BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
S S) OAH No. 05-0707-PER
) Div. R&B No. 100-003

DECISION ON REMAND

I. Introduction

S S was awarded non-occupational disability benefits. Her application for occupational disability benefits was denied by the administrator, a decision which was sustained on appeal to the Office of Administrative Hearings[1] and the Superior Court.[2] Ms. S appealed to the Alaska Supreme Court. The court remanded the matter to the Office of Administrative Hearings and directed the administrative law judge to reconsider his decision in light of the causation standard stated in its opinion and to clarify whether Ms. S's prolonged sitting at work was a substantial factor in causing her disability.[3]

The administrative law judge ordered the record supplemented to include the parties' briefs on appeal to the supreme court and the parties agreed to submit the matter for decision on the supplemented record.

The administrative law judge has reconsidered his decision in light of the causation standard stated in the supreme court's decision and the record as supplemented. Upon reconsideration, the administrative law judge again concludes that Ms. S has not established that prolonged periods of sitting at work were a substantial factor in her disability. The administrator's decision is therefore sustained.

II. Summary of Facts[4]

S S is disabled by chronic pain. The precipitating cause of the pain is nerve damage incurred in a 1984 surgical procedure, when Ms. S was 22 years old. As a result of the damage

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1 In Re S, OAH No. 05-0707-PER (2007) (hereinafter, "In re S").

2 S v. State of Alaska Department of Administration, Division of Retirement and Benefits, Superior Court No. 3AN-07-8162 CI (April 28, 2010).

3 S v. State, Department of Administration, Division of Retirement and Benefits, 267 P.3d 624, 636 (Alaska 2011) [hereinafter, "S"].

4 This summary is based on the facts as determined in the prior decision. No new findings of fact are made in this decision, except insofar as whether prolonged sitting at work was a substantial factor in Ms. S's disability is an issue of fact. That determination is made by the administrative law judge based on the preponderance of the evidence, subject to review on appeal for substantial evidence; however, "[i]t is a legal question whether the quantum of evidence is substantial enough to support such a conclusion in the contemplation of a reasonable mind." S, 267 P.3d at 630.

to her nerves, over the course of the next nine years Ms. S experienced intermittent weakness, stiffness and pain in her hip, groin and lower extremities. During that period, Ms. S was able to continue a fairly normal life. For most of that time, she was working for Alaska USA Federal Credit Union in a variety of positions, where her job duties included some strenuous lifting but did not restrict her to a desk for the entire work day.

In 1993, Ms. S took a job with the State of Alaska. Her duties included prolonged periods of time sitting at a desk. Over the course of the next four or five years, she regularly reported pain in her lower back and extremities. By 1997 or 1998, her symptoms were more pronounced, and she was in more or less constant pain.

In mid-1998, Ms. S began an intensive and prolonged search for medical relief from the pain she was feeling. Ms. S reported that the pain had increased in frequency and severity over the years and that it was exacerbated by physical activity; she did not identify any significant aggravating or alleviating factors.

By 2000, Ms. S's discomfort was apparent to her co-workers, and she was spending much of her non-work hours lying down, in hot baths, and avoiding prolonged periods of sitting or standing. In July, 2001, she was disabled by pain, and was unable to return to work.

III. Discussion

A. Legal Standards

An employee is eligible for occupational disability benefits under AS 39.35 if the employee's physical or mental condition prevents the employee from performing her usual duties and "the proximate cause of the condition [is] a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties."[5] A work injury is the proximate cause of a disabling condition if it is a substantial factor in the condition.[6] A work injury may be a substantial factor in the disability if it aggravates, accelerates, or combines with a pre-existing condition,[7] even if the pre-existing condition could independently have caused the disability.[8] A work injury may be a substantial factor in a disability if it aggravates the symptoms of a pre-existing condition (*e.g.*, pain), even if it does not aggravate the underlying

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5 AS 39.35.680(27).

6 State, Public Employees' Retirement Board v. Cacioppo, 813 P.2d 679, 683 (Alaska 1991). *See generally*, S, 267 P.3d at 631-634.

7 Hester v. Public Employees' Retirement Board, 817 P.2d 472, 475 (Alaska 1991) (adopting test identical to that applied in workers' compensation cases).

