

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOSHUA L. ELLIS,)	
)	
Employee,)	
Claimant,)	INTERLOCUTORY
)	DECISION AND ORDER
v.)	
)	AWCB Case No. 202411168
RUS, INC.,)	
)	AWCB Decision No. 25-0088
Employer,)	
and)	Filed with AWCB Anchorage, Alaska
)	on December 23, 2025
ALASKA NATIONAL INSURANCE)	
COMPANY,)	
)	
Insurer,)	
Defendants.)	
)	

Rus, Inc.'s and Alaska National Insurance Company's (Employer) petition for reconsideration was heard on the written record in Anchorage, Alaska, on October 2, 2025, a date selected on September 10, 2025. Employer's August 27, 2025 petition for reconsideration gave rise to this hearing. Attorney Adam Sadoski represented Employer. Attorney Michael Flanigan represented Joshua Ellis (Employee). Because the parties did not receive notice of the hearing, the record was held open to receive their hearing briefs and closed upon receipt of Employee's second supplemental brief on November 3, 2025. Previous decisions in this case include, *Ellis v. Rus, Inc.*, AWCB Dec. No. 25-0050 (August 12, 2025) (*Ellis I*) (reversed a designee's discovery determination denying Employee's request for copies of Employer's and Employer's owner's bank records and ordered an in camera review of those records), and *Ellis v. Rus, Inc.*, AWCB Dec. No. 25-0063 (September 30, 2025) (*Ellis II*) (affirmed a designee's discovery

determinations denying Employee's requests for a list of Employer's other employees along with their contact information, W2s and 1099s; and reversed a designee's discovery determination granting Employee's request for copies of Employer's tax returns).

ISSUE

Employee originally contended, even though he was earning \$60 per hour at the time of his injury, Employer incorrectly set his temporary total disability (TTD) compensation rate at just \$325 per week, the statutory minimum. He contended, since Employer was paying him "under the table" with cash and checks, there was a "gross under-reporting" of his wages that resulted in a "gross underpayment" of his TTD compensation. Employee sought discovery of Employer's and Employer's owner's bank records to prove his claim for a compensation rate adjustment and contended the designee abused his discretion when he denied his petition to compel the production of this discovery and granted Employer's petition for a protective order.

Employer originally contended that the designee did not abuse his discretion in making the above rulings. It contended Employee's request for all Employer's and all Employer's owner's bank records was overbroad and sought information that was not relevant since the bank records will show numerous and various transactions that bear no relationship to Employee's claim for benefits. It further contended, even if cash withdrawals or related checks were demonstrated, they would provide no indication of where the money went or for what purpose. Employer also contended other provisions of the Alaska Workers' Compensation Act specifically address the situation where an employee's wages cannot be ascertained and provide information that may be considered in determining Employee's compensation rate and contends these provisions are his "exclusive remedies." It additionally contended that the bank records would be inadmissible under the Alaska Rules of Evidence and compelling the production of all an employer's bank records in a workers' compensation case would infringe upon the strong privacy protections provided by the Alaska State Constitution.

Should *Ellis* 's order for an in camera review of Employer's and Employer's owner's bank records be changed on reconsideration?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On August 9, 2024, Employee reported injuring his brain, back and left arm when he fell 26 feet from a condominium while working for Employer. (*Ellis I*).
- 2) On January 30, 2025, Employee claimed temporary total disability (TTD) benefits and medical costs. He also sought a compensation rate adjustment and late-payment penalty. His reason for filing his claim was his allegation that he was “making \$3500 a wk [week] while employed, now getting \$325 a wk in time loss benefit.” (*Ellis I*).
- 3) On April 1, 2025, Employee filed another claim, which also sought a compensation rate adjustment. He contended: “My compensation rate is incorrect. I was making \$60 an hour[] but am being paid only \$350 [sic] a week which doesnt [sic] even cover rent. The rate is based on incorrect employer information.” On that same date, Employee also informally sought Employer’s bank records as well as Employer’s owner’s personal bank records and attached a proposed subpoena for these records covering the period from April 1, 2023 to July 7, 2024. (*Ellis I*).
- 4) On April 2, 2025, Employer petitioned for a protective order against Employee’s request for Employer’s and Employer’s owner’s bank records. It contended Employee’s request was “overbroad, unduly burdensome, and not reasonably calculated to lead to discoverable information.” (*Ellis I*).
- 5) On April 3, 2025, Employee petitioned to compel the production of Employer’s and Employer’s owner’s banking records. He contended: “Employee states that employer was paying him in cash and checks which greatly exceed the amount the employer claims he was paying the Employee. Employee need [sic] the records for his compensation rate adjustment claim.” (*Ellis I*).
- 6) At an April 29, 2025 prehearing conference, a designee ruled on the parties’ respective petitions:

