

**Case:** *Terry M. Parsons vs. Craig City School District and Alaska Municipal League Joint Insurance Association*, Alaska Workers Comp. App. Comm'n Dec. No. 168 (August 30, 2012)

**Facts:** Terry Parsons (Parsons) was injured in June 2001 when an attic ladder fell down and bruised her arms. She was working for the Craig City School District (CCSD) as a custodian. Parsons asserted that a number of complaints of pain in various parts of her body developed as a result of her work-related injury. She filed a claim for various benefits in November 2001. CCSD controverted the claim on March 19, 2002. The employer maintained that it served the entire controversion notice, including the reverse side with warnings about deadlines, on Parsons. Parsons testified that she did not recall receiving the notice.

Drs. McGrath and Roper concluded that Parsons' pain complaints and symptoms were related to the 2001 work injury. However, Dr. McGrath considered her conditions and symptoms no longer related to that injury, informing her she was "no longer on state comp claim" when he evaluated her in March 2003. He did not relate his diagnoses, evaluations, and treatment of Parsons after March 2003 to her work injury, noting her magnetic resonance imaging (MRI) results were negative and stating her rib pain was of unknown etiology. Two years after the 2001 injury, Dr. Roper evaluated Parsons once and two months later treated her three times over about two weeks.

Parsons' other treating physicians did not think the 2001 work injury caused her conditions and symptoms. Dr. Richey stated: "She thinks that maybe her continued problems are a result of this work injury. Although it is difficult to see how abdominal pains, headache, and neck pains would happen as a result of this." Another treating physician, Dr. Schwartz, was of the opinion that Parsons' thoracic and lumbar spine conditions, as evidenced in MRIs, were not work-related. Yet another treating physician, Dr. Schultz, commented: "[I]n reviewing her prior notes . . . I wonder if this is not related to her trying to blame a chest injury from a ladder falling on her a decade ago of [sic] her subsequent health problems." Another treating physician, Dr. Thomas, refused Parsons' request that he relate her hip pain to the work injury. Moreover, Dr. Garg, the treating physician that Parsons identified as most knowledgeable about her condition, diagnosed undifferentiated spondyloarthropathy. His opinions were that her work injury did not cause her current inflammatory arthropathy and that Parsons did not have any disability related to her condition.

Employer medical evaluation (EME) physicians Drs. Kellogg and Carter evaluated Parsons in 2002 and again in 2011. In 2002, Dr. Kellogg diagnosed: 1) contusion of the right biceps tendon, related to the work injury but resolved, 2) left wrist contusion, related to the work injury but resolved, and 3) multiple complaints relative to Parsons' entire body, without objective findings, unrelated to the work injury. In 2002, Dr. Carter diagnosed histrionic personality traits with somatic focus, unrelated to the work injury.

The board concluded that the employer did not serve a controversion notice with the warnings about the deadlines and therefore, the deadline to request a hearing was never triggered in Parsons' case and thus her claim was not time-barred. However, the

board denied all benefits, concluding that her claims were not work-related. Parsons and CCSD appeal.

**Applicable law:** AS 23.30.110(c) provides in part, "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied."

AS 23.30.120(a), compensability presumption, and related case law laying out the three-step presumption analysis.

AS 23.30.122 provides in part, "A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions."

**Issues:** Did the board err in failing to dismiss Parsons' claim as time-barred under AS 23.30.110(c)? Did substantial evidence support the board's denial of Parsons' claim for benefits?

**Holding/analysis:** The commission concluded that Parsons' claim was time-barred. The board lacked substantial evidence to conclude that the employer did not file and serve both sides of the controversion notice in March 2002. An affidavit from CCSD's attorney indicated that she prepared and served both sides on Parsons. Because Parsons failed to file anything, much less the required request for hearing, within two years after the controversion, her claim was time-barred.

The commission concluded that substantial evidence supported the board's denial of benefits. The commission accepted the board's conclusions that although the presumption of compensability attached, it was rebutted and Parsons failed to prove her claim by a preponderance of the evidence. The commission was required to accept the board's weight findings when it evaluated the evidence. The board discredited the only two opinions that connected Parsons' pain complaints and symptoms to her 2001 work injury. Although Dr. McGrath initially connected the work injury with her complaints and symptoms, he eventually concluded her complaints were no longer related to the work injury as of March 2003. The other doctor's opinion that connected her complaints with the work injury was accorded little weight because he treated her only briefly two years after the injury. Four other treating doctors, as well as two EME physicians, did not believe the 2001 work injury caused Parsons' symptoms and conditions.