8 State, Public Employees' Retirement Board v. Cacioppo, 813 P.2d 679, 683 (Alaska 1991).

physical condition.[9] The work injury is a substantial factor in the disability if (1) the disability would not exist but for the injury,[10] and (2) reasonable persons would regard the work injury as a cause and attach legal responsibility to it.[11]

B. Supreme Court Decision

The court's opinion in S identified two specific points of concern in the administrative decision. First, the court expressed concern that the legal standard applied in the decision might erroneously have been whether work was *the* substantial factor in Ms. S's disability rather than *a* substantial factor.[12] Second, the court noted that the decision at one point characterized Dr. Smith's testimony as that prolonged sitting at work *could* aggravate Ms. S's symptoms, notwithstanding that Dr. Smith expressed the opinion that prolonged sitting at work *did* aggravate her symptoms.[13]

In addition, the court's opinion expressly adopted the "but for" and "attach responsibility" components of the "substantial factor" test.[14] Those components are derived from the common law test for causation in the tort context, and had previously been adopted for purposes of workers' compensation cases, but had not been expressly adopted for purposes of AS 39.35.[15] On reconsideration, therefore, the "but for" and "attach responsibility" components will be specifically addressed.

C. Reconsideration

1. Legal Standard Applied

The legal standard applied in the prior administrative decision was that a work injury must have been *a* substantial factor in Ms. S's disability.[16] Any suggestion to the contrary in the

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9 Hester v. Public Employees' Retirement Board, *supra*, 817 P.2d at 476, n. 7. *See* S, 267 P.3d at 631, n. 18; Lopez v. Administrator, Public Employees' Retirement System, 20 P.3d 568, 573-574 (Alaska 2001).

10 The "but for" test does not apply when two independent forces are both sufficient in themselves to have caused the disability. *See, e.g,* Vincent *ex. rel.* Staton v. Fairbanks Memorial Hospital, 862 P.2d 847, 851-852 (Alaska 1993). There is no contention in this case that Ms. S's working conditions would have resulted in a disability absent a pre-existing condition. Accordingly, the "but for" test applies.

11 S, 267 P.3d at 633.

12 S, 267 P.3d at 636.

13 S, 267 P.3d at 635.

14 S, 267 P.3d at 633.

15 *See* Doyon Universal Services v. Allen, 999 P.2d 764, 770 n. 26 (Alaska 2000), *citing* Fairbanks North Star Borough v. Rogers & Babler, 747 P.2d 528, 532 (Alaska 1987); State v. Abbott, 498 P.2d 712, 726-727 (Alaska 1972).

16 *See* In re S, at 6, n. 49.

wording of the decision is expressly disavowed.[17] Nonetheless, because the court in S further clarified that the substantial factor test incorporates the "but for" and "attach responsibility" elements, reconsideration of the question whether Ms. S's working conditions were a substantial factor in her disability may yield a different outcome.[18]

2. Dr. Smith's Opinion

Dr. Smith's opinion was that prolonged sitting at work aggravated Ms. S's pain from a physical condition, ilioinguinal neuralgia.[19] However, Dr. Smith's opinion does not in itself establish that, as a factual matter, prolonged sitting at work aggravated a physical condition or the pain. More importantly, even if prolonged sitting at work aggravated a physical condition and the pain, that does not necessarily mean that prolonged sitting was a substantial factor in Ms. S's disability. As the court explained in S, a claimant must establish that the disability would not exist but for the work injury, and that reasonable persons would view the injury as a cause and attach responsibility to it.

3. Summary Of Evidence

It is undisputed that Ms. S is disabled by chronic pain, and she has been awarded non-occupational disability benefits. The evidence that Ms. S incurred a work injury that was a substantial factor in her disability consists primarily of (1) Dr. Smith's opinion that prolonged sitting aggravated a physical condition and her pain symptoms,[20] and undisputed evidence that (2) sitting was painful to her, (3) her job duties involved long periods of sitting, and (4) during the time she worked for the State of Alaska, her pain symptoms increased.