Designee reviewed Employer’s 4/2/2025 Petition for Protective Order and Employee’s 4/3/2025 Petition to Compel along with the documentation attached to the same. Designee finds Employee’s discovery request for Employer’s Banking Records to be overbroad and unlikely to lead to discoverable information noting that Banking Records are generally confidential/protected and Employee’s W2(s) and 1099(s) for the two years prior to Employee’s injury (2023 & 2024)

are the standard methodology for calculating Employee's Compensation Rate. Employer's 4/2/2025 Petition is granted and Employee's 4/3/2025 Petition is denied.

(*Ellis I*).

7) On May 8, 2025, Employee petitioned for reconsideration of the designee's April 29, 2025 rulings, where he set forth his contentions in greater detail:

On 7/17/2024, the employee was catastrophically injured and remains disabled, due to a fall from a roof while working for the employer as a roofer. Although the employee claims he was making \$60 an hour, his TTD rate was set at \$350 [sic] a week (which is not enough to cover rent) due to what the employee states is a gross under-reporting of his wages by the Employer, which is resulting in a gross underpayment of his TTD benefits and will effect [sic] his other benefits (PPI & PTD). The employee claims that the employer was paying him 'under the table' with business and personal checks and cash and not reporting his true earnings. The employee has no records of these payments since he cashed most of the checks at the employer's bank. In order to prove his claim of the employer's underreporting of his earnings, the employee in this case has requested the issuance of a subpoena to the Employer's Bank for copies of statements and checks that were issued during the time the employee was employed by the employer . . . Rus, Inc. and its owner, Anthony Rus.

(*Ellis I*).

8) On May 8, 2025, Employee also filed an affidavit in which he averred he worked for Employer as a foreman for three seasons in 2022, 2023 and 2024, overseeing roofing, carpentry, remodels, painting and tile work. He was paid \$60 per hour, and although he thinks his 2023 W2 showed he made \$1,700, he believed he made \$70,000 that year. Employee recalls Employer paying him approximately 75 percent of his earnings by checks written on Employer's or Employer's owner's accounts at First National Bank and Alaska USA, and 25 percent of his earnings in cash. Employee cashed Employer's checks at the banks they were written on and "mostly just used the cash to live on[] rather than deposit them in a bank account." (*Ellis* affidavit, May 7, 2025).

9) On May 12, 2025, the designee denied Employee's May 8, 2025 petition for reconsideration finding Employee's request for Employer's banking records "overbroad and irrelevant," and that the banking records were "confidential and protected." (*Ellis I*). He also referred to the parties to AS 23.30.220(5) and (10). (Pullen letter, May 12, 2025).

10) On May 19, 2025, Employee petitioned to seek a review of the designee's April 29, 2025 ruling. (*Ellis I*).

11) On August 12, 2025, *Ellis I* stated the following in its analysis:

Here, if Employer was making cash withdrawals proportionate to the cash payments described in Employee's affidavit that corresponded to his paydays, it would make his contention that he was being paid "under the table" in cash and earning more money than Employer attributes him as having earned more probable than it would be without that evidence. [citation omitted] Similarly, if the bank records show checks made payable to Employee or payable to "cash" and bearing Employee's endorsement, it would make his contention that he was being paid "under the table" with such checks and earning more money than Employer attributes him as having earned more likely than it would be without that evidence. [citation omitted] An articulable nexus exists between the information Employee seeks and evidence relevant to his compensation rate adjustment claim. [citation omitted]

The decision ordered Employer to produce "monthly statements for all Rus, Inc. and Tony T. Rus accounts at Global Credit Union (formerly Alaska USA) and First National Bank Alaska, as well as copies of all checks written on those accounts, to include dates between April 1, 2023 through July 7, 2024" for an in camera review. (*Ellis I*).

12) On August 27, 2025, Employer petitioned for reconsideration of *Ellis I*. (Employer Petition, August 27, 2025).

13) On September 7, 2025, Employee opposed Employer's August 27, 2025 reconsideration petition. (Employee Answer, September 7, 2025).

14) At a September 10, 2025 prehearing conference, the designee informed the parties that Employer's August 27, 2025 petition for reconsideration was granted and an October 2, 2025 hearing was scheduled for the petition. (Prehearing Conference Summary, September 10, 2025).

15) A hearing notice for the October 2, 2025 hearing was not sent to the parties. (Observations).

