ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

JOHNNY ANDREW, Employee, Claimant, v. SILVER BAY SEAFOODS, LLC, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201810619 AWCB Decision No. 26-0010 Filed with AWCB Anchorage, Alaska on February 6, 2026

Johnny Andrew's (Employee) August 21, 2025 petition (filed on October 21, 2025, and incorrectly listed on the controlling Prehearing Conference Summary as dated "August 2, 2025") to compel rescheduling his deposition, Silver Bay Seafoods, LLC's (Employer) October 20, 2025 petition to dismiss, Employee's January 5, 2026 petition to continue the January 15, 2026 hearing, and Employer's January 5, 2026 petition to strike Employee's late-filed evidence were all heard in Anchorage, Alaska, on January 15, 2026, a date selected on November 25, 2025. A November 10, 2025 hearing request gave rise to this hearing. Non-attorney Employee represented himself and testified. Attorney Jeffrey Holloway represented Employer and its insurer. Both Employee and Holloway appeared by Zoom. Oral orders at hearing denied Employee's January 5, 2026 petition to continue the hearing, and granted Employer's January 5, 2026 petition to strike Employee's late-filed evidence. The record closed on January 15, 2026. This decision examines the oral orders and addresses the parties' remaining petitions on their merits.

ISSUES

Employee requested a continuance. He contended that he received evidence from Employer after the 20-day deadline had passed for filing evidence. Employee argued that he could not "respond" timely because he did not receive it until December 30, 2025. Employee asked for an order continuing the hearing so his responsive evidence would be considered timely filed.

Employer considered Employee's request for a hearing continuance "nonsense." It contended Employee switched envelopes and "certificates of service" to make it appear he received Employer's filings late, when in fact he did not. It opposed the hearing continuance.

1) **Was the oral order denying Employee's petition for a continuance correct?**

Employer requested an order striking Employee's late-filed evidence. It argued that non-medical evidence was due not later than December 26, 2025, but Employee filed evidence on December 29, 2025, with no good reason. Employer expressly objected to two pictures purportedly showing images on Employee's laptop screen regarding his October 13, 2025 deposition. It also argued that the two photographs were "double hearsay" and inadmissible for that reason as well.

Employee contended the pictures he took of his laptop screen were crucial evidence showing he tried to participate in his October 13, 2025 Zoom deposition, but no one "admitted" him into the Zoom "room." He argued that Holloway was responsible for letting him in and deliberately did not. Employee opposed Employer's request to strike these pictures.

2) **Was the oral order striking Employee's late-filed evidence correct?**

Employee sought an order requiring Employer to reschedule his deposition. He contended Holloway deliberately failed to admit him into the October 13, 2025 Zoom deposition so Employer could later argue that he failed to attend the deposition and Employer could then seek to further dismiss his claims and petitions. Employee argued that he wants to attend his deposition.

Employer contended Employee three times failed to attend his properly-noticed depositions and otherwise has no standing to require Employer to reschedule it. It sought an order denying Employee's request for an order requiring Employer to reschedule Employee's deposition.

3) Should Employee's petition for an order rescheduling his deposition be denied?

Employer sought an order dismissing Employee's remaining claims and petitions "with prejudice." It contended Employee has thrice failed to appear for his properly-noticed depositions, which Employer has been trying to obtain for years. Employer argued that Employee willfully refused to be deposed, which wastes its time and money, and warrants dismissal "with prejudice."

Employee contended he has not willfully failed to participate in his depositions. He argued that he is not a "damn fool," and was not "that dumb" to risk having his claims and petitions dismissed. Employee asserted that everything Employer does is a "trap" used to dismiss his claims before he has a fair hearing. He contended he was present in the Zoom "waiting room" on October 13, 2025 for his deposition, and Holloway never let him in so he could participate. He opposed the petition to dismiss his claims and petitions "with prejudice."

4) Should Employer's petition to dismiss be granted with or without prejudice?

Employer sought an order awarding Employer attorney fees and costs for two missed depositions.

Employee opposed the request.

5) Is Employer entitled to an attorney fee and cost award as an additional discovery sanction?

FINDINGS OF FACT

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

1) On July 20, 2018, Employee while working for Employer as a fish processor was pushing a cart to a freezer and noticed ice on the floor. He slipped and did not fall, but his legs "spread causing pain" in his knee. (Employee's First Report of Injury, July 22, 2018).

2) On July 9, 2019, in a claim dated July 8, 2019, Employee filed his first request for benefits in this case. (Claim for Workers' Compensation Benefits, July 8, 2019).

3) While Employee's alleged injury occurred on July 20, 2018, and his first claim was filed on July 9, 2019, he has still not had a hearing on his claim's merits. The instant decision will be the 14th decision in this case. (Observations).

4) On November 10, 2022, the parties attended a prehearing conference. Regarding Employer's attempt to depose Employee on December 1, 2022, "Employee [stated] clearly that he would not attend the deposition." (Prehearing Conference Summary, November 10, 2022).

5) On May 8, 2023, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0024 (May 8, 2023) (*Andrew III*), expressly warned Employee that his continued failure to cooperate with discovery could result in his inability to obtain compensation at a merits hearing. (*Andrew III*).

6) On January 26, 2023, the Board's designee ordered Employee "to attend a deposition at his and Employer representative's earliest possible and mutually convenient date and time." (Prehearing Conference Summary, January 26, 2023).

7) By October 30, 2023, Employer had filed two petitions to dismiss Employee's claims, for his failure to cooperate with discovery. On October 30, 2023, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0060 (October 30, 2023) (*Andrew V*), found Employee "not credible" on several points. It found he believed litigation was "a game." It further noted that, "The fact he was advised his case cannot move forward without his discovery has not persuaded him to cooperate in discovery." *Andrew V* dismissed Employee's claims filed to that point, for his willful failure to cooperate with discovery. (*Andrew V*).

8) On November 21, 2023, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0068 (November 21, 2023) (*Andrew VI*), denied Employee's three petitions for reconsideration of *Andrew V*. *Andew VI* reiterated that Employee had "willfully and repeatedly" failed to cooperate with previously ordered discovery. (*Andrew VI*).

9) On February 27, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 25-0013 (February 27, 2025) (*Andrew VIII*), found his February 25, 2025 hearing testimony "even less credible" than his previous non-credible testimony. (*Andrew VIII*).

10) On March 17, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 25-0018 (March 17, 2025) (*Andrew X*), denied Employer's request to reconsider *Andrew VIII*. Employer argued that *Bailey* provided authority for the Board to dismiss Employee's claims filed after October 30,

2023 that duplicated claims the Board had already dismissed. *Andrew X* held that *Bailey*, if it was applicable to discovery violations at all, would allow Employee to file "a new claim for the same kind of benefits for a different time period." (*Andrew X*).

11) On July 16, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 25-0042 (July 16, 2025) (*Andrew XI*), reopened the hearing record from *Andrew X* to allow Employee to address Employer's request for a screening order. *Andrew XI* found that the United States Postal Service (USPS) had probably entered an incorrect Zip code onto its tracking document for the hearing notice for the *Andrew X* hearing. It also found that because Employee may not have received the notice, *Andrew XI* gave him the opportunity to be heard. (*Andrew XI*).

12) Employee's file does not include a petition dated August 2, 2025. (Agency file).

13) On August 15, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 25-0052 (August 15, 2025) (*Andrew XII*) cited §.108(c) and reiterated that benefits sought in Employee's first seven claims were "all suspended, forfeited and dismissed." It expressly warned Employee that benefits sought in his subsequent claims were "suspended by operation of law" until he cooperated with discovery "and may be forfeited." *Andrew XI* also warned Employee that if he continued to evade his deposition, he may not be allowed to testify at a merits hearing under §.054(d). (*Andrew XII*).

14) On August 21, 2025, Employee prepared a request for an order requiring Employer to reschedule his oral deposition that was scheduled for October 13, 2025, or allow him to proceed with his petition claiming "Workers['] Compensation Fraud." (Petition, August 21, 2025).

15) Employee did not file the August 21, 2025 petition for two months. (Agency file).

16) On September 10, 2025, Employer served Employee by email a notice stating it would take Employee's oral deposition via Zoom video "on **October 13, 2025, at 9:30 a.m.** (Pacific Daylight Time)." (Notice of Deposition, September 10, 2025; bold in original).

17) On September 19, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 25-0061 (September 19, 2025) (*Andrew XIII*), citing §108(c) decided that benefits sought in Employee's December 2, 2025 claim were "forfeited and dismissed" through September 19, 2025. *Andrew XIII*, "as an additional incentive" for him to comply with discovery orders, declined to dismiss Employee's unresolved petitions "yet." It found Employee's arguments "unconvincing" and "not credible." *Andrew XIII* again ordered Employee to sign and return releases and sit for his deposition, which the parties had scheduled for October 13, 2025. (*Andrew XIII*).

18) On October 13, 2025, at 9:40 AM, Holloway went on the record before a Veritext court reporter for Employee's deposition:

> Yes, this is Jeffrey Holloway at Holloway and Stires, representing the employer, Silver Bay Seafoods, LLC, and its workers' ompensation carrier, Liberty Insurance Company.
>
> We're here today to take the deposition of the employee, Johnny Andrew, pursuant to the notice of deposition that was served on him at his address of record on September 10, 2025.
>
> The deposition was scheduled to start at 9:30 a.m. Pacific Daylight Time. It is now 9:41 a.m., and Mr. Andrew has not appeared. We have received no phone calls in our office indicating his inability to attend, or that he was having any sort of technical difficulties.
>
> We will continue this deposition and pursue all remedies, including possible dismissal of this case, before the Alaska Workers' Compensation Board. Off record.

The "Deposition Officer" gave his certification:

> 1 CERTIFICATE OF DEPOSITION OFFICER
> 2 I, ARTHUR VO, the officer before whom the
> 3 foregoing proceedings were taken, do hereby certify that
> 4 any witness(es) in the foregoing proceedings, prior to
> 5 testifying, were duly sworn; that the proceedings were
> 6 recorded by me and thereafter reduced to typewriting by
> 7 a qualified transcriptionist; that said digital audio
> 8 recording of said proceedings are a true and accurate
> 9 record to the best of my knowledge, skills, and ability;
> 10 that I am neither counsel for, related to, nor employed
> 11 by any of the parties to the action in which this was
> 12 taken; and, further, that I am not a relative or
> 13 employee of any counsel or attorney employed by the
> 14 parties hereto, nor financially or otherwise interested
> 15 in the outcome of this action.
>
> 16 [/s/]
>
> 17 ARTHUR VO
> 18 Notary Public in and for the
> 19 State of California (Statement on the Record: Deposition of Johnny Andrew, October 13, 2025).

The transcriber also added her certification:

> 1 CERTIFICATE OF TRANSCRIBER
> 2 I, DONNA DECKER, do hereby certify that this
> 3 transcript was prepared from the digital audio recording
> 4 of the foregoing proceeding, that said transcript is a
> 5 true and accurate record of the proceedings to the best
> 6 of my knowledge, skills, and ability; that I am neither
> 7 counsel for, related to, nor employed by any of the
> 8 parties to the action in which this was taken; and,
> 9 further, that I am not a relative or employee of any
> 10 counsel or attorney employed by the parties hereto, nor
> 11 financially or otherwise interested in the outcome of
> 12 this action.
> Date: October 25, 2025
> . . . .
>
> [/s/]
> Donna Decker (Statement on the Record: Deposition of Johnny Andrew, October 13, 2025).

19) On October 20, 2025, Employer sought an order dismissing Employee's claims and petitions, expressly requesting:

> The employer petitions for an order dismissing all remaining claims and petitions filed by the employee. The ER seeks an order that all claims and petitions are dismissed with prejudice, and that EE cannot file any further claims or petitions. EE refused to attend his 10/13/25 deposition despite orders from the Board. ER seeks an order for EE to pay all costs and fees due to refusal. (Petition, October 20, 2025).

20) On October 21, 2025, the parties appeared telephonically before a Board designee. The designee recorded that the four "discovery releases noted in D&O #25-0061 have been signed by Employee and returned to Employer representative." However:

> Employer representative advised that Employee's deposition was scheduled for 10/13/2025 and Employee did not appear. Employee advised that he did sign in and appear after downloading the app and it was Employer representative that did not appear. Employee advised that he will be filing a petition to compel Employer representative to reschedule the deposition shortly. (Prehearing Conference Summary, October 21, 2025).

21) On October 21, 2025, in a document dated August 21, 2025, Employee filed and served a petition to "Compel Discovery," to "Reschedule October 13, 2025 Deposition or let Employee proceed with Petition for Workers['] Compensation Fraud." (Petition, August 21, 2025).

22) On November 10, 2025, Employer opposed Employee's "October 22, 2025" [sic] petition:

> The employee's October 22, 2025, [sic] petition is nonsense and filed in bad faith. The employee has engaged in gameplaying and refused to attend his deposition on October 13, 2025, despite orders from the Board. Setting that aside, the employee has no standing to request the Board to order the employee [sic] to reschedule a deposition. It is within the employer's discretion to schedule a deposition of the employee under Civil Rule 30.
>
> The October 22, 2025, [sic] petition should be DENIED because it seeks no actual relief that can be granted by the Board. (Opposition to Employee's October 22, 2025, [sic] Petition, November 10, 2025).

23) On November 25, 2025, the parties appeared telephonically before a Board designee. The designee scheduled Employer's October 20, 2025 petition to dismiss and Employee's August 21, 2025 (incorrectly dated "August 2, 2025") petition to compel his deposition rescheduling, for a January 15, 2026 oral hearing. The designee directed the parties to file evidence by December 26, 2025, and witness lists and briefs by January 8, 2026, in accordance with the applicable regulations. The Division served the summary on the parties at their addresses of record on this date by first-class mail. (Prehearing Conference Summary, November 25, 2025).

24) Two working days before January 15, 2026, was January 13, 2026. Five working days before January 15, 2026, was January 8, 2026. Twenty calendar days before January 15, 2026, was December 26, 2026. (Observations).

25) On December 16, 2025, Holloway signed, filed and served an affidavit stating:

> (1) On October 13, 2025, 0.60 hours of attorney time was billed to Liberty Mutual Insurance Company for attorney attendance at the properly noticed deposition of the employee.
> (2) On June 30, 2023, 4.00 hours of attorney time was billed to Liberty Mutual Insurance Company for attorney travel to Los Angeles to attend a properly noticed deposition of the employee.
> (3) On June 30, 2023, 1.20 hours of attorney time was billed to Liberty Mutual Insurance Company for attorney attendance at the properly noticed deposition of the employee.

> (4) On July 1, 2023, 4.00 hours were billed to Liberty Mutual insurance Company for attorney travel back to San Diego after the employee's non-appearance at the properly noticed deposition.
> (5) On October 27, 2025, Veritext Legal Solutions issued to Liberty Mutual Insurance an invoice for services rendered for non-appearance deposition in the amount of $645.00.
> (6) On July 24, 2023, Esquire Deposition Solutions issued to Liberty Mutual insurance an invoice for services rendered from non-appearance deposition the amount of $125.00.
> (7) Travel costs in the amount of $604.13 were incurred and billed to Liberty Mutual Insurance Company, which included $83.84 for mileage, due to attorney travel for the deposition of the employee on June 30, 2023. (Affidavit of Counsel, December 16, 2025).

Holloway's hourly attorney fee rate was not provided. (Observation).

26) On December 30, 2025, Employee filed and served various documents he stated were "for January 8th 2026 Hearing," which the Workers' Compensation Division (Division) treated as his hearing brief: (1) the first document was his "oral argument." It did not address any issue set for this hearing; (2) the second document, dated December 29, 2025, titled "Notice of Intent to Rely," listed evidence upon which Employee wanted to rely, but again did not address the issues set for hearing; (3) the third document, called "Proposed Order: Finding OF" [sic] also addressed Employee's claim rather than the scheduled issues for hearing; (4) the fourth document, named "Claimant's Memorandum OF [sic] Points and Authorities," likewise addressed claim-related issues; (5) the fifth document titled "Claimant's Exhibit List for Hearing," included a list of exhibits, and attached numbered exhibits mostly inapplicable to the issues in the instant hearing. However, three exhibits, "Exhibit #11 Notice of Deposition Oct 13, 2025 9:30 AM Employee was there at 9:38 AM," "Exhibit #12 new Zoom sign-in Detected on 10/13/2025 9:38 AM," and "Exhibit #13 SD-7598126 Johnny Andrew versus Silver Bay [S]eafood LLC scheduled for 8:30 AM this was another attempt of many to have my claim dismissed for missing a deposition[;] maybe the board can find out which was the appropriate time," are relevant to the instant hearing. The attached Exhibit #11 was Employer's September 10, 2025 "Notice of Deposition," which stated Employer would take Employee's oral deposition via Zoom on "**October 13, 2025, at 9:30 a.m.** (Pacific Daylight Time)" [bold in original]. The attached Exhibit #12 was a Zoom login detection note stating, "We noticed a new sign-in to your Zoom account, [email address redacted for privacy]." The time was "10/13/2025 09:38 AM (13 days ago)," and the location was

"Phoenix, Arizona, United States." The attached Exhibit #13 was a photograph of what is purported to be a "Veritext" waiting room in Employee's case stating "Scheduled: 8:30 AM," which says, "Waiting for the host to start the meeting." A partially visible message advises Employee to "stand by, the meeting host will let you in soon." (Claimant's Oral Argument for Hearing January 8, 2026 [sic], December 30, 2025).

27) On January 5, 2026, Employer filed and served a request to cross-examine the authors of the two photographs of "alleged emails and logins allegedly from ZOOM" attached to Employee's December 30, 2025 filing addressed in the immediately preceding factual finding. It asserted its right to cross-examine the persons who authored the information depicted on the images. (Request for Cross-Examination, January 5, 2026).

28) On January 5, 2026, Employee filed and served an "Urgent Request" for a continuance of the January 15, 2026 hearing. The Division treated this as a petition. Employee cited as "Good Cause" for his request: (1) he received "new evidence" on December 30, 2025, four days after the 20-day deadline for filing evidence had passed; and (2) a "Service Error" that Employee considered a "Due Process" violation regarding a 2023 document. Employee attached exhibits to his request: (Ex. #1) an envelope from Holloway's office to Employee's California address of record postmarked December 22, 2025; (Ex. #2) a December 16, 2025 San Diego, CA notary certificate signed by Becca Sheldon stating that Holloway appeared before her on that date; (Ex. #3) a USPS return receipt "green card" for an item addressed to Employee at his California address, with no date but including the handwritten notation in the "Received By" box, stating "In mailbox"; (Ex. #4) a USPS Tracking Plus form for an item that left the Anchorage Alaska Distribution Center on May 6, 2025, at 10:52 PM, was "In transit to next facility" on May 8, 2025, arrived at a USPS Regional Facility in Los Angeles, CA, on May 9, 2025, at 8:53 AM, and was delivered on May 10, 2025, at 3:51 PM to ZIP Code 10047, which is a New York ZIP code; (Ex. #5) a December 24, 2025 "Certificate of Service" related to a "Notice of Intent to Rely" signed by Sheldon showing service on Employee at his Los Angeles, CA address; (Ex. #6) a Glenmark Hotel invoice for Holloway for his stay at that hotel beginning June 30, 2023, and ending July 1, 2023; (Ex. #7) page 2 of the September 10, 2025 Veritext Legal Solutions deposition transcript from Employee's scheduled deposition that date wherein Holloway stated that it was 9:41 AM and Employee's deposition was scheduled to begin at 9:30 AM Pacific Daylight Time, but he did not appear and had not called or indicated he had any technical difficulties; (Ex. #8) an October 26, 2025

photograph of a laptop screen showing a "New Zoom Sign-in Detected" message to Employee on October 13, 2025, telling him there had been a sign-in to his Zoom account on that date at 9:38 AM, in "Phoenix, Arizona, United States"; (Ex. #9) a January 1, 2026 print-out from Employee's Gmail account showing he emailed Holloway's office on June 26, 2023 the message, "Cancel June 30, 2023 deposition"; and (Ex. #10) another January 1, 2026 print-out from Employee's Gmail account showing the Division emailed him a message on June 26, 2023, stating the Division had received his June 26, 2023 email. Exhibits #1 through #6 were not associated with any documents to identify to what they were attached. (Urgent Request for Continuation #201810619 Jan 15.2026, January 5, 2026; observations).

29) On January 5, 2026, in a document dated January 4, 2026, Employee also filed and served a petition seeking to strike "Certificate of Non-Appearance." He also asked for an order admitting his "Zoom logs," for alleged "good cause." Employee also attached exhibits to this petition including many he filed at other times. One document was Employee's "Oral Argument" for the January 15, 2026 hearing addressing the October 13, 2025 deposition issue, which appears to be partially created by artificial intelligence; it is included here as written:

> January 15th, 2026, Oral Argument regarding the missed October 13, 2025, Deposition
>
> Based on your evidence, the attorney Holloway was likely in a proprietary Veritext Virtual room while you were in the zoom room you were explicitly told to use
>
> oral argument outlines the two-room trap defense
>
> 1Introduction good faith participation members of the Board the employers claimed that I refused to attend the October 13th, 2025, that position is factually false the evidence shows that was present punctual and technologically prepared the issue was not my absence, but a technical failure caused by the employer's use of two conflicting digital platforms
>
> 2The chronology of compliance the 9:38 AM fact
> The instructions the notice I received on October 10th stated participation via zoom is required it did not say Veritext virtual was required it specified zoom
>
> The check-in on the day of the deposition I received an e-mail at 9:30 AM containing 2 separate links one for Veritext virtual and one for zoom following the written instructions in my notice, I selected the zoom link

> The proof of presence I successfully checked into the zoom meeting at 9:38 AM which was 22 minutes before the schedule start, I have digital records confirming this check in time I sat in that room waiting for the attorney to appear
>
> 3Rebutting Holloways on the record statement
> The Ghost Room Mr. Holloway went on the record at 9:41 AM claiming I was not there. However he failed to disclose which room he was in, it is now clear that while I was in Zoom room per the instructions, he was likely in the Veritext Virtual room. He was in the wrong place, not me
>
> The Time Zone Fact: There was no time zone confusion on October 13th, 2025, California PDT and Arizona (MST) we're on the exact same time (UTC 7) when he said it was 941 AM my clock said 9:41 AM and I was already in the Zoom room for three minutes'
> 4 Failure to Coordinate (The Waiting Room' issue)
>
> Vertex Logistics: Veritext Virtual is a proprietary platform that often acts as a waiting room for Zoom if Mr. Holloway did not admit me from the waiting room or if he stayed in the vertex portal and never launched the zoom session he effectively locked the door while I was standing on the porch rebuttal to failure to call Mr. Holloway claims I didn't phone in However the instruction said to call if I did not receive the link I did receive the link I did use the link and I was in the room I had no reason to call tech support at 9:41 AM because I was exactly where the notice told me to be
>
> The smoking gun exhibits to reference one the October 10th notice highlight the sentence participation via Zoom is required
>
> 2 The 9:30 AM e-mail: Show the two separate links to prove the confusion was created by their service provider Veritext
>
> 3 year Zoom log your 9:38 AM check-in timestamp is your absolute proof of intent to participate.
>
> Key Closing Point:
>
> The Employer is attempting to use a technical glitch one created by their own choice of vendor to claim my non-compliant. Under AS 23.30.135 this Board favors deciding cases on The truth the truth is that I was in the Zoom room at 9:38 AM if Mr. Holloway couldn't find me it's because he wasn't looking in the Zoom room he told me to use.

Employee also attached a "motion" to accept his other attached evidence after the 20-day deadline, claiming Employer failed to provide "the scheduling order" with filing deadlines for the January 15, 2026 hearing, and on grounds the evidence was compelling to rebut Employer's contention

that he failed to appear by Zoom for his October 13, 2025 deposition. He claimed that Employer had all his supporting evidence since October 13, 2025, so it was not prejudiced or surprised by his evidence. Employee added that fairness and due process supported his request. He also attached the October 13, 2025 deposition notice, a Notice of Intent to Rely citing the deposition notice, Zoom sign-in notices, "Veritext Scheduled: 8:30 am," and the October 13, 2025 deposition transcript, which were all also attached. (Petition, January 4, 2026, with attachments).

30) On January 5, 2026, Employee also filed and served "Supplemental Exhibits" for the January 15, 2026 hearing to support his unspecified "Petition for Modification" under AS 23.30.130:

> Please file the attached documents as Supplemental Exhibits for the hearing scheduled for January 15th, 2026. These records directly support my Petition for Modification AS 23.30.130 and rebuked the employer's claims of non-cooperation
>
> Exhibit 4 E-mail to the Board and Mr. Holloway dated June 26, 2023, providing 4-day advance notice of cancellation for the June 30th deposition
>
> Exhibit 5 follow up e-mail communication from June 2025 confirming the cancellation
>
> [E]xhibit 6: Copy of the $436 hotel bill this expense was incurred by Mr. Holloway despite receiving four days' notice of cancellation I dispute this cost as unreasonable and manufactured Under 8 AAC 45.145. (SUPPLEMENTAL EXHIBIT #201810619 For Jan 15, 2026, January 5, 2026).

31) On January 5, 2026, Employer filed and served a request to strike Employee's late-filed evidence. It stated:

> The employer petitions for an order striking all late-filed evidence under 8 AAC 45.120. Non-medical evidence was due to be filed no later than 12/26/25. The employee did not file his non-medical evidence until 12/29/25, notwithstanding the deadlines set forth in the prehearing summary dated 11/25/25. (Petition, January 5, 2026).

32) On January 8, 2026, the parties appeared telephonically before a Board designee. The designee elected to add Employee's January 5, 2026 petition to continue or vacate the January 15, 2026 hearing, and Employer's January 5, 2026 petition to strike, as issues for hearing. He did not change the previously established deadline for filing evidence, witness lists or briefs. Employee stated he wanted a hearing continuance to "ensure process and to correct mistakes" and cited alleged errors in payment calculations. The summary stated:

> An Oral Hearing is to be held on 1/15/2026, for approximately 2 hours on which date they will be on a trailing calendar. The parties are ordered to serve and file witness lists and legal memoranda by 1/8/2026 and evidence by 12/26/2025 in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120. . . . .
>
> Mr. Andrew further stated that "regarding the 15th . . . I received a 10/22/2025 letter regarding the 10/13/2025 deposition with a certificate of service dated 12/24/2025 and this is a fraud/backdating issue. Holloway went on record at 9:40 am while I was on Zoom at 9:38 am for the 10/13/2025 deposition. Holloway saying I wasn't there is a violation of my due process."
>
> Mr. Andrew further advised that "I have been trapped by fraud, I don't have an overpay, letting this Hearing go forward is a violation of my due process. Per AS 23.30.130 my year is not up and I want a Hearing on my Workers[']Compensation Claims."

The Division served the summary on the parties at their record addresses by first-class mail. (Prehearing Conference Summary, January 8, 2026).

33) On January 8, 2026, Employee filed and served evidence, "For January 15th 2026 hearing written argument." Employee stated:

> The Employer's representative provided the Employee with the date and what was believed to be the correct time for the Zoom deposition. However, the notice from the Employer indicated an incorrect time, which the Employee relied upon to attend the deposition.
>
> On the day of the scheduled deposition, the Employee attended at 9:38 AM, after a brief delay required to download the necessary Zoom application. Upon logging into the meeting, the employee discovered that the actual deposition time had been set for 8:30 AM -- over an hour earlier than the time provided by the Employer. At the time the Employee joined, no other participants were present in the Zoom meeting. The Employee's failure to appear at the correct time is directly caused by the erroneous information contained in the Employer's notice.

Included in this document were Employee's arguments concerning due process and proper notice. He contended his actions clearly showed his "intent to comply with the AWCB order" requiring him to sit for his deposition. Employee further contended that Employer should not benefit from its defective deposition notice. He sought an order finding that the deposition notice was defective, his delayed attendance was justifiable, and Employer's request for sanctions be denied and the

deposition re-noticed with a correct date and time. (Statement and Legal Argument Regarding Deposition Attendance, January 8, 2026).

34) On January 8, 2026, Employer filed and served its brief for the January 15, 2026 hearing. Although Employer attached to its hearing brief several releases that Employee signed in September and December 2025, it contended Employee still had not signed the releases the Board ordered him to sign even after a "three-year delay." Moreover, Employer argued that Employee did not attend the Zoom deposition, did not contact Employer's lawyer's office on the day of or any day thereafter, or indicate that he had logged into Zoom, and was waiting or was having problems attending the deposition. It argued that within one week, Employee filed at least five "ridiculous, nonsensical, harassing, annoying, pernicious, and frivolous petitions" to which Employer had not responded. Employer contended, "Enough is enough." It argued that Employee continued to "gaslight" the Board and has no intention of ever cooperating with discovery orders. Employer argued that the Board has authority to dismiss future claims "with prejudice" because, unlike the situation where an injured worker failed to act and missed a statute of limitations, Employee had not acted in good faith and affirmatively and intentionally acted to continue "the same bad faith tactics." It contended that such intentional behavior demanded "a different, and more severe, punishment than dismissal of a claim for failing to act." In Employer's view, Employee needed "to be prohibited from filing anything further," and the Board should act to end this "*Beowulf* of a claim once and for all." Employer sought an order dismissing Employee's claims and petitions "with prejudice." Alternately, Employer contended:

> Should the Board not dismiss all claims and petitions <u>with prejudice</u> and allow the torture to continue, the employer opposes any order that it must re-depose the employee. Whether to conduct a deposition is within the discretion of the employer, and the Board has no authority to order the employer -- or frankly any party in a workers' compensation case -- to *conduct* discovery. It only has the authority to order a party to *respond* to a discovery request (emphasis in original).

