board to issue a decision addressing it, which would ensure that a single appeal to the Supreme Court (as appears likely) would resolve both the merits of his claim and UPS's objection based on *res judicata*. Lastly, to apply *res judicata* to bar consideration of a claim that was not identified for hearing would limit the prehearing officer's discretion under 8 AAC 45.065(c) to control the presentation of claims and factual matters to the Board.[103] Given these considerations, we conclude that the equitable doctrine of *res judicata* should not be applied in this case to bar the Board from issuing a ruling on Mr. Mitchell's previously filed, fully litigated (at the *Mitchell XX* hearing), and undecided claim for a compensation rate adjustment.

Because Mr. Mitchell's claim for a compensation rate adjustment was not identified in the PHCS for hearing, pursuant to 8 AAC 45.065(c) that claim was in effect severed, with UPS's tacit consent. At any of the prehearing conferences, or in response to the prehearing officer's omission of Mr. Mitchell's claim for a compensation rate adjustment from the PHCS, UPS could have asked that Mr. Mitchell's claim be heard at the same time as UPS's petition for an offset, in order to avoid impairment of UPS's right to an offset that was to be established at the hearing. But because UPS failed to request that Mr. Mitchell's pending claim be heard in conjunction with its petition for an offset, and the Board permitted Mr. Mitchell to present his evidence and argument on that issue, UPS may not now complain that a Board ruling on Mr. Mitchell's claim for a compensation rate adjustment will impair its legal right to an offset as established at the *Mitchell XVI* hearing.

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[102] AS 23.30.001(2).

[103] *See Alaska State Comm'n for Human Rights v. United Physical Therapy*, 484 P.3d 599, 607 (Alaska 2021); *Schmidt v. Beeson Plumbing and Heating, Inc.*, 869 P.2d 1170, 1176 (Alaska 1994).

On reconsideration, UPS argues that our ruling will "create substantial practical difficulties and undermine finality" in Board proceedings.[104] UPS suggests that under our ruling, "Mitchell could relitigate on remand any of the 17 abandoned issues – or any other issue decided in *Mitchell XVI* – simply by characterizing them as not having been 'decided on appeal.'"[105] We do not read our decision so broadly. First, with respect to the law of the case, nothing in our decision suggests that an issue (and related issues) which was ruled on in a first Board hearing, and which was not appealed, may be raised on remand. Second, with respect to *res judicata* as to an issue which was not decided in a first Board hearing or on appeal, our ruling, consistent with 8 AAC 45.065 and Restatement of Judgments (2d) §22(2)(b), permits subsequent litigation of that issue if (a) that issue was a substantive element of a pending claim, (b) the claim was not identified for hearing in the PHCS, and (c) the issue was not contested and actually litigated before the Board or decided on appeal.

c. Interest.[106]

Mr. Mitchell argues that prejudgment interest should have been paid for attorney fees.[107] Mr. Mitchell did not argue to the Board that prejudgment interest should be awarded on his attorney fees, and there is no statutory authority for such an award. In any event, as attorney fees are not owed until they are awarded, prejudgment interest is inappropriate.[108]

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104 Motion at 9.

105 Motion at 9.

106 Mr. Mitchell also asserts a penalty (with interest) is owed for late payment of PTD and interest, because UPS did not pay the PTD owed under *Mitchell XVIII* within seven days after that decision was issued. Appellant's Brief at 21-22. Because he did not claim a penalty before the Board, he waived his claim for a penalty.

107 Appellant's Brief at 22.

108 For this reason, *Childs v. Copper Valley Elec. Ass'n*, 860 P.2d 1184 (Alaska 1993), cited by Mr. Mitchell, is inapposite.

d. Attorney fees.

Mr. Mitchell argues that he should have been awarded additional attorney fees by the Board for work performed on his claim filed on January 21, 2022.[109]

The Board denied attorney fees (beyond statutory fees on the additional PTD obtained in *Mitchell XX*), because Mr. Mitchell was unsuccessful on his claim for a compensation rate adjustment and recalculation of the Social Security offset.[110] The Board did not err in denying fees for a claim as to which Mr. Mitchell was unsuccessful before it.[111] Should he be successful on remand, the Board will reassess the award of fees.

Mr. Mitchell also asserts that the Board erred in declining to make an award of fees for his work before the Commission in *Mitchell XVII*.[112] The Board lacks jurisdiction to award fees for work performed before the Commission.

4. Conclusion.

We conclude that the doctrines of the law of the case and *res judicata* did not bar Mr. Mitchell from asserting a claim for a compensation rate adjustment on remand, even though he failed to request a compensation rate adjustment at the hearing in *Mitchell XVI*.[113] Because Mr. Mitchell presented his evidence and argument regarding a compensation rate adjustment at the *Mitchell XX* hearing, the Board need not conduct any further evidentiary proceedings in order to resolve his claim for a compensation rate adjustment.

Accordingly,

IT IS HEREBY ORDERED:

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109 Appellant's Brief at 22-23.

110 *Mitchell XX* at 28-29.

111 *See*, *e.g.*, *Sulkosky v. Morrison-Knudsen* 919 P.2d 158 (Alaska 1996).

112 Appellant's Brief at 23-26.

113 Because we conclude that neither the law of the case nor *res judicata* bars Mr. Mitchell's claim for a compensation rate adjustment, it is not necessary for us to address his alternative arguments that the Board erred in denying modification, and that equitable principles should be applied to allow such a claim.

1. The Board's order denying a compensation rate adjustment and attorney fees beyond the statutory minimum is VACATED, and this case is REMANDED to the Board to determine, based on the current record, whether to grant Mr. Mitchell's claim for a compensation rate adjustment, and, if the rate is adjusted, to (a) if necessary, adjust the Social Security offset accordingly and (b) revise the award of attorney fees as may be appropriate. The Board may, in its discretion, order additional briefing and argument.[114]

2. The Board's decision in all other respects is AFFIRMED.

Date: January 9, 2026 Alaska Workers' Compensation Appeals Commission

Signed
James N. Rhodes, Appeals Commissioner

Signed
Amy M. Steele, Appeals Commissioner

Signed
Andrew M. Hemenway, Chair

APPEAL PROCEDURES

This decision is issued under AS 23.30.128(e). A party may appeal this decision by filing a petition for review with the Alaska Supreme Court as provided by the Alaska Rules of Appellate Procedure (Appellate Rules). *See* AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review not later than 10 days after the date shown in the Certificate of Distribution below.

You may wish to consider consulting with legal counsel before filing a petition for review. If you wish to petition for review to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

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http://www.courts.alaska.gov

[114] *See supra*, note 68.

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision on Reconsideration No. 312 issued in the matter of *Stephan C. Mitchell v. United Parcel Service and Liberty Mutual Fire Insurance Company*, AWCAC Appeal No. 24-007, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on January 9, 2026.

Date: *January 9, 2026*

Signed

K. Morrison, Appeals Commission Clerk