Dr. Smith's opinion that prolonged sitting aggravated a physical condition and Ms. S's pain does not establish that prolonged sitting was a substantial factor in her disability. Nor does the fact that her symptoms worsened during the period she worked for the State of Alaska

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17 *See* S, 267 P.3d at 636, *quoting* In re S at 13-14. In particular, the observations that "prolonged sitting was 'no more or less [of a contributor] than anything else'" and that "it is not inherently unreasonable to conclude that 5 to 10 percent is not a substantial proportion of the whole" did not reflect a view that Ms. S was required to show that prolonged sitting contributed more to her disability than any other contributing factor, or more than 51% of the total causation. They simply signal that prolonged sitting was one among a multitude of aggravating factors, no one of which stood out as of particular significance.

18 *Cf.* Smith v. University of Alaska, Fairbanks, 172 P.3d 782, 792 (Alaska 2007) (when permitted by reviewing court, agency "could reweigh the evidence on remand."). The supreme court in S stated: "The ALJ may reevaluate the evidence or allow for supplemental evidence and hearings, as he deems necessary."). *Id.*, 267 P. 3d at 636.

19 In re S at 8, n. 63.

20 Dr. Smith's opinion was based, in part, on his view that "there's more pressure put on the nerves around the hip and groin area when you're sitting than when you're standing or when you're lying down." Tr. p. 22, ll. 21-24.

establish that there is a causal relationship between her working conditions and her disability.[21] Nonetheless, (1) Dr. Smith's opinion that prolonged sitting aggravated a physical condition and her pain symptoms, coupled with the facts that (2) Ms. S sat for prolonged periods of time while working and found it painful, and that (3) her chronic pain symptoms worsened during the time she was working, is substantial evidence that prolonged sitting at work was a substantial factor in her disability.

But there is also substantial evidence that prolonged sitting at work was not a substantial factor in Ms. S's disability, including that: (1) Ms. S on multiple occasions prior to becoming disabled reported that her pain was caused by a wide variety of common, every-day activities, including walking, and physical activity in general;[22] (2) Ms. S did not identify sitting as a causal factor until February, 1999, after her symptoms had become highly problematic;[23] (3) Ms. S in 1998, and again in 1999, reported no significant or particular aggravating or alleviating factors;[24] (4) Ms. S did not herself identify working conditions as a causal factor until 2003, long after she had ceased working;[25] (5) Dr. Beard's expert medical opinion that prolonged sitting did not permanently aggravate the underlying physical condition;[26] and (6) Dr. Beard's observation that Ms. S's pain symptoms could have been a result, in some degree, of psychological factors.[27]

Because there is substantial evidence to support either characterization,[28] whether prolonged sitting at work was a substantial factor in Ms. S's disability depends on whether she established, by a preponderance of the evidence as a whole, that but for the prolonged periods of

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[21] S, 267 P.3d at 635. ("S's pain may have worsened over this period for a variety of reasons, such as new or increased activities outside of her job or as the natural progression of her underlying condition. S's conclusion regarding causation does not follow from the mere fact that her conditioned worsened.").

[22] *See, e.g.,* In re S at 3 ("exacerbated by physical activity"), and n. 11; 9, n. 66 (1988 report pain "quite severe at times especially when she's been…lifting children, or working in the yard") , n. 71 ("discomfort increases with utilizing stairs or sitting or standing too long") and n. 72 ("lifting 7.5 pounds"); 14, n. 94, n. 95.

[23] In re S at 9, n. 71 (February 8, 1999, "discomfort…increases with utilizing stairs or sitting or standing too long").

[24] In re S at 3, n. 17 (November 6, 1998, "no report of any "significant aggravating or alleviating factors"; 9, n. 71 (April 8, 1999, "no particular aggravating factors"). *See also id.,* at 4, n. 19 (reporting "there [did] not seem to be a pattern" to her pain).

[25] In re S at 10, n. 74 (report to Dr. Gevaert, August 22, 2003).

[26] *See* In re S at 8.

[27] Tr. 184-187.

[28] Dr. Smith's opinion that prolonged sitting aggravated her condition by 5-10% is consistent with characterizing her work injury as a substantial factor, or as not a substantial factor. *Cf.* S, 267 P.3d at 636, note 18 ("even a five to ten percent contribution *could* suffice *if* 'reasonable persons would regard the injury as a cause of the disability and attach responsibility to it.'") [emphasis added].

sitting she would not have been disabled in 2001, and that reasonable persons would view that as a cause of her disability and attach legal responsibility to it.

a. "But For" requirement

In order to show that prolonged sitting at work was a substantial factor in her disabling pain, Ms. S needed to prove, by a preponderance of the evidence, that if she had not been sitting behind a desk for prolonged periods while working, she would not have been disabled by chronic pain in 2001.[29]

The preponderance of evidence in this case is that during the time she was employed by the State of Alaska, Ms. S's chronic pain increased significantly.[30] Comparing the six-year period from 1993 (when she began her State employment) to 1999 (when she first reporting pain from sitting), with the immediately preceding period from about 1985 (when she began working at the credit union) to 1993, two facts stand out: first, her work conditions changed, in that she was no longer moving about during the work day but instead was sitting for prolonged periods, and second, during the latter period, as compared with the former, the change in her level of pain was substantially greater, even though her everyday activities did not change (except in response to pain).

That Ms. S's pain increased significantly during this time does not necessarily mean that her work had anything to do with the increase in pain.[31] Nonetheless, in view of the fact that Ms. S's working conditions changed after she went to work for the State, in a manner that, in Dr. Smith's opinion, increased her pain symptoms, in the absence of an alternative explanation for the increased pain it is more likely than not that but for the change in her working conditions (*i.e.*, prolonged sitting) she would not have been disabled in 2001.

The administrator argued that rather than her working conditions, the onset of disabling pain during her state employment was the result of a natural progression or aggravation of Ms. S's pre-existing physical condition, brought about by every day activities. But the testimony of the administrator's own expert, Dr. Beard, provides scant support for that argument. Dr. Beard's testimony, in substance, was to the effect that the physical condition (*i.e.*, ilioinguinal neuralgia)

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29 In a case involving a pre-existing condition, the claimant must show that but for aggravation or acceleration of, or combination with, the pre-existing condition, the claimant would not have been disabled "at this time [acceleration], or in this way [combination], or to this degree [aggravation]." Fairbanks North Star Borough v. Rogers and Babler, 747 P.2d 528, 533 (Alaska 1987).

30 *See* Tr. 51-52.

31 *See* note 21, *supra*.

that Ms. S contended was generating her chronic pain would have resolved, rather than progressing. In Dr. Beard's view, an individual with the ability to move about in the event of discomfort from sitting would not incur a permanent aggravation of a pre-existing nerve injury of the type Ms. S had incurred, and it would take a notable force, such as heavy lifting, childbirth, or back country hiking, to aggravate such a condition.[32] In any event, even disregarding Dr. Beard's testimony, that everyday activities also aggravated Ms. S's condition does not necessarily mean that her working conditions were not a substantial factor.[33]

Because Ms. S provided substantial evidence, supported by an expert medical opinion, that her working conditions aggravated a pre-existing condition to the point it generated disabling chronic pain, and the administrator concedes the onset of disabling by chronic pain during employment and did not establish an alternative explanation, supported by an expert medical opinion, as to why she began to experience disabling pain during her employment,[34] the preponderance of the evidence is that but for periods of prolonged sitting at work, Ms. S would not have been disabled in 2001.

b. "Attach Responsibility" requirement

Reasonable persons would attach responsibility when "the [work injury] has been so significant and important a cause that the [employer] should be legally responsible."[35] To attach legal responsibility for a disability to an employer, all of the circumstances should be considered. Even though the disability would not exist but for the work injury, the work injury may still be one that reasonable persons would not attach legal responsibility to.[36]

In this case, Dr. Smith was of the opinion that that prolonged sitting at work aggravated Ms. S's chronic pain.[37] Dr. Beard's opinion was couched in terms of the underlying physical condition, and thus did not directly rebut Dr. Smith's opinion. Nonetheless, Dr. Beard's

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32 *See* Tr. 128-129; 149; 164; R. 740-741.

33 S, 267 P.3d at 636 ("In Alaska, a prolonged work-related factor could contribute to a person's disability in equal proportions to her other daily activities and still be considered a 'substantial factor'"). *See* Fairbanks North Star Borough v. Rogers and Babler, 747 P.2d 528, 533 n. 9 ("In Alaska, a disability resulting from gradual wear and tear and activity which is in no sense unusual may be compensable. *Fox v. Alascom*, 718 P.2d 977 (Alaska 1986).").

34 This is not to say that there is no evidence of an alternative explanation. There is evidence that psychological factors contributed to Ms. S's disability. *See* note 27, *supra*. However, the administrator did not attempt to prove that Ms. S's pain was a psychological response to the original non-work-related ilioinguinal neuralgia and as such not proximately caused by her employment.

35 *See* S, 267 P.3d at 634, *quoting* Vincent by Staton v. Fairbanks Memorial Hospital, 862 P.2d 847, 851-852 (Alaska 1993), *quoting* State v. Abbot, 498 P.2d 712, 727 (Alaska 1972).

36 *See* Fairbanks North Star Borough v. Rogers and Babler, 747 P.2d 528, 532 (Alaska 1987).

37 *See* Tr. 35, l. 25-36, l. 4.

testimony provides support for the view that prolonged sitting at work was not a substantial factor in Ms. S's disability, because her testimony, in substance, was to the effect that Ms. S's ilioinguinal neuralgia had resolved.[38] Thus, while Dr. Beard did not directly rebut Dr. Smith's opinion as to aggravation of chronic pain, her testimony weakens the basis for his opinion, which was that Ms. S's underlying physical condition (ilioinguinal neuralgia) had <u>not</u> resolved.[39] In light of Dr. Beard's testimony, Dr. Smith's opinion that Ms. S's chronic pain was work-related is only marginally persuasive.[40] In light of the close balance in the expert medical testimony, the other evidence in the case warrants careful consideration.

The prior administrative decision in this case referenced, in particular, the absence of any report by Ms. S that prolonged sitting at work was a causal factor until long after she had ceased working.[41] On appeal to the supreme court, Ms. S suggested this was the sole evidence relied on to deny her claim.[42] On reconsideration, in light of her argument, a more extensive discussion of that particular issue is appropriate.

A claimant's reported perception of pain and the activities that generate it, made for the purpose of assisting in the diagnosis and treatment of that pain, is important evidence of the cause of that pain. Just as a medical doctor relies on such information, in part, in diagnosing and treating the condition complained of, so, too, will a fact finder rely on that information in assessing whether reasonable persons would attach legal responsibility to the employer. For these reasons, when considering whether to attach legal responsibility for a claimant's disabling chronic pain to the employer, reasonable persons will consider whether the claimant reported a

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[38] *See* Tr. 184-187.

[39] *See* Tr. 24, l. 21-25, l. 1 (sitting aggravated "her condition of an ilioinguinal neuralgia); p. 31, ll. 8-9 ("I think the ilioinguinal neuralgia is the primary problem.").

[40] Dr. Smith's and Dr. Beard's opinions were afforded more weight than those of the other doctors. *See* <u>In Re S</u> at 10 ("Dr. Cole's and Dr. Blocher's opinions were less persuasive than the opinions of Dr. Smith and Dr. Beard"), 11 n. 82 (Dr. Gevaert's "report of little value."). Dr. Beard's opinion as to causation was somewhat less persuasive than Dr. Smith's because "it does not appear that Dr. Beard applied the legal standard that applies in occupational disability benefit cases." *See* <u>In re S</u> at 12. However, her testimony has some persuasive weight even in the absence of a definitive statement applying the correct legal standard. *See* <u>Smith v. University of Alaska Fairbanks</u>, 172 P.3d 782, 791 (Alaska 2007).

[41] *See* <u>In re S</u> at 13-14.

[42] *See* Appellant's Brief at 6 ("S was denied occupational benefits merely because she did not otter the phrase, 'sitting triggered my condition' to her treating doctors at some point before 1999."); 31 ("The ALJ appears to have ruled against S simply because she failed to specifically utter the phrase 'prolonged sitting was a trigger for her pain' before 1999.").

work injury as a source of pain during the period of employment, and, if not, whether there is a reasonable explanation for the failure to do so.[43]

In this case, Ms. S did not identify sitting as a causal factor until 1999, and she did not identify sitting at work as a causal factor until two years after she retired, in 2003. This is not a case in which a relationship between the alleged work injury and the disability is obscure and which Ms. S could not reasonably have been expected to identify without expert medical assistance.[44] Rather, the alleged relationship between her working conditions and the disability is one that Ms. S might reasonably be expected to have identified through direct personal experience, and to tell her treating physician: "It hurts when I sit for a prolonged period of time." Under these circumstances, that Ms. S did not report prolonged sitting at work as contributing to her chronic pain while she was still employed suggests that prolonged sitting at work was not so significant and important a cause as to attach legal responsibility to her employer.

To be sure, there is undisputed evidence that Ms. S's level of pain increased substantially while she was working. But that there was a temporal relationship between her work and her chronic pain is undisputed; the issue to be resolved is the nature of the causal relationship. Ms. S's failure to report prior to her termination that prolonged sitting at work was painful does not mean that no reasonable person would attach legal responsibility for her disability to that specific activity. It is a relevant circumstance, however, to be considered in light of all of the other evidence, including evidence that: (1) ordinary daily activities also aggravated her chronic pain; (2) expert medical opinion evidence that the aggravation of her chronic pain symptoms due to prolonged sitting was limited to 5-10%; (3) expert medical testimony to the effect that her underlying physical condition had resolved; and (4) expert medical testimony that psychological factors may have contributed to her disability.

The facts of this case are such that, in the administrative law judge's judgment, some reasonable persons would consider prolonged sitting at work so significant and important a cause

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43 Applicable law in some degree reflects this common-sense view, because a person is not considered presumably permanently disabled if the employer can provide "another comparable position or job". *See* AS 39.35.680(27). Absent some reason to believe that a change to a comparable position or job will alleviate or eliminate the disabling symptoms, employers and employees have no incentive to investigate available alternatives.

44 *Compare, e.g.*, Apone v. Fred Meyer, Inc., 226 P.3d 1021 (Alaska 2010) (disabling symptoms allegedly caused by gasoline fumes); Doyon Universal Services, Inc. v. Allen, 999 P.2d 964 (Alaska 2000) (bowel obstruction allegedly caused by eating brussels sprouts); Norcon, Inc. v. Alaska Workers' Compensation Board, 880 P.2d 1051 (Alaska 1994) (sudden cardiac arrest allegedly precipitated by long working hours and stress); Hester v. Public Employees' Retirement Board, 817 P.2d 472 (Alaska 1991) (Crohn's disease allegedly aggravated by work stress).

as to attach legal responsibility for it and others would not. The administrative law judge's view was, and remains, that the latter group is larger.

IV. Conclusion

The preponderance of the evidence is that but for prolonged sitting at work, Ms. S would not have experienced disabling chronic pain in 2001. However, in light of the facts that the initial onset of ilioinguinal neuralgia was not work-related, many ordinary activities of daily life aggravated her pain, and Ms. S did not report working conditions as contributing to her pain until after she had stopped working, coupled with evidence that the ilioinguinal neuralgia had resolved and that psychological factors may have contributed to her disability, Ms. S has not shown that, more likely than not, reasonable persons would view prolonged sitting at work as so significant and important a cause as to attach legal responsibility to her employer for her disability.

Reconsideration of the record in light of the court's decision in S yields the same conclusion as was reached previously: Ms. S did not prove that prolonged sitting at work was a substantial factor in her disability. Accordingly, the administrator's decision is sustained.

DATED February 26, 2013.

Signed
Andrew M. Hemenway
Administrative Law Judge

Adoption

In accordance with AS 44.64.060(e)(1), the undersigned revises the proposed decision on remand as follows:

1. The first sentence of the third paragraph beginning on page 8 is amended to add, following "report": "to a physician"
2. Footnote 41 is amended to add, following the citation: "Notwithstanding the absence of a report to a physician, there is 'undisputed evidence…that prolonged sitting at work was painful to her.' *Supra*, at 5; *see* In Re S at 13 (quoting testimony of Ms. S and her husband)."
3. The final sentence of the second paragraph beginning on page 9 is amended to add, following "report": "to a physician"
4. The third sentence of the third paragraph beginning on page 9 is amended to add, following "report" (on page 10): "to a physician"
5. The second sentence of the second paragraph beginning on page 10 is amended to add, following "report": "to a physician"

Under authority of AS 39.35.006 and AS 44.64.060(e), the revised proposed decision on remand is adopted as the final decision in this matter.

Judicial review of this final decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED April 10, 2013. By: *Signed*
Andrew M. Hemenway
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]