Lastly, Employer sought an award of attorney fees and costs based on Employee's refusal to cooperate at multiple depositions. It justified this request given Employee's alleged "egregious and bad faith conduct in refusing to cooperate with discovery." (Hearing Brief of Silver Bay Seafoods, LLC, January 8, 2026).

35) At hearing on January 15, 2026, Employee testified as follows: Addressing his request for a continuance, Employee said he received Employer's Notice of Intent to Rely (NOI) dated

December 24, 2025, on December 30, 2025. He said, he "did not get the information in time to respond to this information." Employee stated that the envelope in which this NOI came was post-marked December 22, 2025, so he concluded that someone had back-dated the envelope to meet the filing deadline. Nevertheless, he added that he did not really need to respond to the information because he was present at the Zoom deposition just like he was on the current hearing date. While Employee's testimony was not clear, after the designated chair found the subject NOI in the agency file and named the documents attached, Employee appeared to focus his objection on the October 13, 2025 deposition transcript, which demonstrated that Employee did not appear at that deposition. He took issue with Holloway's statement made on the record at the deposition stating that Holloway had gone on the record by 9:40 AM on October 13, 2025, but Employee had not appeared. Employee stated Holloway failed to say "where he [Holloway] was" when he made that statement. He testified that Holloway had two virtual "rooms, one in Zoom and one in Veritext," and Employee was "knocking on the door" to attend the deposition, but Holloway would not let him in. Redirected back to the continuance issue, Employee stated that the material attached to Employer's NOI was filed untimely. When asked when he received this NOI, Employee was less certain and stated it was "a little bit after the holiday . . . maybe, like, the 27th, 28th, or something like that." In addition to the perceived service irregularity, Employee added that he disagreed with Holloway's statement made in the October 13, 2025 transcript. (Record).

36) Employee clarified that the response he wanted to file to Employer's NOI was the evidence attached to his continuance request, Exhibit 7, allegedly showing pictures of his laptop screen allegedly demonstrating that he logged into the Zoom deposition at 9:38 AM, and was in Veritext at 8:30 AM. Consequently, he contended that Employer does not want his evidence admitted, but at the same time Employer's evidence was untimely as well. He wanted all his exhibits to be considered. This was why he wanted a hearing continuance. (Record).

37) When asked about the discrepancy between his address of record in his agency file, which is in California, and his current location in Arizona, Employee said he "just moved" to Arizona. When asked when he moved, Employee equivocated and said, "maybe months back." He quickly added he "was not in Arizona" when Holloway mailed the NOI to him, "I just got here, officially." Employee had just filed a change of address notice with the Division "the other day." He wants his mail sent to him in Arizona, as Los Angeles is Employee's father's home. (Record).

38) On the continuance issue, Employer contended the December 22, 2025 service certificate pertained to its answer and controversion, and Employee was mismatching those documents and service certificates. Employer mailed the answer and controversion to Employee at his record address in the envelope postmarked December 22, 2025. It filed and served the NOI two days later on December 24, 2025. Employer further contended that the agency record shows it served three documents on three separate days in three separate envelopes. Employer contended there was no basis to continue the hearing. (Record).

39) Addressing Employee's late-filed documents, Employer clarified that the documents to which it objected were the two photographs allegedly showing Employee's laptop screen and notices from Veritext regarding the October 13, 2025 deposition. (Record).

40) Addressing Employer's petition to strike these two photographs, Employee testified that he was present on October 13, 2025, in the Zoom waiting room and was waiting to be admitted to his deposition. When asked to verify the photographs, Employee stated that one photograph, his Exhibit 8, shows he was in the waiting room for his October 13, 2025 deposition. He said this proves he signed-in on that date. Employee tried to authenticate this image and stated that although there was no identifying information to connect the picture to this case, the proof that it was connected was the October 13, 2025 date, which was the date for his deposition. He claimed he could not be in the waiting room without a password. Employee also testified for the first time that he had given a deposition in this case, but when asked for details, he could not provide a specific date or place or say by whom his deposition was taken. He could not say if it was Holloway who took his deposition. Employee further testified that he took the two photographs at issue with his cellphone. When asked why he took the photos, he said he expected that he would have to prove he was there because he was "dealing with Holloway." Employee said he knew Holloway would "be up to no good" and would ask that his claims be dismissed. When asked if he took the picture of the purported deposition waiting-room screen at 12:06 PM on October 26, 2025, as shown on the bottom-right-hand-corner of the computer screen, Employee testified that October 26, 2025 was not the date he took the photograph. He said, "The day I took that picture is that day on that, on that Zoom paper right there." When the designated chair pointed out that the picture he took of the image on the laptop screen specifically stated the alleged Zoom meeting was "(13 days ago)," which would mean the picture of the screen was taken on October 26, 2025, as stated on the picture itself, Employee chuckled nervously and stated, "I do not know about that."

He insisted that he was present in the waiting room on October 13, 2025. He averred he was not a "tech expert" and simply took the picture "to prove that [he] was there." (Record).

41) When asked if he could have filed the pictures he took of his laptop screen on October 26, 2025, or by at least October 27, 2025, Employee said he believed he may have, but did not say when. Employee insisted there were two virtual rooms on October 13, 2025 for his deposition -- one in Zoom and one in Veritext -- and he was in Zoom. When Employee reviewed the second photograph with the words "SD 7598126 Andrew Johnny v. Silver Bay Seafoods, LLC, scheduled 8:30 AM, waiting for the host to start the meeting," he stated this was the other photograph he took, but he did not say when he took it. Employee testified that Employer provided him with two different deposition times and he showed up for the 9:30 AM time as directed in the deposition notice. However, he further testified that this picture did not show he had signed in on Zoom for his deposition on October 13, 2025. Rather, he stated that Zoom and Veritext are two different things. He declined to state that this picture evidenced him signing in for his deposition; he testified this was "another room that they had." Employee said when he could not "find them," presumably meaning Holloway, he went over to Veritext and stumbled upon this screen. That is when he said he found out there were "two rooms." Employee further testified that when he attempted to sign-in there were two rooms from which he could choose -- Zoom and Veritext. He chose Zoom because that is where he was told to go. Employee said he had to download the Zoom app and it took a few minutes so he did not actually sign into Zoom until 9:38 AM. Employee said it never occurred to him that Employer might have thought he was not going to show up because he signed into Zoom eight minutes late. Employee further clarified that to him, attending his deposition was like going to a courtroom. He offered this analogy -- if you have an 8:30 AM court appointment, and you arrive at the courthouse at 8:30 AM, you still have to find out where the elevator is and which courtroom your hearing is in and then walk to that court room. "It might take a couple of minutes." He implied he considered this "on time." (Record).

42) On the striking evidence issue, Employer argued that all non-medical evidence was due no later than December 26, 2025, as reflected in the November 25, 2025 prehearing conference summary. It contended Employee had "fabricated" his two photographs. Further, Employee had no excuse for not filing and serving these photographs in October 2025, well before the December 26, 2025 evidence-filing deadline. Once he received Employer's evidence proving he had not appeared for his October 13, 2025 deposition, Employee responded by fabricating these

photographs to rebut that evidence. Moreover, Employer argued that each photograph contained double hearsay and were not admissible for that additional reason. Further, the photographs were not complete pictures. Employer noted there is no credible verification as to who created these documents and from where they came. It contended that the documents must be stricken from evidence and not considered at the hearing. (Record).

43) After reviewing the evidence and the parties' arguments, the panel deliberated and orally denied Employee's request for a continuance. The panel found no basis under 8 AAC 45.074(b) to continue the hearing. It orally granted Employer's petition to strike the two photographs at issue. The panel based this decision on the fact that one photograph showed Employee had that picture by at least October 26, 2025, and he testified that he knew beforehand that he had to photograph these documents to prove he was present for the deposition. The second photograph had no date to show when it was taken. But whether the second photo was taken on October 13, 2025, as Employee testified, or on October 26, 2025, when the first photo was taken, Employee still had months in which he could have filed and served those photos. The panel concluded that the photos, even if admitted as evidence, would not help his situation. (Record).

44) At hearing, the parties stipulated that the November 25, 2025 Prehearing Conference Summary under "Issues Identified" for the January 15, 2026 hearing, had a typographical error. They agreed that there is no "8/2/2025" petition to compel rescheduling Employee's deposition, but there is an August 21, 2025 petition requesting that relief. (Record).

45) When asked why he waited until October 21, 2025 to file his August 21, 2025 petition, Employee explained that the parties had attended a prehearing conference on August 20, 2025, and at that time Employer was noncommittal on whether it would reschedule his deposition. When pressed to explain why he waited until October to file his August 21, 2025 petition, Employee did not know but pointed out that he "has another life." He admitted he had received Employer's deposition notice for the October 13, 2025 Zoom deposition. He received that notice through email from Holloway's office along with four releases that he signed and returned. Employee had no questions about the deposition notice when he received it. He also received the Zoom link for the deposition around October 12, 2025, and had no questions about it either. Employee had used Zoom before and appeared at past Board hearings by Zoom. (Record).

46) Employee was using the same laptop during the current hearing that he had used in previous Zoom hearings. He was in Phoenix, Arizona on October 13, 2025. Employee affirmed that

Arizona does not change its time for daylight savings. He was very conscious of the time differences between Arizona and California. Employee testified that he would have had to login at 11:30 AM Arizona time to attend a 9:30 AM Pacific Daylight Time deposition in California. Employee stated he logged onto Zoom at 9:38 AM, stayed on Zoom for about 20 minutes, and then " went over" to Veritext. There was "no question" in Employee's mind that when he saw the 8:30 AM scheduled time on the Veritext screen that this was an intentional effort to confuse him. Nevertheless, he said the 8:30 AM time did not bother him because he was on Zoom where he was supposed to be at 9:38 AM. In total, Employee testified that he remained in the Zoom and Veritext "rooms" from 9:38 AM to about 10:15 AM. (Record).

47) Employee testified that it never occurred to him, while he was allegedly waiting to be admitted to his deposition, to call Holloway or contact the court reporter and advise them that he was waiting to get admitted to the Zoom deposition. He was "where [he] was supposed to be." If Employer was having some technological difficulty with Zoom, it should have called him, not the other way around. "Of course," Employee knew that Employer was going to try to have his claims dismissed again if he did not show up for this deposition. When asked if, during the entire time he was allegedly logged into the Zoom deposition, he tried to contact anybody, Employee stated "no," the "writing was on the wall." When asked why he thought Holloway was in charge of admitting him into the deposition, Employee testified that he understood there was a "host." He thought Holloway was the host because "he was the one doing the deposition." Employee did not think he should be penalized for following instructions. The first time Employee mentioned to anyone involved in this case that he was present on October 13, 2025, but no one admitted him into the deposition, was on October 21, 2025 at the prehearing conference. (Record).

48) Regarding his August 21, 2025 petition to compel Employer to reschedule his deposition, Employee testified that "this has all been a trap." Employer was trying to get him "locked in" with this "nonappearance thing." Employer wants to dismiss his claims. Employee just wants to do the deposition and "be done with it." He testified that he is not "playing games" and he has a vested interest in his case. Employer is "harassing" him with this "deposition thing." If his case is heard, "somebody's going to be in trouble." Employee referenced a previous issue when the Division served notice for a hearing, which he alleged was delivered to a ZIP Code in New York, according to the USPS. In short, he reiterated that he was where he was supposed to be at 9:38 AM on Zoom for his deposition. (Record).

49) Employer contended that in its past 13 decisions in this matter, the Board had found several occasions where Employee was not credible. It contended it had been dragged through this "Groundhog Day" case for eight years. Employee had obstructed and resisted discovery at every turn. Employer asked the Board for an order dismissing all claims and petitions "with prejudice," and wanted a litigation-ending sanction. It wanted an order stating that Employee can never file another thing with the Division in this matter. Employer followed the Board's previous order and even mutually agreed with Employee on the October 13, 2025 deposition date. (Record).

50) Employer took issue with Employee's testimony that there were two virtual "rooms" for his deposition; it argued there were not. It cited to the Board's use of Zoom as the official record for its hearings and its familiarity with that method. Holloway, as an "officer of the court," explained that Veritext is a national court reporting agency. His client uses that service for depositions. Holloway's office arranged with Veritext for the October 13, 2025 deposition. Veritext was, and is always, the "host" for a Zoom deposition. Holloway's office had nothing to do with controlling the Zoom deposition. The court reporter with Veritext ran the Zoom meeting and admitted parties. Veritext admitted Holloway, just like any other person, into the deposition. He logged in at 9:20 AM on October 13, 2025. Nonetheless, Employer waited until 9:40 AM to go on the record and state that Employee had not appeared. Even assuming Employee had logged onto Zoom as he stated, Employer contended that he did not participate in the deposition in "good faith" as ordered. Employee never attempted to contact Holloway the day of or in the week following his non-appearance at the October 13, 2025 deposition. Employer argued that if Employee really wanted to participate in good faith, and if he really had a problem being admitted into the deposition, he would have contacted Holloway or the court reporter and tried to get in. Employer contended he was lying about his efforts on October 13, 2025. It spent substantial funds attempting to depose Employee. Holloway stated that the reason there was an 8:30 AM start time listed on the Veritext screen was because Veritext always uses the time for the jurisdiction for which the deposition was being taken. Therefore, Veritext would use 8:30 AM Alaska time for a 9:30 AM California deposition. Employer further argued that Employee did not have to download the Zoom application because if he had simply clicked on the provided link it would have taken him directly to the deposition without further action. (Record).

51) Employer sought the "dismissal with prejudice" sanction because Employee had willfully resisted discovery, including not appearing for three depositions. It cited *McKenzie*, which had

relied on Civil Rule 37 for support. Employer also cited *Alaska Transportation* and *Whittle* Alaska Supreme Court civil cases as support for its request. It argued that Employee refused to take any responsibility for not appearing for his depositions. He made no attempt to connect to his last deposition. Employee only raised the current issue after Employer filed its new petition to dismiss his claims. It contended that Employee continued to give Employer and the Board the "middle finger." He also ignored other Board orders that required him not to repetitively file the same documents. Employer contended Employee continued to "play games." It argued that the only remedy in this case is to "dismiss with prejudice." Employer also sought reimbursement for attorney fees and costs for attempting to obtain his deposition. (Record).

52) When asked to cite to a statute in the Act to justify dismissing an injured worker's claims "with prejudice," Employer cited §.108(c). It did not see why there should be a distinction between an injured worker in a workers' compensation claim who does not comply with discovery orders and a civil litigant in court who fails to cooperate with discovery. In its view, the "dismissal with prejudice" sanction should apply equally to both. Employer also referred to §.001(1), which requires the Act be interpreted to ensure "quick, fair and efficient" delivery of benefits at a "reasonable cost to employers." It argued that there is nothing quick or efficient about this case because Employee repeatedly failed to cooperate with discovery orders. Employer noted that dismissing all of Employee's prior claims did nothing to compel him to cooperate with discovery and give his deposition. In its view, although no statute in the Act specifically states that the Board can dismiss a claim "with prejudice," if the Board applied §.001(1) in conjunction with §.108(c) and Civil Rule 37, Employer argued there was nothing in the Act that said the Board could not sanction a party with a litigation-ending dismissal. (Record).

53) The designated chair cited §.012(b), the former statute that "discharges the liability of the employer" for compensation if the Board approves a settlement. The chair noted that no other statute in the Act "discharges" the liability of an employer. Employer argued that it sought an order "expanding sanctions" in the Act to create litigation-ending dismissals "with prejudice." Moreover, it cited §.001(4), which provided all parties "due process," and argued that if Employee refused to provide discovery, Employer was denied due process. When asked why the proper sanction should not fall under §.054(d), which could prevent Employee from testifying at hearing because he failed to provide his deposition, Employer stated that lesser-imposed sanctions previously ordered did not work. Moreover, it argued that Employee's failure to allow Employer

to depose him had prevented Employer from discovering information with which it could develop various affirmative defenses. For example, he may have worked for a different employer since his work injury and perhaps was not disabled during that time or perhaps reinjured his alleged work injury with Employer. Employer also drew a distinction between cases where the Alaska Supreme Court reversed Board decisions dismissing a party's claim under a statute of limitations violation. The person in those cases "failed to do something," while Employee affirmatively and willfully "refused" to do something. (Record).

54) In response, Employee stated he had not willfully refused to participate in his deposition. He insisted that Employer's "own evidence" shows that Holloway was in "Veritext" on October 13, 2025, and was not in Zoom. The designated chair reviewed the October 13, 2025 deposition transcript, and asked Employee to show him where in that document Holloway said he was in "Veritext." Employee clarified and stated the document did not say where Holloway was, which he believed supported his argument that Holloway was not in Zoom but was in "Veritext." He further asserted that he had "a paper" (that he could not locate) from Holloway, stating Holloway admitted he was in "Veritext" on the October 13, 2025 deposition date. Employee also argued that he would not be a "damn fool" and fail to show for his deposition and get his claims dismissed. Further explaining his position on why the first photograph showed October 26, 2025 on the computer screen in the lower-right-hand-corner, Employee stated that date was the date he "printed it out." He added that he is "not that dumb" to come "all this way" with his case to have it dismissed because he failed to go to a deposition. "Everything is a trap." Employee argued that if the Board dismissed his case, it would be a complete injustice. He suggested Employer reschedule his deposition and Employee could call into the Board and have the Board control the deposition as an impartial third-party. (Record).

55) Employee has filed to date 10 claims in this case. (Claims for Workers' Compensation Benefits, July 8, 2019, December 9, 2019, October 5, 2022, April 4, 2023, May 29, 2023, July 18, 2023, July 18, 2023, December 3, 2024, December 1, 2025, and December 31, 2025).

56) Zoom is the official record for Board hearings. (Experience; observations).

PRINCIPLES OF LAW

AS 01.10.040. Words and phrases; meaning of "including". . . .

> (b) When the words "includes" or "including" are used in a law, they shall be construed as though followed by the phrase "but not limited to."
>
> **AS 23.30.001. Legislative intent**. It is the intent of the legislature that
>
> > (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
> > (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> > . . . .
> >
> > (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The Board may base its decision on testimony, medical findings, evidence, "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler,* 747 P.2d 528, 533-34 (Alaska 1987).

Addressing statutory construction, *Croft v. Pan Alaska Trucking, Inc*., 820 P.2d 1064, 1066-67 (Alaska 1991) construed a statute allowing an employer to recover an overpayment from an injured worker. *Croft* held the statute provided "the exclusive remedy for an employer to recover overcompensation." The Court added, "In reaching this conclusion, we employ the principle of statutory construction *expressio unius est exclusio alterius.* The maxim establishes the inference that, where certain things are designated in a statute, 'all omissions should be understood as exclusions.' The maxim is one of longstanding application, and it is essentially an application of common sense and logic." *Croft* stated, "In the absence of any indication in the Act to the contrary, the inference we draw is that the inclusion of this specified remedy was intended to exclude other remedies. . . ." The Court stated, "The case for application of *expressio unius est exclusio alterius* is particularly compelling where, as here, the scheme is purely statutory and without a basis in the common law. Where a statutory scheme provides comprehensive and specific remedies, it 'implies that the legislature did not intend to allow further unenumerated remedies.'"

State, Dept. of Health & Social Services v. White, 529 P.3d 534, 540 (Alaska 2023) stated, "A statute is ambiguous when it 'is susceptible of two or more conflicting but reasonable meanings.'"

It added, "We have held that agency jurisdiction is derived from statutes and that agencies 'must find within the statute the authority for the exercise of any power they claim.'" *Id*. at 541.

The *res judicata* doctrine in civil actions will bar a party from relitigating an injury claim that is based on the same claims addressed in a prior complaint. *Williams v. Strong*, 557 P.3d 745 (Alaska 2024). By contrast, in a workers' compensation claim, *Bailey v. Texas Instruments*, 111 P.3d 321 (Alaska 2005) held dismissal of a claim under §.110(c) did not preclude an employee from filing a later claim for benefits incurred subsequent to dismissal of the prior claim.

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance**. . . .
>
> (c) . . . If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. . . .

Prior to AS 23.30.108's addition to the Alaska Workers' Compensation Act (Act) on July 1, 2000, "dismissal" decisions routinely declined to dismiss "with prejudice." For example: In *Millard v. Norm's Enterprises*, AWCB Dec. No. 85-0208 (July 19, 1985), the employer asked the Board to dismiss the employee's claim "with prejudice." The employee had never responded to discovery. His employer argued that the employee had failed to prosecute his claim, and it sought dismissal and associated attorney fees. *Millard* stated:

> The Alaska Workers' Compensation Act and its related regulations do not grant us authority to dismiss with prejudice; but the regulations do allow us to set a case for a hearing and to dismiss a claim without prejudice. 8 AAC 45.070(b), (c). Therefore, we believe it is appropriate to require the employee to request a rescheduling of the hearing in this case within the next 90 days. We find that if the employee has not requested a hearing within 90 days from the date of this decision, his claim shall be considered dismissed without prejudice.
>
> The employer also requests that it be reimbursed for its actual costs and attorney fees. However, the employer has not cited any authority by which we might grant such an award, and we are not aware of any. Accordingly, we deny the Petition for Costs and Attorney Fees.

Lindekugel v. Fluor Alaska, Inc., AWCB Dec. No. 94-0047 (March 8, 1994) (*Lindekugel I*) denied a worker's attempt to set-aside a 1983 oral stipulation and order that dismissed a claim against an

employer "with prejudice." Three parties had appeared at a hearing and the employee's lawyer stated a settlement had been reached with one employer. The second employer demanded a hearing or a discharge through a stipulated agreement to dismiss the claim against it "with prejudice." The employee's lawyer and the second employer's lawyer agreed and the hearing chair ordered, in respect to the second employer, "Dismiss ALPAC/INA with prejudice. . . ." The superior court affirmed on appeal in *Lindekugel II*.

In *Johnson v. Carr Gottstein Foods Co*., AWCB Dec. No. 96-0200 (May 16, 1996), parties represented by attorneys stipulated, at the claimant's request, to dismiss her claims "with prejudice." They entered this stipulation at hearing on the record. The Board granted the request orally at hearing and memorialized it differently later in a decision and order. The written decision cited the stipulation regulation and evaluated the facts. Based thereon, it "granted the party's request to dismiss the employee's claims." However, based on a *Lindekugel II* superior court decision, which *Johnson* said stated "stipulations to dismiss with prejudice are not binding unless they conform with AS 23.30.012 and 8 AAC 45.160," the *Johnson* decision dismissing the claim was not "with prejudice." *See Bush-Drago v. Wal-Mart, Inc., #2074*, AWCB Dec. No. 97-0219 (October 31, 1997) (*Johnson*, 96-0200, dismissed a claim but "did not however indicate that such dismissal was with prejudice.").

Even after AS 23.30.108(c) had been in effect for several years, decisions still dismissed claims but not expressly "with prejudice." For example, *Struzynski v. Manpower Inter. Inc*., AWCB Dec. No. 06-0120 (May 15, 2006) said:

> The employer filed a Petition to Dismiss on November 7, 2005, together with a supporting memorandum. In the memorandum, the employer argued the employee has repeatedly obstructed the employer's right to gather information concerning his claim and medical condition, and has failed to comply with our order. It argued . . . the employee's claim should be dismissed with prejudice.
> . . . .
>
> We find the employee agreed to attend the employer's medical examination. . . . In our October 27, 2005 Interlocutory Decision and Order, we specifically ordered the employee to cooperate with the examination by the employer's physician. The employee failed to comply with our order. In our April 10, 2006 Interlocutory Decision and Order, we again ordered the employee to cooperate with the

> examination by the employer's physician, giving a deadline, and warning the employee of dismissal of his claim if he failed to comply with the order. The evidence in the record indicates the employee has failed to comply with our April 10, 2006 order. We find the employee has willfully failed to comply with his agreement, and with our orders.
>
> AS 23.30.108(c) provides procedure and authority for us to control discovery and resolve discovery disputes. . . . In extreme cases, we have long determined we have the authority to dismiss claims if an employee willfully obstructs discovery.
>
> Based on our review of the record, we find the employee has willfully refused to cooperate with the examination, and has failed to comply with our orders. We find the employee's failure is egregious. Under AS 23.30.108(c), we will dismiss the employee's claim for benefits under the Alaska Workers' Compensation Act.

Eventually, Board decisions started using AS 23.30.108(c) as legal authority to dismiss workers' compensation claims "with prejudice." For example:

Zaragoza v. Trident Seafoods Corp., AWCB Dec. No. 06-0163 (June 29, 2006) addressed an employer's request to dismiss the employee's only claim, "with prejudice." The employee had refused to sign various releases and failed to attend his deposition. He claimed to have appeared at a hotel where the employer's attorney was to take his deposition, but claimed the attorney was not a guest at that place so the deposition did not occur. Finding the employee had refused to comply with its discovery orders, the Board found his failure egregious and dismissed his December 20, 2005 claim "with prejudice, under AS 23.30.108(c)."

Berean v. Coleman Bros. Timber Cutting, Inc., AWCB Dec. No. 07-0087 (April 17, 2007) addressed an employer's petition to dismiss the injured worker's sole claim "with prejudice." A Board designee had ordered the employee to sign and return releases. The employer had noticed his deposition, but the employee did not appear for it. At hearing, the employee failed to explain why he had not signed and returned releases or attended his deposition. The Board found the employee had willfully refused to cooperate "with the investigation" of his claim, and had "failed to comply with Board designee orders." Consequently, his December 20, 2005 claim for benefits was "denied and dismissed with prejudice, under AS 23.30.108(c)."

In *Bahr v. Job Ready, Inc*., AWCB Dec. No. 07-0327 (October 25, 2007) an injured worker failed to attend her twice-noticed deposition. At hearing, the claimant testified, "she cannot put her life on hold and stop things she is doing to attend a deposition scheduled by the employer." The employee asked the Board to dismiss her claim. Nonetheless, the Board orally ordered the clamant to attend a Board-ordered deposition and she stated she would not. Relying on guidance from Alaska Civil Rule 37(b)(3) and AS 23.30.108(c), *Bahr* "dismissed with prejudice."

In *Longenecker v. Colaska, Inc*., AWCB Dec. No. 08-0045 (March 7, 2008) the employer tried to take the employee's deposition three times but he failed to appear for each properly-noticed deposition. Likewise, the employee failed to attend two medical appointments to which he had previously agreed. After a hearing, the Board found the employee had continually "obstructed the investigation process." He often expressed a willingness to cooperate and then failed to follow through. Consequently, *Longenecker* dismissed "with prejudice" the employee's request for modification of a previous decision as well as his existing claim under AS 23.30.108(c).

Gilbert v. Asbestos Removal Specialists, Inc., AWCB Dec. No. 08-0150 (August 22, 2008) addressed a case where the issue was "shall the Board dismiss with prejudice the employee's November 23, 2007 claim for workers' compensation benefits for his failure to comply with the discovery orders issued . . . by the board's designee?" *Gilbert* cited AS 23.30.108(c) and in analyzing the matter stated, "Dismissal with prejudice as a sanction for failing to comply with the discovery process is disfavored in all but the most egregious circumstances." After reviewing the matter, the Board "denied and dismissed with prejudice" the employee's November 23, 2007 claim for benefits, under §.108(c).

In *McKenzie v. Assets, Inc*., AWCAC Dec. No. 109 (May 14, 2009) the Alaska Workers' Compensation Appeals Commission (Commission) affirmed the Board's dismissal of the employee's claim for her failure to cooperate with discovery, with the Commission Chair dissenting. The Board had dismissed her claim because she had refused to attend a Board-ordered deposition. The claimant, represented by a non-attorney advocate, made the employer's overall discovery efforts difficult from the start. On the employee's appeal, *McKenzie* stated:

In McKenzie's case, the board made adequate findings of fact to support the dismissal of her workers' compensation claim, sometimes referred to as administering the "death knell" to the claim because it brings all proceedings to an end. . . .

. . . .

First, the evidence in the record is compelling that McKenzie willfully violated the board's discovery order. "Willfulness" in the context of Civil Procedure Rule 37(b) is the "conscious intent to impede discovery, and not mere delay, inability or good faith resistance." Under this definition, McKenzie bears the burden to demonstrate her failure to comply was not willful. . . .

But McKenzie's actions went beyond good-faith resistance. McKenzie was obstructive and resistant to fulfilling her responsibilities as a claimant. Assets had a right to take McKenzie's deposition, but McKenzie disregarded a clear order of the board to attend a deposition no later than December 17, 2007. She did not seek to come into compliance during the five months between the board's order to attend a deposition and the hearing on the petition to dismiss. Instead, she resisted attending a deposition by seeking stalking orders in district court and an injunction in superior court. Her actions were outrageous and egregious in seeking these orders not only against the board, the insurer, the employer and the employer's attorney but also against the insurer's and attorney's heirs. Even at oral argument before the commission, McKenzie was unwilling to say that she would attend a deposition; she stated that she would have to consult her doctor.

. . . .

"While we have recognized that the trial court need not make detailed findings or examine every alternative remedy, we have held that litigation ending sanctions will not be upheld unless 'the record clearly indicate[s] a reasonable exploration of possible and meaningful alternatives to dismissal."' A conclusory rejection of all sanctions short of dismissing an action does not suffice as a reasonable exploration of meaningful alternatives.

. . . .

The Court has stated:

> [T]he scope and duration of prior misconduct should be considered in determining whether sanctions should be imposed and how severe they should be. But the ultimate sanction of dismissal with prejudice should be reserved for cases in which lesser sanctions are not reasonably available or the misconduct of the party being sanctioned is so egregious that a lesser sanction would be inappropriate.

. . . .

Ultimately, the commission need not determine the board *should* have dismissed the case if the board *could* have done so because dismissal was within the range of

> its discretion. Therefore, the commission concludes the board did not abuse its discretion because McKenzie willfully and repeatedly failed to comply with its orders and her misconduct was so egregious that no lesser sanction would be effective. The commission affirms the board's dismissal of McKenzie's claims.

Dissenting from the majority's decision, the Commission Chair stated:

> . . . However, I dissent from the commission's decision to affirm dismissal of McKenzie's claims as a sanction for failure to appear at deposition for two reasons.
>
> First, I believe that the board had lesser sanctions available and that the claim "death knell" should not sound until the board has attempted a lesser sanction for the specific conduct resulting in dismissal. I disagree with my fellow appeals commissioners on the availability of lesser sanctions to the board in this case. The board found that there are no other benefits from which the employer may suspend or forfeit from the employee. As she is medically stable, no further timeloss is due; as she had been paid her 4% PPI rating, no further PPI is due; as she has been paid her $5,000.00 job dislocation benefit, no further .041(k) stipend is due.
>
> Appellees had controverted further compensation and medical benefits, and paid other benefits, so that the board's determination that no ongoing payments were being made, or future entitlement to benefits acknowledged, that could be suspended or forfeited by the employer is correct. However, the question is not whether the *employer* could suspend or forfeit benefits, but whether the *board* could do so. Even if the board could not order the suspension or forfeiture of benefits or compensation, the board had lesser sanctions available that should have been imposed in an incremental fashion, so that dismissal of the claim is not the only sanction imposed after a series of orders directing compliance and warning of possible claim dismissal.
> . . . .
>
> It was also possible for the board to fashion other tailored, but appropriately, serious sanctions. McKenzie refused to make herself available for a deposition; so, the board might have barred admission of her testimony at hearing to the extent it concerned events that would have been the subject of the deposition. The statute permits the board to fashion "appropriate sanctions." In my view, tailored sanctions of increasing severity, directed toward correcting the effect of the sanctioned conduct, are most appropriate. . . .

Lindekugel v. Fluor Alaska, Inc., 934 P.2d 1307 (Alaska 1997) (*Lindekugel III*) reversed the Board's 1994 pre-§.108(c) *Lindekugel I* decision:

> The stipulation is "an agreement in regard to a claim" as we interpret that term. The meaning of the statutory term "agreement in regard to a claim" is clarified by the

> third sentence of subsection .210(b), which explains that the agreement, "[i]f approved by the board . . . discharges the liability of the employer. . . ."

Metcalf v. Felec Services, 938 P.2d 1023 (Alaska 1997), also pre-§.108(c), said:

> We conclude that it was an abuse of discretion to grant the motion to dismiss under Appellate Rule 511.5 despite Metcalf's failure to file his brief timely. Even though Metcalf unquestionably failed to timely file the brief per the controlling extension order, the superior court had actually received the brief more than two weeks before it entered the dismissal order. . . . Given that the brief had already been lodged and that appellees demonstrated no prejudice, the harsh remedy of dismissal could be justified only if there had been some controlling principle, such as a need to punish the wrongdoer, deter like conduct, preserve the integrity of the fact finding process, or protect the dignity of the court. The superior court identified no such justification. . . . Those circumstances themselves, however, would not justify complete dismissal of Metcalf's appeal. We also note that there is no reason to think delay worked in Metcalf's favor, such that only dismissal could prevent Metcalf from using delay to his benefit. The record does not suggest that the court considered, and rejected as ineffective, any less extreme sanction or remedy.

Statute of limitation dismissal cases under AS 23.30.110(c) held: *Egemo v. Egemo Constr. Co.*, 998 P.2d 434 (Alaska 2000) (new medical treatment entitles a worker to restart the statute of limitations for medical benefits.) *Bailey v. Texas Instruments*, 111 P.3d 321 (Alaska 2005) (dismissal of an earlier claim under §.110(c) does not preclude an employee from filing a later claim for benefits incurred subsequent to dismissal of the prior claim). *University of Alaska Fairbanks v. Hogenson*, AWCAC Dec. No. 074 (February 28, 2008) stated:

> We conclude that when a claim for benefits expires under AS 23.30.110(c) and is dismissed, a later-filed claim for the same benefits for the same injury may not revive the expired claim, but that a later-filed claim for the same benefits on a different nature of injury previously unknown to the employee, or for a different benefit from the same injury, is not extinguished with the earlier claim.

Smith v. CSK Auto, Inc., 132 P.3d 818 (Alaska 2006) said:

> Additionally, a dismissal with prejudice is treated as a dismissal on the merits and is, therefore, a final judgment on the merits. Put differently, "[t]he term 'with prejudice,' expressed in a judgment of dismissal, has a well-recognized legal import; and it indicates an adjudication of the merits, operating as res judicata."

The legislative history for AS 23.30.108 does not discuss §.108(c)'s "dismissal" language. Other states have taken different approaches to dismissal "with" and "without prejudice":

In *Loosey v. Osmose Wood Preserving Co*., 744 S.W.2d 402 (Arkansas 1988), the court reviewed the authority of its Workers' Compensation Commission to dismiss a claim "with prejudice." In *Loosey*, the claimant failed to comply with an order requiring discovery, with notice that failure to comply would result in sanctions. The Administrative Law Judge (ALJ) dismissed the claim "with prejudice" even though the claimant filed belated discovery responses approximately two months after the deadline. *Loosey* rejected the claimant's argument that the Commission lacked authority to dismiss the claim with prejudice, relying on a state statute (citing the Commission's rule-making authority) and an express rule (incorporating the statute and sanctions authorized by Rule 37(b)(2)(A), (B), and (C) including dismissal of a claim).

Gebhart v. Anna Bart, Ltd., 2001 WL 1657345 (Wis. Lab. Ind. Rev. Com., December 21, 2001) addressed an injured worker's refusals to attend employer's medical evaluations (EMEs):

> The respondent scheduled an independent medical examination appointment with Richard K. Karr, M.D., on November 20, 2000. The respondent notified the applicant of the examination. . . . However, the applicant did not attend the examination. The respondent nonetheless incurred a $250 charge from Dr. Karr for the applicant's missed appointment.
>
> The employer scheduled a second appointment for an independent medical examination with Dr. Karr on April 27, 2001, again providing proper notice, but again the applicant again did not attend. The respondent again incurred a $250 charge.
>
> The applicant subsequently sent a letter . . . to the Worker's Compensation Division explaining that he missed the second independent medical examination because he was in a "rehabilitation center and on medication." He . . . offered to attend an independent medical examination thereafter, and to reimburse the insurer for the $500 in no-show fees it had paid Dr. Karr.
>
> At this point, the ALJ sent a letter dated May 21, 2001 informing the applicant's attorney that . . . he would dismiss the application with prejudice if the applicant failed to appear at a third exam.
>
> A third examination was scheduled with Dr. Karr on August 6, 2001, again with proper notice, and again the applicant did not appear. The employer incurred a third $250 charge for the applicant's non-appearance.
>
> The ALJ then gave the applicant a chance to explain why he missed the third appointment. . . . The applicant stated he has moved three times since his injury.

However, the applicant also indicated that he was aware of the third appointment for an independent medical examination, and had planned to attend, but apparently got the days confused.

Accordingly, the ALJ dismissed the application with prejudice by order dated September 20, 2001. The applicant appeals.

. . . .

Thus, if a worker fails to go to an independent medical examination, his ability to proceed on his claim is "suspended." If he refuses to go to an independent medical examination after being directed to attend by an ALJ, he is barred from collecting those disability benefits accruing during the period of that refusal. . . .

However, the penalties prescribed by the statute for not attending an independent medical examination do not include the total forfeiture of accrued but unpaid benefits, nor do they prescribe a dismissal with prejudice, nor do they permit barring the claim in total. Nor can the commission conclude that an ALJ has the independent discretionary authority to dismiss a claim with prejudice for a failure, even a repeated failure, to attend an independent medical examination.

. . . Nonetheless, ordinarily neither the department nor this commission may add to a statute that expressly prescribes the penalties for an act or omission. Penalty statutes are generally construed strictly, unless a contrary legislative intent is clear or strict construction thwarts the purpose of the statute. . . .

Here Wis. Stat. §102.13(1)(c) sets out the penalty for not going to an independent medical examination -- suspension of the claim . . . -- and an additional penalty for failing to go after being ordered to attend by an ALJ -- the barring of the accrual of disability during the period of refusal. The language of the statute is clear. . . .

. . . Wis. Stat. §102.13(1)(c) does not permit an ALJ or this commission to impose a penalty that permanently bars the entire claim. Consequently, the commission concludes that the application may not be dismissed with prejudice. . . .

While the commission may not totally bar the applicant's claim under Wis. Stat. §102.13(1)(c), the commission does not read the statute to preclude the commission from imposing certain restrictions on the applicant's ability to proceed with his claim under the facts of this case. Accordingly:

1. The applicant's January 2001 application for hearing shall be dismissed, albeit without prejudice. If the applicant desires to proceed with his claim, he must refile an application.

2. If the applicant refiles an application and the respondent still desires the applicant undergo an independent medical examination, the Worker's Compensation Division need not go forward with the case unless the applicant himself arranges

> for an appointment for independent medical examination by Dr. Karr, including arranging to assume sole responsibility with Dr. Karr's office for any non-appearance at that appointment. The respondent need take no action under Wis. Stat. §102.13 (1)(b) except to indicate to the applicant that it desires the applicant to undergo an examination.
>
> 3. If the applicant recovers disability compensation on his claim, he must forfeit to the insurer the $750 appointment cancellation fees the insurer has already incurred (as the applicant offered in his May 17, 2001, letter).

Nebraska routinely dismisses workers' compensation claims "with prejudice," with no citation to authority and no analysis. These cases provide no useful insights. *See Raymond v. Wal-Mart, Inc*., 2010 WL 3759607 (Neb. Work. Comp. Ct., September 23, 2010). However, in *Goff v. KWS, Inc*., 2021 WL 3013703 (Neb. Work. Comp. Ct., July 8, 2021), the court denied a request to dismiss "with prejudice" when a claimant had been awarded benefits, but then failed to cooperate with vocational rehabilitation discovery. However, the court had authority to stay any further proceedings until the claimant cooperated with discovery, and it ordered a stay.

Other states also dismiss workers' compensation claims and related agency appeals with similar, terse opinions with no citation to legal authority and little analysis. *See Jones v. Liberty Mutual*, 1 Mass. Workers' Comp. Rep. 279 (Mass. Dept. Ind. Acc., December 23, 1987); *Lewis v. Miller Transport*, LLC, 2018 WL 3601828 (Miss. Work. Comp. Com., July 18, 2018). Some states, like North Carolina, have workers' compensation administrative regulations that provide for dismissal "with" and "without prejudice." *See Puckett v. North Carolina Dept of Public Safety*, 2023 WL 3995721 (N.C. Ind. Com., June 8, 2023).

"Willfulness" in discovery issues is defined as "the conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Hughes v. Bobich*, 875 P.2d 749, 752 (Alaska 1994). Repeated noncompliance with Board orders is also "willful." *Brown v. Gakona Volunteer Fire Dep't*, AWCB Dec. No. 15-0143 (October 24, 2015). Dismissal of an employee's claim cannot be upheld absent a reasonable exploration of "possible and meaningful alternatives to dismissal." *Hughes*, 875 P.2d at 753. A conclusory rejection of sanctions other than dismissal of the case does not suffice. *DeNardo v. ABC Inc. RV Motorhomes*, 51 P.3d 919 (Alaska 2002).

> **AS 23.30.110. Procedure on claims**. . . .

> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . 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 23.30.115. Attendance and fees of witnesses**. . . . [B]ut the testimony of a witness may be taken by deposition . . . in accordance with the rules of Civil Procedure. . . .

Referring to AS 23.30.115, the Act's deposition statute, *White*, 529 P.3d 534 at 546 stated, "The Workers' Compensation Board is generally not bound by technical discovery rules, but it does consider them."

> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter;

Rockney v. Boslough Const. Co., 115 P.3d 1240, 1246 (Alaska 2005) clarified that the §.120 presumption does not apply to issues that do not involve "coverage" or do not "promote the goals of encouraging coverage and prompt benefit payments."

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony . . . is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc*., 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.135. Procedure before the board**. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .
>
> **AS 23.30.155. Payment of compensation**. . . .

> (j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. . . .

> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions.** (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists . . . in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter . . . is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120-11.46.150.
>
> (b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter . . . by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the board shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).
>
> (c) To the extent allowed by law, in a civil action under (a) of this section, an award of damages by a court or jury may include compensatory damages and an award of three times the amount of damages sustained by the person, subject to AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

Grace v. F.S. Air Service, Inc., AWCB Dec. No. 02-0186 (September 17, 2002) applied §.250 and found the injured worker knowingly made false and misleading statements to obtain benefits under the Act. *Grace* ordered him to reimburse his employer $244,325.06 for paid medical and time-loss benefits, expert witness fees and the employer's attorney fees and costs.

> **8 AAC 45.054. Discovery.** (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .
> . . . .
>
> (d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request.

8 AAC 45.070. Hearings. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority, ...

(2) dismiss the case without prejudice; or . . . .

8 AAC 45.074. Continuances and cancellations. (a) A party may request the continuance or cancellation of a hearing by filing a

(1) petition with the board and serving a copy upon the opposing party. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;
(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;
(C) a party, a representative of a party, or a material witness becomes ill or dies;
(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;
(E) the hearing was set under 8 AAC 45.160(d);
(F) a second independent medical evaluation is required under AS 23.30.095(k);
(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d) or 23.30.043(h), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;
(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;
(I) the parties have agreed to and scheduled mediation;
(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);
(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief

> that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;
> (L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;
> (M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or
> (N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing; . . .

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. . . . Except as provided in this subsection and 8 AAC 45.112, a party who wants to present a witness's testimony by deposition must file a transcript of the deposition with the board at least two working days before the hearing. . . .
. . . .

(c) Each party has the following rights at hearing:

(1) to call and examine witnesses;
(2) to introduce exhibits;
(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;
(4) to impeach any witness regardless of which party first called the witness to testify; and
(5) to rebut contrary evidence.

. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions.

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will,

> in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. . . .
>
> (g) A request for cross-examination filed under (f) of this section must (1) specifically identify the document by date and author, and generally describe the type of document; and (2) state a specific reason why cross-examination is being requested.
>
> (h) If a request is filed in accordance with (f) of this section, an opportunity for cross-examination will be provided unless the request is withdrawn or the board determines that
>
> > (1) under a hearsay exception of the Alaska Rules of Evidence, the document is admissible;
> > (2) the document is not hearsay under the Alaska Rules of Evidence; or
> > (3) the document is a report of an examination performed by a physician chosen by the board under AS 23.30.095(k) or AS 23.30.110(g).
>
> (i) If a hearing is scheduled on less than 20 days' notice or if a document is received by the board less than 20 days before hearing, the board will rely upon that document only if the parties expressly waive the right to cross-examination or if the board determines the document is admissible under a hearsay exception of the Alaska Rules of Evidence. . . .

Alaska District Court Rules of Civil Procedure, Rule 17. Judgment states in relevant part:

> (g) A claim may be dismissed with or without prejudice and without court order at any time by agreement of the parties, or upon written notice by the plaintiff at any time before the defendant has filed an answer. A dismissal with prejudice bars action in any court based on the claim dismissed.

Three Alaska Rules of Civil Procedure pertain to "taking" a deposition in Alaska: Alaska Rules of Civil Procedure, Rule 30. Depositions Upon Oral Examination sets forth the rules related to a party taking an oral-examination type deposition. It states in pertinent part, "(1) A party may take the deposition of any person, including a party. . . ." Alaska Rules of Civil Procedure, Rule 30.1. Audio and Audio-Visual Depositions, describes procedures for taking and recording depositions on audio and video. Alaska Rules of Civil Procedure, Rule 31. Depositions Upon Written Questions provides the procedures whereby a party may depose any person by sending that person written questions. All three civil rules apply to "parties" to a case.

Alaska Rules of Civil Procedure, Rule 37. Failure to Make Disclosures or Cooperate in Discovery; Sanctions states in relevant part:

> **(b) Failure to Comply With Order.**
> . . . .
>
> (3) *Standard for Imposition of Sanctions.* Prior to making an order under sections (A), (B), or (C) of subparagraph (b)(2) the court shall consider
>
> (A) the nature of the violation, including the willfulness of the conduct and the materiality of the information that the party failed to disclose;
> (B) the prejudice to the opposing party;
> (C) the relationship between the information the party failed to disclose and the proposed sanction;
> (D) whether a lesser sanction would adequately protect the opposing party and deter other discovery violations; and
> (E) other factors deemed appropriate by the court or required by law.
>
> The court shall not make an order that has the effect of establishing or dismissing a claim or defense or determining a central issue in the litigation unless the court finds that the party acted willfully.

Alaska Rules of Civil Procedure, Rule 41. Dismissal of Actions states in relevant part:

> **(b) Involuntary Dismissal -- Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits. . . .

Alaska has 23 Administrative Code Titles, ranging from "General Provisions" (1 AAC 05.010 - 1 AAC 05.030) through "Office of Victims' Rights" (23 AAC 05.010 - 23 AAC 40.100). No administrative regulation in Alaska provides for dismissal of anything "with prejudice." However, there are 13 Alaska regulations that provide for denial or dismissal "without prejudice," including 8 AAC 45.070(f), cited above. Additional "without prejudice" regulations include: 2 AAC 50.895 (the Public Offices Commission will dismiss an administrative complaint without prejudice); 3 AAC 11.400, 3 AAC 13.070 and 3 AAC 14.085 (an abandoned application is denied without prejudice); 3 AAC 48.648 (an application will be rejected without prejudice for refiling to cure discrepancies); 3 AAC 52.358 (commission staff may reject an incomplete registration without

prejudice to refiling); 3 AAC 305.105 (a competing application not granted under this section will be denied without prejudice to future application); 6 AAC 30.340 (the executive director shall refer the complaint to the commission for hearing or dismiss without prejudice); 11 AAC 90.124 (if a property rights claim is the subject of pending litigation, the commissioner will issue a determination made without prejudice and the applicant may refile the request once the property rights dispute is adjudicated); 12 AAC 02.910 (an abandoned application is denied without prejudice); 12 AAC 40.987 (an application from an applicant who has been issued a temporary permit before abandoning the application will be reported to the Federation of State Medical Boards as denied without prejudice); and 13 AAC 67.040 (an abandoned application is denied without prejudice).

ANALYSIS

As a preliminary matter, the statutory presumption of compensability in §.120(a) does not apply to any factual disputes in this case because the disputes do not go to "coverage" under the Act. Moreover, applying §.120(a) would not promote timely benefit payment. *Rockney*. At this point in the litigation, this case is about Employee's refusal to follow several discovery orders.

1) Was the oral order denying Employee's petition for a continuance correct?

On January 5, 2026, Employee filed a petition to continue the January 15, 2026 hearing under §.074(a)(1). As grounds, he claimed to have received "new evidence" after the December 26, 2025 deadline for filing evidence. He initially argued he had not received that evidence until December 30, 2025. This was a due process "service" argument. Ordinarily, when a party seeking a continuance states they have received "new evidence," it refers to the moving party finding or uncovering that evidence. Here, Employee apparently is referring to "new evidence" attached to Employer's December 16, 2025 "Notice of Intent to Rely," including the hotel and other receipts, and the two missed-deposition transcripts. Relatedly, Employee also contended Employer had previously violated his due process rights, which caused him to miss a "screening hearing," which resulted in forfeited benefits.

Employee's "new evidence" argument refers to a hotel bill and receipts Employer filed as support for its request for attorney fees and costs for Employee missing his deposition, and two transcripts

showing he missed the two depositions. Though his arguments are hard to follow, it appears Employee may object to only the two deposition transcripts showing his non-appearance. In other words, Employee received what he considered "new evidence" from Employer, which he contended caused him to need more time to "respond." At hearing, Employee also alleged Employer had "back-dated" documents to make it look like it had timely filed and served him with these documents. Employer denied this.

Under §.074(b) continuances and cancellations are not favored and are not routinely granted. A hearing may be continued only for "good cause," which is defined and limited under §.074(b)(1)(A) thru (N). In essence, Employee argued that he received from Employer evidence he was not expecting or did not anticipate. Employee's "new evidence" ground is not included in the "good cause" list. The closest grounds to his are: under §.074(b)(1)(K), the panel "determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence"; under §.074(b)(1)(L) the panel "determines at a scheduled hearing that, due to surprise, [or] excusable neglect . . . additional evidence or arguments are necessary to complete the hearing"; and under §.074(b)(1)(N), the panel "determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance. . . ."

First, Employee argued for a continuance because he "could not have filed this evidence on time because the employer did not provide it" to him "until December 30th." "This evidence" apparently meant his two, laptop screen photos. His two photographs are not "rebuttal evidence" under §.074(b)(1)(K). To the contrary, they are documents Employee should have filed as his direct evidence supporting his position that he attended the deposition on October 13, 2025. Second, Employee could not seriously argue that the two deposition transcripts showing his non-appearance at two depositions came to him as a "surprise," under §.074(b)(1)(L). He knew Employer had petitioned to dismiss his claims with prejudice based on his failure to attend the depositions. He offered no excuse why he did not file and serve his two photographs timely as his owned direct evidence. Third, Employee did not exercise "due diligence" under §.074(b)(1)(N)

to file and serve his two photographs timely. His reasons for requesting a continuance do not fit under even the closest possible grounds constituting "good cause" for his request.

Regarding Employee's "service" objection, his agency file shows that on December 24, 2025 Employer filed with the Division its December 16, 2025 NOI. Attached to the NOI were the June 30, 2025 hotel bill and receipts, and transcripts for the missed June 30, 2023 and October 13, 2025 depositions. Although Holloway's affidavit states he "caused" the NOI and attached documents "to be served" on December 16, 2025, his legal assistant actually served them on Employee on December 24, 2025. The differing dates between Holloway's affidavit and his office's certificate of service date is consistent with Holloway telling his staff on December 16, 2025 to serve the NOI on Employee on December 24, 2025. While this is unusual, the Division's date stamp shows Employer filed this material timely (in fact, two days early) and the service certificate on the actual documents filed with the Division shows Employer timely served Employee with these documents on December 24, 2025, two days before the December 26, 2025 deadline.

Employer filed and served its evidence timely under §.120(f), and in accordance with the controlling November 25, 2025 Prehearing Conference Summary. Alternately, even if Employee objects to only the deposition transcripts and not the deposition expense evidence, a different rule applies to transcripts. Deposition transcripts must be filed and served two working days prior to a hearing under §.120(a). Employer filed and served the deposition transcripts three weeks -- not just two days -- before the January 15, 2026 hearing. Employee's argument, which is hard to follow, does not provide "good cause" to continue the hearing under §.074(b)(1)(A)-(N).

Employee's other ground for a continuance referred to *Andrew XI*, which acknowledged that the USPS likely made a typographical error by stating it had delivered the Division's hearing notice for the June 24, 2025 hearing on Employee at a New York ZIP Code. Apparently, Employee now asserts that Employer sent him that notice, which is not true. Regardless, to ensure that Employee had due process, *Andrew XI* reopened the hearing record to allow him to be heard; and he was, in *Andrew XII*. Thus, this issue and argument were resolved in *Andrew XI* and *XII* and there was no due process violation. Further, this ground did not support Employee's continuance request because *Andrew XI* and *XII* have no connection to the January 15, 2026 hearing. Moreover,

Employee testified at hearing that he did not really need to "respond" to Employer's evidence anyway. In short summary, Employee presented no "good cause" under §.074 to continue the January 15, 2026 hearing and the oral order denying his request was correct.

2) Was the oral order striking Employee's late-filed evidence correct?

a) *Timeliness*

On November 25, 2025, the designee advised the parties that December 26, 2025 was the deadline for filing and serving evidence for the January 15, 2026 hearing. Employer's January 5, 2026 petition objected to the two pictures, which Employee said he took of his laptop screen, as untimely filed and served. One picture, taken on October 26, 2025, referenced Employee's alleged entry into his Zoom "account" 13 days earlier, on October 13, 2025. The second picture, which Employee did not identify by date-taken, and which date is not obvious from the photograph, allegedly shows his laptop screen with an image for an 8:30 AM Zoom meeting in the instant case. Neither picture showed the entire laptop screen.

At least one of these documents, the picture taken on October 26, 2025, was in Employee's possession since October 26, 2025. He could have and should have filed and served that picture well before the December 26, 2025 evidence-filing deadline. He gave no credible explanation as to why he did not. AS 23.30.122; *Smith*. Moreover, there is no credible reason to believe that Employee would take one photograph on October 26, 2025, and the other on some other date. Thus, it is likely Employee took both pictures on October 26, 2025.

Further, Employer's October 20, 2025 petition plainly alleged that he had failed to appear at the October 13, 2025 deposition. A reasonable person in Employee's position would have filed and served this alleged "proof" that he tried to attend the deposition immediately upon not gaining admittance. Alternately, a reasonable person would have filed and served these pictures after receiving Employer's October 20, 2025 petition to dismiss, at least by October 26, 2025. Employee did none of these and his testimony and arguments were not credible. AS 23.30.122; *Smith*. Thus, the oral order declining to consider the two photographs because they were untimely-filed was correct.

b) Hearsay

Employer also filed a timely request to cross-examine the authors of these images. Employee did not present the authors at hearing for cross-examination and Employer did not waive its hearsay objection under §.120(i). Employer's request specifically identified the documents to the extent it could and stated why it wanted to cross-examine the authors under §.120(f). Although Employee testified about these photographs, the authenticity and origin of these pictures are suspect, because on their face they do not comport with Employee's testimony regarding them. His testimony was not credible under §.122. *Smith*. One shows Employee logged-on to his Zoom "account"; it does not show he attempted to enter the Zoom deposition. There is no evidence or testimony as to when Employee took the second picture. Thus they both lack adequate foundation. The photos are hearsay. Absent credible foundation, there is no exception by which these photographs could be admissible as hearsay exceptions, or as admissible non-hearsay under §.120(h).

Further, these particular photos are not the kind of evidence upon which a reasonable person would rely in the conduct of serious affairs under §.120(e) for several reasons. They are partial images; the entire screen is not visible to verify Employee's testimony. One was taken 13 days after the Zoom deposition, and the other's taken-date is unknown. Thus, both images lack objectivity and reliability. They were properly excluded on this basis as well. However, notwithstanding the oral order to exclude the photos as evidence, which this decision affirms, Employee nevertheless testified about them and his alleged efforts to attend his October 13, 2025 deposition, at length, and the panel considered his testimony while addressing the issues below.

3) Should Employee's petition for an order rescheduling his deposition be denied?

Parties may take a person's deposition, including a party, pursuant to Civil Rules 30, 30.1 or 31. AS 23.30.115. Parties have a right to depose within the bounds of the Act, regulations and those three Civil Rules. Employer objected to Employee's request for an order requiring Employer to yet again re-notice his deposition. His request is closely related to Employer's request to dismiss Employee's claims and petitions "with prejudice." Therefore, given the analysis in the next section, Employee's petition for an order requiring Employer to re-notice and take his deposition will be denied for the reasons stated in the next section, below.

4) Should Employer's petition to dismiss be granted with or without prejudice?

The first statute in the Act sets forth the legislature's intent: The Act must be interpreted to ensure quick, efficient, fair, and predictable delivery of benefits to Employee if he is entitled to them, at a reasonable cost to Employer. AS 23.30.001(1). These goals have not been met in this case. Employee filed his first claim in this case on July 9, 2019; since then, he has filed nine more claims. The designee first ordered Employee to attend his deposition on January 26, 2023, nearly three years ago. He has still not attended and completed his deposition. Employer obtaining Employee's deposition has not been "quick," "efficient," "fair," or "predictable," in the sense intended. The only thing "predictable" regarding Employee's deposition is his failure to attend it. Obtaining his deposition has clearly not been at a "reasonable cost" to Employer. Likewise, Employee's case has not been decided on its "merits," under §.001(2), because he has willfully obstructed Employer in obtaining discovery. This is not "fair" to either party.

a) "Willfulness"

Employee argues that he has not "willfully" resisted giving his deposition, particularly the Zoom deposition scheduled for October 13, 2025. He adamantly asserts that he was present in the Zoom deposition waiting room on October 13, 2025, and contends Holloway did not admit him. Employee is certain that Holloway did this with purpose so Employer could later seek claim dismissal. Both the court reporter and the transcriber for the October 13, 2025 deposition certified that they had no connection to any party. They were neutral. The court reporter controlled the deposition as his certification states, not Holloway.

Employee's testimony, while confusing, is also not credible. AS 23.30.122; *Smith*. He based his testimony primarily on two pictures of his laptop screen he says he took with his cellphone. Employee testified these pictures showed his contemporaneous effort on October 13, 2025 to attend his Zoom deposition. As analyzed above, Employee filed these documents untimely, even though he had at least one of them since October 26, 2025, and they are hearsay, lack credible foundation and the authors were not presented for cross-examination. Thus, the panel will not consider the two pictures. However, before the panel issued the oral order excluding them, Employee testified at length about his Zoom deposition participation both to support his request for a continuance, and to address Employer's petition to strike his photos. To be clear, while his

two pictures will not be considered, his testimony regarding his alleged efforts to attend his Zoom deposition will be considered.

Employee's testimony about his deposition makes no sense. On October 13, 2025, he knew that Holloway, in his words, "was up to no good," when Employee says he logged into Zoom for his deposition, and no one admitted him. Believing that Employer was trying to "trap" him, Employee said he took two photographs of his computer screen because he knew at that time he would eventually have to prove he was present, using more than just his testimony. It is undisputed that Employee never provided a contemporaneous, dated picture of his computer screen taken on October 13, 2025, showing he entered the Zoom deposition link on that day and was waiting for the host to admit him. He testified that he knew if he did not appear for the October 13, 2025 deposition Employer would try to dismiss his claims. Given this knowledge, Employee argued he was not a "damn fool," and was not "that dumb," to miss his deposition. One would think with this understanding firmly in mind, Employee would have taken a contemporaneous photo of his computer screen and immediately filed it to preserve that evidence. But he did not.

When questioned about why he photographed his computer screen 13 days after the Zoom deposition, he denied that he did. Employee testified that he took that photo on October 13, 2025. His testimony was provably false. The picture that he testified proved he was on Zoom on October 13, 2025, only proved that he photographed that image 13 days later. When the chair pointed out the computer-generated October 26, 2025 date and time in the lower-right-hand-corner of the image Employee took, he denied he took the photograph on that date. That testimony was also provably false as the computer-generated date correlated with the image to prove that Employee took that photograph 13 days later on October 26, 2025, not on October 13, 2025. Employee had no explanation for this obvious discrepancy other than to chuckle uncomfortably and say he was not a "tech expert." Later, in his closing argument after he time to think about it, Employee offered another false statement and testified that the October 26, 2025 date in the lower-right-hand-corner of his computer screen was the date he "printed it out." The only thing that date shows with certainty is the date Employee took the picture, not the date he printed it out. Even that testimony contradicted his position on the untimely-filing issue. Had Employee printed out the photo on

October 26, 2025, he could have filed it months earlier in conformance with the December 26, 2025 evidence-filing deadline. He is not credible. AS 23.30.122; *Smith*.

Employee's testimony about why he did not notify Holloway or the court reporter that he was allegedly waiting for entry into the Zoom deposition is even less credible. AS 23.30.122; *Smith*. It is not conceivable that Employee, who was adamant that he would never miss his deposition purposefully, would simply sit in a Zoom waiting room for roughly 40 minutes for admission to it without contacting someone to find out what was going on. Instead, he claims to have gone back and forth between the Zoom "room" and some nebulous "Veritext room." Had the panel considered Employee's late-filed laptop screen pictures, the image taken on October 26, 2025 at best shows Employee logged into his Zoom "account" on October 13, 2025 -- it does not show that he had tried to enter the Zoom deposition by clicking on the link.

While the panel does not know everything about Veritext's use of Zoom as its recording method, that does not mean it knows nothing about Zoom recordings. The Division uses Zoom as the official record for its workers' compensation hearings. All a party needs to do to enter a Zoom hearing is click on the Division-provided link and they are taken to the hearing. Zoom depositions operate the same way; there is no alternate platform for the Zoom recording. *Rogers & Babler*. Furthermore, even if it were true that Employee sat in a Zoom waiting room for 40 minutes this demonstrates he was not operating in "good faith" as he was previously ordered to do. He should have done something. Employee's testimony was internally inconsistent. He said he would have had to log-in to the Zoom deposition at 11:30 Arizona time for a 9:30 California deposition. Employee repeatedly said he logged in at 9:38. Overall, these inconsistencies are too great to ignore and show that Employee's testimony is, again, not credible. AS 23.30.122; *Smith*.

Employee's testimony and representations warrant the following advisory: It is a crime for any person to knowingly make a false or misleading statement or representation related to a benefit under the Act. It is also a crime for a person to knowingly make a false or misleading submission "affecting the payment, coverage, or other benefit" under the Act. Furthermore, persons engaging in this conduct are civilly liable to a person adversely affected by such conduct. If a person is found to have obtained compensation, medical treatment or another benefit provided under the Act

by knowingly making a false or misleading statement, representation or submission for the purpose of obtaining that benefit, that person will be ordered to make full reimbursement of the cost of all benefits obtained, including all reasonable costs and attorney fees incurred by the employer or carrier in obtaining an order and in defending against any claim made under the Act. If a civil action is brought against that person, the civil award may include compensatory triple damages as well as attorney fees to the prevailing party. AS 23.30.250(a)-(c); *Grace*.

Employee's failure to participate with his October 13, 2025 deposition in "good faith" as previously ordered was demonstrably "willful." *Hughes*; *Brown*. Thus, this decision will examine the panel's authority to dismiss his claims and petitions, and will fashion an appropriate sanction in accordance with the Act, regulations and applicable case law.

b) Authority to dismiss "with prejudice"

The Court has clearly stated, "We have held that agency jurisdiction is derived from statutes and that agencies 'must find within the statute the authority for the exercise of any power they claim.'" *White*. Thus, this panel must find authority in the Act to dismiss Employee's claims and petitions "with prejudice." Employer contends the panel has authority to dismiss Employee's claims and petitions "with prejudice." At hearing, Employer agreed the only statute in the Act granting this panel authority to dismiss Employee's claims and petitions is §.108(c). It also admitted that this provision does not expressly grant authority to dismiss "with prejudice." Employer seeks an order "expanding" §.108(c) to include "with prejudice" dismissal in egregious cases, such as this one. The primary legal issue in this case thus becomes: Does this panel have authority to dismiss Employee's claims or petitions "with prejudice" where he has been ordered to attend, and willfully failed to sit for his properly-noticed deposition three times?

As a preface to this analysis, it is helpful to know a basic difference between an administrative injury case under the Act and a civil action filed in court. In a civil action, a plaintiff files a complaint against a defendant. If the case goes to trial, the plaintiff has one opportunity to present all his evidence supporting his life-long physical and economic damages. The plaintiff must present lay and expert testimony regarding lost earnings, need for medical treatment, pain and suffering and so forth. He gets one "bite at the apple." Whether the plaintiff wins or loses, he

cannot return to court later and ask for more money because his expert underestimated his lost-earning-capacity resulting from the injury, or because the injury turned out to be worse than he expected. The doctrine of *res judicata* will bar the second complaint if it is based on the same injury as in the complaint previously decided. *Williams*.

By contrast and comparison, an injured worker in a workers' compensation case files a claim against his employer and its insurer. He could, for example, seek a compensation rate adjustment and temporary total disability benefits for a particular period. Although he may lose after a hearing on those claims, the injured worker can return later and claim a new period of disability or need for medical care that arose long after the original hearing. If all legal and factual requirements are met, he may prevail in a subsequent hearing. In some circumstances and absent a settlement an injured worker filing claims under the Act may get several bites at the apple -- even if the employee's first claim was dismissed because he missed the statute of limitations. *Bailey*.

These differences between civil actions and workers' compensation claims cause this panel to pause before dismissing Employee's claims and petitions "with prejudice" absent express authority in the Act to do so. The distinction between a dismissal "without prejudice," and one "with prejudice" is huge. Generally speaking, a dismissal "without prejudice" allows the claimant to correct an issue and refile the pleading. By contrast, a "dismissal with prejudice" is "treated as a dismissal on the merits and is, therefore, a final judgment on the merits." A dismissal "with prejudice" acts as an "adjudication" on the merits "operating as *res judicata*." *Smith*. A dismissal "with prejudice" would effectively prohibit Employee from filing any other claims. As discussed above, that is not generally consistent with how procedures work under the Act.

AS 23.30.108 became effective in 2000. Before §.108(c), agency decisions routinely declined to dismiss injured workers' claim "with prejudice" citing lack of authority. *Millard*; *Johnson*; *Bush-Drago*. By 2006, some decisions relied on §.108(c) to dismiss claims but did not expressly state they were dismissing them "with prejudice." *Struzynski*. Some agency decisions interpreted §.108(c) to provide authority and dismissed claims "with prejudice" for repeated discovery violations similar to Employee's. *Zaragoza*; *Berean*; *Bahr*; *Longenecker*; *Gilbert*. It is possible

that those decisions were correct. But none were appealed, and so far as it can be determined none of those claimants ever filed a new claim, in contrast to Employee in the instant case.

The Commission's *McKenzie* decision, in a failure to attend a deposition case, reads as though the Commission interpreted §.108(c) to include dismissing a claim "with prejudice." For example, the majority's opinion in *McKenzie* included language referring to claim "dismissal" under §.108(c) as the "death knell" to a claim, and dismissal for discovery violations bringing "all proceedings to an end." The majority opinion in *McKenzie* even cited the words "with prejudice," extracted from a civil court appeal to the Alaska Supreme Court. This implies that the Commission in *McKenzie* believed or perhaps simply assumed §.108(c) provided authority to dismiss "with prejudice." However, a hearing panel's authority for a "dismissal with prejudice" as a debatable sanction was not raised or discussed before the Commission in *McKenzie*. The *McKenzie* parties, panel and Commission all apparently thought that "dismissing" in §.108(c) included dismissing "with prejudice" but never addressed it. Thus, *McKenzie* is not controlling precedent. It remains debatable if "dismissing with prejudice" is an available sanction under §.108(c).

This panel found no legislative history discussing what the intent was behind language in §.108(c) stating a panel may impose appropriate sanctions in discovery matters including "dismissing the party's claim, petition, or defense." Clearly, "dismissing" as used in §.108(c) could reasonably mean with or without prejudice. Thus, that phrase is ambiguous because it is "susceptible of two or more conflicting but reasonable meanings." *White*. Without legislative history, the panel is left to construe the statute based on "common sense and logic." *Croft*.

Had the legislature wanted §.108(c)'s "dismissing" to be "with prejudice," it could have said so. The statutory construction principle *expressio unius est exclusio alterius* establishes an inference that where certain things are designated in a statute, "all omissions should be understood as exclusions." *Croft*. The absence of "with prejudice" in §.108(c) suggests the "dismissing" is "without prejudice." This comports with the statutory scheme behind workers' compensation cases that often provides injured workers with more than one bite at the apple.

On the other hand, §.108(c) was clearly intended to give a hearing panel broad discretion to fashion an appropriate sanction for discovery violations. The statute lists one sanction, forfeiture, but adds that a panel may "impose appropriate sanctions in addition" to forfeiture "including dismissing the party's claim, petition or defense." Under AS 01.10.040 the word "including" when used in Alaska law means "including but not limited to." As will be discussed later in this decision, §.040 allows a hearing panel to fashion a sanction "including but not limited to" forfeiture and "dismissing" a claim, petition or defense. However, adding a sanction to those listed in §.108(c) does not equate to changing the word "dismissing" into the phrase "dismissing with prejudice." This is the "expansion" of "dismissing" Employer seeks and is a bridge too far for this panel.

By contrast, dismissing claims for discovery violations "without prejudice" comports with the legislature's expressed intent, which mandates that the Act be interpreted to ensure cases are decided on their merits "except where otherwise provided by statute." Parties are afforded due process and "an opportunity to be heard," and parties' "arguments and evidence" must be "fairly considered." AS 23.30.001(2), (4). The only "statute" in the Act that addresses "dismissing" a claim or petition is the ambiguous section §.108(c). Read as a whole, the Act's intent appears to cut against dismissing Employee's claims and petitions "with prejudice" notwithstanding his willful refusal to comply with repeated discovery orders.

Other Act provisions, though not relevant to the instant case, illuminate the "dismissal" issue. For example, the only action that forever "discharges the liability of the employer" for compensation under the Act is a valid settlement agreement. *Lindekugel III*. Employer wants to expand the "dismissing" language in §.108(c) to effectively "discharge" its liability to Employee by dismissing not just his claims and petitions, but his entire case. It wants an order prohibiting him from even filing additional pleadings if the instant decision is issued in its favor.

Lindekugel I entered an oral order at a hearing dismissing an employer from a case "with prejudice." The Alaska Supreme Court in *Lindekugel III* reversed and found the agreement to dismiss the employer "void" because it did not comply with requirements for a settlement agreement. In other cases, §.110(c) provided for a claim to be "denied," as opposed to "dismissed," if a party filed a claim, the claim was controverted and the claimant failed to timely request a

hearing. In such cases, the Court and Commission have held that only past benefits were "dismissed" and the claimant could restart the statute of limitations for ongoing medical and other benefits. *Egemo*; *Bailey*; *Hogenson*. *Andrew X* applied this logic to Employee's situation, hoping that by dismissing his previous claims, Employee would appear for his deposition. Likewise, although not applicable directly here, the Court in *Metcalf* found a judge abused his discretion in granting a motion to dismiss under Alaska's appellate rules because the appellant failed to file his brief timely. Dismissing an appeal was a disfavored litigation-ending sanction.

Employer raised a valid point that these decisions refer to cases where the injured worker failed to do something -- like file something timely. By contrast, Employee has not just failed to do something timely, he has willfully refused to do something he has been ordered several times to do -- attend his deposition and participate in good faith. While Employer's position has merit, it still requires statutory authority to dismiss claims and petitions "with prejudice." *White*.

Workers' compensation and other regulations do not support dismissing Employee's claims and petitions "with prejudice" based on even the most egregious discovery violations. For example, if a party failed to appear at a hearing, which in some cases may be intentional, the panel had discretion to proceed with the hearing in that party's absence, dismiss "the case without prejudice," or adjourn, postpone or continue the hearing. 8 AAC 45.070(f)(1)-(3). Dismissing a case or claim "with prejudice" is not an option. Parties at hearings generally have a right to "call and examine witnesses," introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. 8 AAC 45.120(c)(1)-(5). None of that is possible if claims or petitions are dismissed "with prejudice." It is worth noting that Alaska has 23 Administrative Code titles, affecting virtually all parts of a person's life. There is no administrative regulation in Alaska that provides for dismissal of anything "with prejudice." However, there are 13 regulations that provide for denial or dismissal "without prejudice," including 8 AAC 45.070(f). In fairness, these regulations generally apply to procedural errors or abandoned cases, not a party's willful actions.

Decisions from states dismissing workers' compensation claims "with prejudice" rely on laws that incorporate sanctions authorized in those states' equivalent to Alaska Civil Rule 37, including subsections allowing dismissing a claim "with prejudice." *Loosey*. With exception of rules for

taking depositions (Civil Rules 30, 30.1 and 31), Alaska's civil rules do not apply to claims brought under the Act. AS 23.30.115; AS 23.30.135(a); 8 AAC 45.054(a); 8 AAC 45.120(e).

Our Court, addressing §.115 in a workers' compensation case, stated, "The Workers' Compensation Board is generally not bound by technical discovery rules, but it does consider them." *White*. Consideration of Alaska's Civil Rule 37(b)(3) in workers' compensation cases has been for "guidance" in determining if a party's discovery violation was "willful," not whether a claim should be denied "with prejudice." The Act in §.108(c) provides non-exclusive sanctions applicable to discovery violations in workers' compensation cases. No statute expressly incorporates Alaska's Civil Rule 37 to workers' compensation claims. That Civil Rule 37 includes authority for a court to dismiss a complaint "with prejudice" does not mean that sanction is available to this panel in an administrative proceeding. There still has to be statutory authority in the Act for this panel to dismiss a claim or petition "with prejudice," because the workers' compensation scheme is "purely statutory and without a basis in the common law." *Croft*.

Likewise, Alaska's District Court Rule 17 and Civil Rule 41 provide for involuntary dismissal with or without prejudice to operate as "an adjudication upon the merits" for various reasons. These sections do not apply to a workers' compensation claim. AS 23.30.135(a).

Nebraska and other states routinely dismiss workers' compensation claims "with prejudice," but their decisions normally provide no authority or analysis, or have statutes or administrative regulations that provide for dismissal "with" and "without prejudice." *Raymond*; *Lewis*; *Jones*; *Puckett*. The Alaska Act and associated regulations do not provide that direction or authority. However, in one Nebraska case, *Goff*, the court denied a request to dismiss a claim "with prejudice" when the claimant had been awarded benefits but failed to cooperate with vocational rehabilitation discovery matters. Rather, *Goff* used the court's "inherent" authority to "stay any further proceedings" until the claimant cooperated with discovery.

The Alaska Act does not provide express authority to stay all further proceedings for Employee's failure to cooperate with discovery. However, under §.040, the word "including" in §.108(c) is construed as though followed by the phrase "but not limited to." Therefore, the legislature granted

this panel broad inherent discretion to "impose appropriate sanctions" in "addition" to those listed. Those sanctions could include a "stay." Unlike the analysis above regarding "dismissing" versus "dismissing with prejudice," adding a stay as an appropriate sanction completely comports with Alaska law. It does not require the panel to inappropriately change a word in a statute into a phrase with a completely different meaning.

Most helpful in this analysis is a Wisconsin case where a claimant three times refused to see an EME physician. *Gebhart*. An ALJ dismissed his claim "with prejudice" and he appealed. The appeals commission reversed the dismissal "with prejudice," citing Wisconsin law that provided express sanctions for such behavior. The commission noted that neither the department nor the commission could add to a statute that expressly prescribed penalties for an act or omission. Alaska law is different than Wisconsin law in that regard because §.108(c) expressly allows a hearing panel to formulate and impose "appropriate sanctions in addition" to those listed. Like the instant panel finds under Alaska law, *Gebhart* found no provision in Wisconsin law authorizing an ALJ or the commission to impose a penalty that "permanently bars the entire claim."

Nonetheless, *Gebhart* fashioned a creative sanction: it dismissed the injured worker's claims "without prejudice." It required him to refile a claim if he wanted to proceed. If he filed a new claim and his employer still wanted him to undergo an EME, the workers' compensation division did not have to move forward with his case unless the claimant himself arranged for an EME with the same physician his employer arranged to see him three times. In other words, it "stayed" his case. Further, the claimant had to assume sole responsibility with the physician's office for any non-appearance at that EME appointment. *Gebhart* relieved the employer from taking any action under the Wisconsin act except to indicate to the claimant that it still wanted him to undergo an EME. Lastly, *Gebhart* required the claimant, if he recovered any disability benefits in the future on his claim, to forfeit to the insurer the appointment cancellation fees it had already incurred for his previously missed appointments.

In conclusion, without express statutory language authorizing this panel to dismiss Employee's claims and petitions "with prejudice," or any similar regulation so stating, and absent any

controlling Commission or Court precedent, Employer's request to dismiss Employee's claims and petitions "with prejudice" will be denied.

c) The appropriate sanction

There are "possible and meaningful alternatives" to "dismissal with prejudice." *DeNardo*. Thus, this decision will formulate a remedy that incentivizes Employee to move his case forward and puts the onus on him. The sanction will fulfill the legislative mandate in AS 23.30.001(1), by reducing "cost" to Employer. If he cooperates it will enable Employee's case to be decided on its merits under §.001(2), and will afford all parties due process and an opportunity to be heard and for their arguments and evidence to be fairly considered under §.001(4). The sanction will also allow the panel to best ascertain all parties' rights under §.135(a).

In addition to §.108(c), which provides this panel with broad discretion to impose "appropriate sanctions in addition to" benefit forfeiture and dismissing claims and petitions, §.135(a) gives this panel broad discretion to make its "investigation or inquiry or conduct its hearing" in a manner by which it may "best ascertain the rights of the parties." Therefore, given the above analyses, Employee's claims and petitions through the date this decision and order is issued will be denied "without prejudice." This decision will modify the sanctions from the *Goff* and *Gebhart* decisions.

At hearing, Employee stated he desired to give a deposition and move his case to a hearing on its merits. Employer has tried three times to make that occur, without success. It need not notice Employee's deposition again, risk another non-appearance and incur additional attorney fees and costs under §.001(1). Alaska civil rules pertaining to taking depositions apply to this case by express reference under §.115(a). Civil Rule 30 states that any party may take the deposition of any person, "including a party." Employee is "a party." Therefore, Employee as a party may notice and take his own deposition.

It will be up to Employee whether or not to notice and take his own deposition. But until he does, all action on his case will be stayed under the panel's inherent authority granted by §.108(c). By noticing and taking his own deposition, Employee may give direct testimony about anything he would like to talk about in respect to a claim he may file from the date of this decision forward.

Likewise, in accordance with the civil rules for depositions, and for due process, Employee must allow Employer an opportunity at Employee's deposition to cross-examine him. Employee cannot limit Employer's time for cross-examination. If he does, Employee's deposition will be considered to not have been taken at all and his case will remain stayed until he provides Employer with an opportunity to cross-examine him. Employee will be limited to taking his own deposition pursuant to Civil Rule 30. He may not use Civil Rule 31 because his deposition must comport with the way Employer tried to take it on three separate occasions, which arose under Civil Rule 30.

In summary, Employee's claims and petitions will be denied without prejudice. This decision and order will stay Employee's case until he notices his own deposition under Civil Rule 30, in accordance with the following instructions, attends his own deposition and provides Employer with the time it needs to cross-examine him. Employee must arrange for and pay for the court reporter's deposition costs, which generally include an hourly rate for the court reporter to record the deposition, and must agree with the court reporter to be responsible for those costs in the event he fails to appear again. If either party wants a transcript of Employee's deposition, that party must pay for the transcript.

The following specific sanctions will apply to Employee: (1) If Employee wants to file a claim for benefits, he must file a new claim, which will apply to only benefits to which he may be entitled from the date of this decision, forward. All previous benefits and relief sought in his prior claims, not already dismissed in a prior decision in this case, and all petitions filed to date, will be denied or dismissed, as applicable, without prejudice. If Employee wants to petition for action other than a claim for benefits, he must file a new petition. (2) If Employee files a new claim and Employer still wants him to submit to a deposition, Employer must notify the Employee in writing that it wants to depose him, and file that notice with the Division. The Division will not move forward with Employee's case unless and until Employee himself arranges for his own deposition with the same court reporting service Employer used for the failed October 13, 2025 deposition. Employee must schedule his own deposition with that court reporting service after consulting with Holloway as to Holloway's availability. Once the parties have agreed to a time and date for the deposition, Employee must file with the Division and serve on Holloway a simple deposition notice patterned after the previous deposition notices Employee has received from Holloway. Employee must

arrange with the court reporting service to assume sole responsibility with the court reporter to pay for the court reporter's time to record his deposition, including any time incurred for Employee's non-appearance costs at his deposition if he does not attend. Employee's case will be stayed until the deposition is completed. Employer need take no action whatsoever under the Act in this case unless Employee files a new claim or petition, except to advise Employee in writing that it still desires for him to undergo a deposition. With one exception, Employer need not controvert or answer any claim or petition, or object to any hearing requests. The matter will be stayed. The exception is that the Division may schedule prehearing conferences as requested or required, and the parties should attend those conferences.

5) Is Employer entitled to an attorney fee and cost award as a discovery sanction?

The last issue is Employer's request for attorney fees and costs. On December 26, 2025, it timely filed evidence of Holloway's fees and costs incurred for two missed depositions. Employee did not request cross-examination of these documents, and they are in evidence. His main objection to the attorney fees and costs was his contention that he either could not attend one deposition, and actually did attend the other. The evidence proved otherwise. As decided in previous decisions, and in the instant decision, Employee's refusal to attend his depositions has been willful.

Ordinarily in a workers' compensation case, an injured worker is not responsible to pay an employer's attorney fees or costs. Likewise, ordinarily the only way an employer can recover an "overpayment" or an "advance payment" of "compensation" from an employee is by "withholding" 20 percent from future compensation due. AS 23.30.155(j). However, Employer is not seeking to recover an overpayment or advance payment of compensation it paid to Employee. It is seeking an additional discovery sanction from Employee under §.108(c). This panel's authority in §.108(c) to impose additional appropriate sanctions, discussed in the previous section, is incorporated here by reference. Requiring Employee to pay attorney fees and costs related to his prior deposition no-shows is a reasonable sanction, because he is the one that caused Employer to incur the fees and costs, with no benefit to Employer.

Holloway's December 16, 2025 affidavit, filed on December 26, 2025, stated he incurred: .60 hours attorney time billed to his client for the October 13, 2025 deposition; 4.0 hours attorney time

billed to his client for travel to Los Angeles to attend the June 30, 2023 deposition; 1.2 hours attorney time billed to his client for attendance at the June 30, 2023 deposition; and 4.0 hours attorney time billed to his client for travel back to San Diego after Employee's non-appearance at the July 30, 2023 deposition. There being no contrary evidence, this deposition-related attorney time is reasonable. Likewise, the costs listed on Holloway's affidavit including: $645 billed on October 27, 2025 by Veritext Legal Solutions for Employee's October 13, 2025 deposition no-show; $125 billed on July 24, 2023 from Esquire Deposition Solutions for services rendered for Employee's non-appearance at the June 30, 2023 deposition; and $604.13 in travel costs billed to his client for Holloway's travel to the June 30, 2023 deposition are also reasonable.

However, the panel could find no evidence in the agency file stating Holloway's hourly rate for attorney fees. Without knowing Holloway's hourly rate, the panel cannot calculate an attorney fee award and require Employee to pay it. If the panel has overlooked evidence in the agency file stating Holloway's hourly rate, Employer may file a petition to modify this decision.

Employer's December 16, 2025 NOI, filed on December 24, 2025, shows Holloway on June 30, 2023 through July 1, 2023, incurred $436.52 at the Glenmark Hotel related to Employee's June 30, 2023 deposition. His attached itemized receipts shows Holloway on June 30, 2023 incurred fees for parking and bought food totaling $83.77 in respect to the June 30, 2023 deposition. There being no contrary evidence, the charges are reasonable.

Employer's request for an award of attorney fees and costs will be denied in part and granted in part. Its request for attorney fees will be denied because the panel cannot calculate the attorney fees without knowing Holloway's hourly rate. Employer's request for costs will be granted. Employee will be ordered to pay to Employer as an additional sanction under §.108(c), costs totaling $1,894.42 ($645 + $125 + $604.13 + $436.52 + $83.77 = $1,894.42).

Since this decision and order resolves all claims and petitions presently pending in Employee's agency file, by dismissing them without prejudice, this constitutes a "final decision" for purposes of appeal as there are no longer any valid claims or petitions pending. The parties' attention is

directed to "Appeal Procedures," and other remedies on the last page of this decision in the event a party disagrees with this result.

CONCLUSIONS OF LAW

1) The oral order denying Employee's petition for a continuance was correct.
2) The oral order striking Employee's late-filed evidence was correct.
3) Employee's petition for an order rescheduling his deposition will be denied.
4) Employer's petition to dismiss will be granted without prejudice.
5) Employer is not entitled to an attorney fee award but is entitled to a cost award as a discovery sanction.

ORDER

1) Employee's August 21, 2025 petition to compel Employer to reschedule his deposition, filed on October 21, 2025, is denied.
2) Employer's October 20, 2025 petition to dismiss with prejudice is denied.
3) Employer's October 20, 2025 petition to dismiss is granted, without prejudice.
4) Employee's claims and petitions filed prior to the date this decision and order is issued are denied as to petitions, and dismissed as to claims, without prejudice.
5) Employee's case is stayed subject to the following:
6) If Employee wants to claim additional benefits, he must file a new claim, which will apply to only benefits to which he may be entitled from the date of this decision, forward.
7) If Employee wants to petition for action other than a claim for benefits, he must file a new petition.
8) If Employee files a new claim, the Division will serve the claim on Employer's attorney. Employer's attorney shall, not later than 10 days after receiving Employee's claim, notify Employee in writing, with a copy filed with the Division, advising Employee if Employer still wants to depose him.
9) If Employer notifies Employee that it still wants to depose him in accordance with this decision, the Division will not move forward with Employee's case unless and until Employee himself

arranges for his own deposition with the same court reporting service Employer used for the October 13, 2025 deposition.

10) If Employer still wants to depose him, Employee must schedule his own Civil Rule 30 deposition with the same court reporting service Employer used for the October 13, 2025 deposition, after consulting with Holloway as to Holloway's availability.

11) Once the parties have agreed to a time and date for the deposition, Employee must file with the Division and serve on Holloway with proof of service, a simple deposition notice patterned after the previous deposition notices Employee has received from Holloway.

12) Employee must arrange with the court reporting service that he will assume sole responsibility to pay for the court reporter's time to record his deposition, including any time incurred for Employee's non-appearance costs at his deposition.

13) With one exception as stated in order 14 below, Employer need take no action under the Act in this case if Employee files a new claim or petition, except to advise Employee that it still desires for him to undergo a deposition. This includes but is not limited to controverting or answering a new claim or petition, or objecting to any hearing request. The related administrative regulations in respect to answering or objecting are hereby modified in accordance with this decision.

14) Both parties retain their right to request and to attend prehearing conferences and they should attend.

15) To lift the stay, Employee may notice and take his own deposition in accordance with this decision and order.

16) Employee must allow Employer an opportunity at Employee's deposition to cross-examine him. Employee cannot limit Employer's time for cross-examination. If he does, Employee's deposition will be considered to not have been taken at all and his case will remain stayed until he provides Employer with an opportunity to cross-examine him, at Employee's expense.

17) Employee must pay for the court reporter's deposition costs, including an hourly rate for the court reporter to record the deposition. If a party wants a transcript of Employee's deposition, that party must pay for the transcript.

18) Employee is ordered to pay Employer, though Holloway's office, $1,894.42 as an additional sanction under §.108(c).

Dated in Anchorage, Alaska on February 6, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Brian Zematis Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord 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 accord 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 Final Decision and Order in the matter of Johnny Andrew, employee / claimant v. Silver Bay Seafoods, LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201810619; 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 February 6, 2026.

/s/
Rochelle Comer, Workers' Compensation Officer