16) On September 24, 2025, Employee again opposed Employer's August 27, 2025 reconsideration petition and submitted statements obtained by his investigator, who contacted homeowners where Employee performed work for Employer. He contended the statements showed he worked for Employer "far beyond the few days" shown by Employer's payroll and W2 records. (Employee Supplemental Answer, September 24, 2025).

17) On October 20, 2025, because a hearing notice for the October 2, 2025 hearing had not been sent to the parties, the hearing officer gave the parties additional time to submit their hearing briefs. (Sadoski-Vollmer emails, October 20, 2025).

18) On October 27, 2025, Employer submitted its hearing brief. (Employer’s Hearing Brief, October 27, 2025).

19) On October 31 and November 1, 2025, Employee submitted his hearing briefs, which were filed in the record on November 3, 2025. He also included additional statements obtained by his investigator as well as an affidavit from a coworker concerning a conversation between Employer’s owner and Employee. (Employee’s Hearing Briefs, October 31, 2025; November 1, 2025).

PRINCIPLES OF LAW

AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.

. . . .

(c) At a prehearing on discovery matters conducted by the board’s designee, the board’s designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee’s injury. . . . If a discovery dispute comes before the board for review of a determination by the board’s designee, the board may not consider any evidence or argument that was not presented to the board’s designee, but shall determine the issue solely on the basis of the written record. . . . The board shall uphold the designee’s decision except when the board’s designee’s determination is an abuse of discretion.

The definition of relevant for discovery purposes in Civil Rule 26(b)(1) is persuasive as to the meaning and legislative intent of the phrases “relative to employee’s injury” and “that relate to questions in dispute” used in AS 23.30.107(a), and AS 23.30.005(h), respectively. *Granus v. Fell*, AWCBC Dec. No. 99-0016 (January 20, 1999). The central question in determining whether authority exists under the statute to compel discovery is whether the information being sought is reasonably calculated to lead to the discovery of facts that are relevant to a question in dispute. *Id.* (citing Alaska Civ. R. 26(b)(1)). For a discovery request to be “reasonably calculated,” it must be based on a deliberate and purposeful design to lead to admissible evidence, and that design must be reasonable and articulable. *Id.* The relevancy relationship of information sought

need not be strong: “relevant evidence means evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* (emphasis in original) (citing Alaska Evid. R. 401).

The burden of demonstrating the relevancy of information being sought rests with the proponent of the discovery request. *Granus*. The proponent of a discovery request must be able to articulate a reasonable nexus between the information sought and evidence relevant to a material issue in the case. *In the Matter of Mendel*, 897 P.2d 68, 93 (Alaska 1995).

In *Jones v. Jennings*, 788 P.2d 732 (Alaska 1990), the plaintiff was arrested on charges of contributing to the delinquency of a minor, disorderly conduct and resisting arrest. All charges were subsequently dropped. The plaintiff then filed a damage action against the municipality and the two arresting officers for assault, false imprisonment and a federal civil rights violation. At issue in *Jones* was discovery of the officers’ personnel files. The trial court ordered an in camera inspection of documents that the defendant thought were irrelevant and unduly prejudicial. According to the Court, the municipality correctly contended that personnel files “contain the most intimate details of an employee’s work history,” but the Court held that the trial court did not abuse its discretionary supervisory role over discovery matters by ordering the in camera inspection and wrote:

The in camera inspection conducted by the trial court is the appropriate means for guaranteeing the privacy of the parties involved. By excluding prejudicial and irrelevant information, the in camera inspection promotes minimal intrusion into the essentially private and confidential matters that must come to light in the present cause of action.

Id.

AS 23.30.220. Determination of spendable weekly wage. (a) Computation of compensation under this chapter shall be on the basis of an employee’s spendable weekly wage at the time of injury. An employee’s spendable weekly wage is the employee’s gross weekly earnings minus payroll tax deductions. An employee’s gross weekly earnings shall be calculated as follows:

....

(4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;

....

ANALYSIS

As a preliminary matter, on September 24, 2025, October 31, 2025 and November 1, 2025, Employee submitted numerous statements obtained by his investigator and an affidavit by a coworker. The Act provides that if a determination by a designee concerning a discovery dispute is reviewed by a panel at hearing, the panel shall not consider any evidence or argument that was not presented to the designee. AS 23.30.108(c). Therefore, the submitted statements and the coworkers' affidavit cannot be considered here. *Id.*

Reconsideration of *Ellis I* was originally undertaken because of imprecise analysis in that decision, which stated:

Here, if Employer was making cash withdrawals proportionate to the cash payments described in Employee's affidavit that corresponded to his paydays, it would make his contention that he was being paid "under the table" in cash and earning more money than Employer attributes him as having earned more probable than it would be without that evidence. [citation omitted] Similarly, if the bank records show checks made payable to Employee or payable to "cash" and bearing Employee's endorsement, it would make his contention that he was being paid "under the table" with such checks and earning more money than Employer attributes him as having earned more likely than it would be without that evidence. [citation omitted] An articulable nexus exists between the information Employee seeks and evidence relevant to his compensation rate adjustment claim. [citation omitted]

However, how Employee was paid, whether it was under the table or not, is not relevant to his claim for a compensation rate adjustment. Neither does the inquiry concern whether Employee was paid more than Employer's payroll records show. Rather, the relevant inquiry is Employee's "total wages" prior to his injury. AS 23.30.220(a)(4).

Ellis I ordered Employer to produce “monthly statements for all Rus, Inc. and Tony T. Rus accounts at Global Credit Union (formerly Alaska USA) and First National Bank Alaska, as well as copies of all checks written on those accounts, to include dates between April 1, 2023 through July 7, 2024” for an in camera review. On reconsideration, any cash withdrawals shown on its bank statements could not be attributed to having been paid to Employee versus having been paid to someone else and so they would not be probative evidence of Employee’s earnings prior to his work injury. Or, stated differently, cash withdrawals shown on Employer’s bank statements would not make it more or less likely that Employee was paid \$70,000 in 2023, as he states in his affidavit. *Granus*. However, such is not the case with Employer’s checks.

Employee averred he recalls Employer paying him approximately 75 percent of his earnings by checks written on Employer’s or Employer’s owner’s accounts at First National Bank and Alaska USA, and 25 percent of his earnings in cash. The discovery of checks made payable to Employee, or made payable to cash and bearing Employee’s endorsement, could readily show earnings sufficient to merit a compensation rate adjustment, even if they did not show the total amount Employee states he was paid. Production of Employer’s checks, as ordered in *Ellis I*, is reasonably calculated to lead to the discovery of facts that are relevant to a question in dispute, and it will again be ordered. *Granus; Mendel*.

Employer again raises privacy concerns on reconsideration and seeks to exclude Employer’s owner’s personal banking records from discovery because they will undoubtedly contain transactions of a “very intimate nature.” However, and notwithstanding Employer’s contentions to the contrary, Employee’s May 8, 2025 affidavit is evidence that Employer’s owner paid him with checks written on his personal bank accounts so Employee’s efforts in seeking the production of at least Employer’s owner’s checks is a deliberate and purposeful design to lead to admissible evidence. *Granus; Mendel*. Hence, they will not be excluded from discovery.

Nevertheless, with respect to Employer’s privacy concerns, as stated in *Jennings*:

The in camera inspection conducted by the trial court is the appropriate means for guaranteeing the privacy of the parties involved. By excluding prejudicial and irrelevant information, the in camera inspection promotes minimal intrusion into

the essentially private and confidential matters that must come to light in the present cause of action.

Additionally, given the above analysis, modifications to the order language of *Ellis I* is also appropriate. Employer will still be ordered to produce not only checks written on Employer's and Employer's owner's bank accounts, but also monthly statements for the purpose of verifying the production of all checks written on these accounts. However, in the interest of maximizing privacy protections for Employer and Employer's owner, Employer may redact all non-check transactions shown on the monthly statements. This approach, along with the in camera inspection, will narrowly tailor Employee's efforts to discover facts relevant to his compensation rate adjustment claim.

CONCLUSION OF LAW

Ellis I's order for an in camera review of Employer's and Employer's owner's bank records should be changed on reconsideration.

ORDERS

- 1) Employer is directed to provide hearing officer Kathryn Setzer monthly statements for all Rus, Inc. and Tony T. Rus accounts at Global Credit Union (formerly Alaska USA) and First National Bank Alaska, as well as copies of all checks written on those accounts, to include dates between April 1, 2023 through July 7, 2024, for an in camera review to determine what, if any, checks written on those accounts are relevant to Employee's claim or Employer's defenses.
- 2) Employer may redact all non-check transactions shown on the monthly statements.
- 3) The hearing officer shall hold a prehearing conference as soon as possible after receiving and reviewing the records.
- 4) Jurisdiction is retained over this discovery dispute.

Dated in Anchorage, Alaska on December 23, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Randy Beltz, Member

/s/
Brian Zematis, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of JOSHUA L. ELLIS, employee / claimant v. RUS, INC., employer; ALASKA NATIONAL INSURANCE COMPANY, insurer / defendants; Case No. 202411168; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 23, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician