ALASKA WORKERS' COMPENSATION BOARD

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

ROBERT J. CHURCHWELL, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 201120502
EZ DELIVERY LLC, Employer,	)	AWCB Decision No. 13-0097
and	)	Filed with AWCB Anchorage, Alaska on August 14, 2013
ZURICH AMERICAN INS. CO., Insurer, Defendants.	)	

EZ Delivery LLC's (Employer) June 3, 2013 petition to dismiss Robert J. Churchwell's (Employee) May 2, 2012 claim for failure to comply with November 20, 2012 and May 14, 2013 discovery orders was heard on the written record on July 31, 2013, in Anchorage, Alaska, a date selected on July 18, 2013. The panel consisted of two members, a quorum under AS 23.30.005(f). Attorney Jeffrey Holloway represented Employer. Employee failed to respond to Employer's petition or submit a hearing brief. The record closed on July 31, 2013.

ISSUE

Employer contends Employee has repeatedly, willfully and unreasonably refused to cooperate with discovery by ignoring board orders to sign releases. Employer contends it is unable to investigate and defend against Employee's claim, and Employee has "brought the case to a standstill."

Employer asserts it has been prejudiced and has incurred unnecessary legal costs unsuccessfully pursuing discovery, and contends Employee's claim should be dismissed.

Employee's position is unknown as he failed to reply to Employer's petition or submit a hearing brief. It is assumed he opposes Employer's petition and dismissal of his claim.

Should Employee's May 2, 2012 workers' compensation claim be dismissed under AS 23.30.108(c) for noncompliance with discovery?

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence:

1) On September 22, 2011, Employee injured his neck and back carrying windows while working for Employer (Report of Occupational Injury or Illness, December 7, 2011).
2) On March 22, 2012, Employer controverted benefits for Temporary Partial Disability (TPD) and Temporary Total Disability (TTD) after March 8, 2012; medical treatment after March 22, 2012; and Permanent Partial Impairment (PPI) benefits (Controversion, March 22, 2012).
3) On May 2, 2012, Employee filed a workers' compensation claim, seeking TPD from March 19, 2012 through May 31, 2012, and medical costs totaling $13,390.00 (Workers' Compensation Claim, April 28, 2012).
4) On May 17, 2012, Employer controverted the same benefits it had controverted on March 22, 2012 (Controversion, May 17, 2012).
5) On June 27, 2012, the first prehearing conference in the case was held. Employee attended and an adjuster attended on behalf of Employer. The summary stated:

> Parties advised that the lines of communication are open and discovery is moving forward, ER confirmed receipt of releases and related medical records. EE advised that he did not agree with Dr. Schroeder's opinion and would be seeking a second opinion regarding the medical stability of his back and would provide that documentation to both ER and the Board. Parties agreed to remain in contact through out [sic] this process and advised that attorney representation is likely. Designee advised parties to file a Request for Conference form located on the website http://www.labor.state.ak.us/wc should another prehearing become necessary.

(Prehearing Conference Summary, June 27, 2012).

6) On July 27, 2012, Employer served releases upon Employee. The releases consisted of a general medical release authorizing disclosure of medical records related to Employee's cervical and thoracic spine from September 19, 2009 forward, an employment records release, two Social Security information releases, and a State of Alaska workers' compensation records release (Employer letter to Employee, July 27, 2012).
7) On August 27, 2012, Employer filed a petition to compel discovery, based on Employee's failure to sign and return releases (Employer's Petition, August 24, 2012).
8) Employee did not file a petition for protective order regarding the releases (Record; observations).
9) Employee did not answer Employer's August 27, 2012 petition to compel (*Id.*).
10) On September 17, 2012, Employer filed an affidavit of readiness for hearing (ARH) (Employer's ARH, September 17, 2012).
11) Employee did not oppose Employer's September 17, 2012 ARH (Record; observations).
12) On October 12, 2012, Employee was served notice of a hearing on the written record scheduled for November 14, 2012. The certified, return receipt requested mail notice was accepted by Corey S. Hoppe at Employee's address of record, and the first class mail notice was not returned as undeliverable (Record).
13) On October 17, 2012, the parties attended a prehearing conference. The summary stated:

> EE advised that he has been out of town and unable to get his mail since the last prehearing conference of 6/27/2012. As such he has not had an opportunity to sign and return the necessary releases. EE confirmed that he is now back in town and that the AWCB and ER have his current and correct mailing address. In fact EE was able to find the releases in question in his file during the prehearing conference. EE advised that he has no issue signing and returning the releases to ER and parties agreed that EE will have the releases back to ER by 10/26/2012. Designee requests that ER notify the AWCB when the releases have been received so that the Procedural Hearing on the release issue scheduled for 11/14/2012 may be canceled from the Board's calendar. If the releases are not signed and received by 10/26/2012 then the 11/14/2012 Procedural Hearing on the release issue will proceed as scheduled.
>
> The parties stipulated to a written record hearing to be held on 11/14/2012, for approximately 1 hour. The parties stipulated to serve and file any witness lists, legal memoranda, and evidence in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120. Briefs without attachments or exhibits must be sent by e-mail to Admin Assistant Teresa Nelson at

> teresa.nelson@alaska.gov concurrently with filing. Any request for a continuance, postponement, cancellation, or change of the hearing date will be reviewed in accordance with 8 AAC 45.074.
>
> In addition, the Board designee **encourages EE to seek the assistance of a Workers' Compensation Technician at (907) 269-4980, if EE has any questions pertaining to his claim.**

The summary ordered: 1) "Parties will proceed in accordance with this prehearing conference summary;" and 2) "A Procedural Hearing is scheduled for 11/14/2012" (Prehearing Conference Summary, October 17, 2012; emphasis in original).

14) The October 17, 2012 prehearing summary did not warn Employee his claim could be dismissed if he did not sign and return Employer's releases (*Id.*; observations).
15) On October 19, 2012, Employee was served the October 17, 2012 Prehearing Conference Summary at his address of record by first class mail, which was not returned as undeliverable (Record).
16) Employee did not file a written objection to the October 17, 2012 Prehearing Conference Summary, but he also did not return the releases as agreed (Record; observations).
17) On November 14, 2012, Employer's August 27, 2012 petition to compel was heard on the written record. Employee did not file a brief so his position was unknown (*Churchwell v. EZ Delivery LLC,* AWCB Decision No. 12-0201 (November 20, 2012) (*Churchwell I*)).
18) On November 20, 2012, *Churchwell I* reviewed the releases Employer sought, determined they were relevant to Employee's injury, granted Employer's August 27, 2012 petition to compel, and ordered Employee to sign and return Employer's releases by December 4, 2012. The decision did not impose sanctions or warn Employee of the potential dismissal of his claim if he failed to sign and return the releases (*Id.*; observations).
19) On November 23, 2012, Dan Carrell received *Churchwell I* by certified mail at Employee's address of record. The version sent by first class mail was not returned as undeliverable (Record).
20) Employee did not file a petition for reconsideration, modification or review of *Churchwell I* (Record; observations).
21) Employee did not sign and return the releases as ordered in *Churchwell I* (Record; observations).

22) On December 12, 2012, Employer filed a petition to dismiss based on Employee's lack of compliance with *Churchwell I's* order to sign releases (Employer's Petition, December 11, 2012).

23) Employee did not answer Employer's December 12, 2012 petition to dismiss (Record; observations).

24) On January 1, 2013, Employee was served notice of a prehearing conference scheduled for February 13, 2013. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

25) On January 4, 2013, Employer filed an ARH on its December 12, 2012 petition to dismiss (Employer's ARH, January 3, 2013).

26) Employee did not oppose Employer's January 4, 2013 ARH (Record; observations).

27) On February 4, 2013, Employee was served notice of a hearing on the written record scheduled for February 27, 2013. The certified mail version was accepted by Corey Hoppe at Employee's address of record, and the first class mail version was not returned as undeliverable (Record).

28) On February 13, 2013, Employer participated in a prehearing conference, but Employee did not. Employer stated it had no recent contact with Employee. Briefing deadlines for the February 27, 2013 hearing were set (Prehearing Conference Summary, February 13, 2013).

29) On February 14, 2013, Employee was served the February 13, 2013 Prehearing Conference Summary at his address of record by first class mail, which was not returned as undeliverable (Record).

30) Employee did not file a written objection to the February 14, 2013 Prehearing Conference Summary (Record; observations).

31) On February 27, 2013, Employer's December 11, 2012 petition to dismiss based on Employee's lack of compliance with *Churchwell I's* order to sign releases was heard on the written record. Employee did not file a brief so his position was unknown (*Churchwell v. EZ Delivery LLC*, AWCB Decision No. 13-0053 (May 14, 2013) (*Churchwell II*)).

32) *Churchwell II* denied Employer's petition to dismiss. It ordered Employee to sign and return Employer's releases by May 24, 2013; sanctioned Employee for noncompliance with discovery by ordering any evidence sought by Employer's releases excluded from future

hearings on the merits; and warned Employee his claim could be dismissed if he failed to sign and return the releases (*Id.*).

33) *Churchwell II* was sent to Employee by both certified and first class mail at his address of record. On June 3, 2013, the certified mail version was returned to the board marked unclaimed and unable to forward. *Churchwell II* was promptly sent again by first class mail to the same address. Neither first class mail version was returned as undeliverable (Record).

34) Employee did not file a petition for reconsideration, modification or review of *Churchwell II* (Record; observations).

35) Employee did not sign and return the releases as ordered in *Churchwell II* (Record).

36) On June 3, 2013, Employer filed a petition to dismiss for failure to comply with the November 20, 2012 and May 14, 2013 discovery orders (Employer's Petition, June 3, 2013).

37) Employee did not answer Employer's June 3, 2013 petition to dismiss (Record; observations).

38) On June 26, 2013, Employer filed an ARH on its June 3, 2013 petition to dismiss (Employer's ARH, January 3, 2013).

39) Employee did not oppose Employer's June 26, 2013 ARH (Record; observations).

40) On June 26, 2013, Employee was served notice of a prehearing conference scheduled for July 18, 2013. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

41) On July 18, 2013, Employer participated in a prehearing conference, but Employee did not. Employer stated it had no recent contact with Employee. A hearing on the written record was set for July 31, 2013 (Prehearing Conference Summary, July 18, 2013).

42) On July 18, 2013, Employee was served that day's Prehearing Conference Summary at his address of record by first class mail, which was not returned as undeliverable (Record).

43) On July 18, 2013, Employee was served notice of a hearing on the written record scheduled for July 31, 2013. The certified mail copy was accepted by Corey Hoppe at Employee's address of record, and the first class mail copy was not returned as undeliverable (Record).

44) Employee did not file a written objection to the July 18, 2013 Prehearing Conference Summary (Record; observations).

45) On July 22, 2013, a board designee attempted to contact Employee at his phone number of record to tell him about the July 31, 2013 hearing, and was informed the number was out of service (Record).
46) On July 23, 2013, the designee attempted to contact Employee at an older phone number in the case file and was informed that number too was out of service (Record).
47) The workers' compensation division's file does not contain evidence of any returned first class mail to Employee, or a change of Employee's address of record (Record; observations).
48) Employee did not file a brief for the July 31, 2013 hearing.

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

(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 not only on direct testimony and other tangible evidence, but also on the board's "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, 533-534 (Alaska 1987).

AS 23.30.005. Alaska Workers' Compensation Board.
. . .

(f) Two members of a panel constitute a quorum for hearing claims. . .
. . .
(h) The department shall . . . adopt regulations to carry out the provisions of this chapter. . . Process and procedure under this chapter shall be as summary and simple as possible.

. . .

AS 23.30.107. Release of information.

(a) Upon written request, an employee shall provide written authority to the employer . . . to obtain medical and rehabilitation information relative to the employee's injury. The request must include notice of the employee's right to file a petition for a protective order with the division and must be served by certified mail to the employee's address on the notice of injury or by hand delivery to the employee. This subsection may not be construed to authorize an employer, carrier, rehabilitation specialist, or reemployment benefits administrator to request medical or other information that is not applicable to the employee's injury. . .

Employers have a constitutional right to defend against claims of liability. *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999), citing Alaska Const., art. I sec. 7. Employers also have a statutory duty to adjust workers' compensation claims promptly, fairly and equitably. *Id.*, citing AS 21.36.010 *et seq*.; 3 AAC 26.010 - .300. The board has long recognized it is important for employers to thoroughly investigate workers' compensation claims to verify information provided by the claimant, properly administer claims, effectively litigate disputed claims and to detect fraud. *Id.*, citing *Cooper v. Boatel, Inc.*, AWCB Decision No. 87-0108 (May 4, 1987). The statute authorizes employers to obtain information relevant to an employee's injuries. *Id.*

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

(a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.

(b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the

> recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a 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.
> . . .

The law has long favored giving a party his "day in court," *see, e..g., Sandstrom & Sons, Inc. v. State of Alaska*, 843 P.2d 645, 647 (Alaska 1992), and unless otherwise provided for by statute, workers' compensation cases will be decided on their merits. AS 23.30.001(2). Dismissal should only be imposed in "extreme circumstances," and even then, only if a party's failure to comply with discovery has been willful and when lesser sanctions are insufficient to protect the adverse party's rights. *Id.* The extreme sanction of dismissal requires a reasonable exploration of alternative sanctions. *Id.* at 648-49.

However, AS 23.30.108(c) does provide a statutory basis for dismissal as a sanction for noncompliance with discovery, and the board has long exercised its authority to dismiss claims when it has found an employee's noncompliance to have been willful. *See, e.g., O'Quinn v. Alaska Mechanical, Inc.*, AWCB Decision No. 06-0121 (May 15, 2006); *Erpelding v. R & M Consultants, Inc.*, AWCB Decision No. 05-0252 (October 3, 2005); *Sullivan v. Casa Valdez Restaurant*, AWCB Decision No. 98-0296 (November 30, 1998); *Maine v. Hoffman/Vranckaert, J.V.*, AWCB Decision No. 97-0241 (November 28, 1997); and *McCarroll v. Catholic Community Services*, AWCB Decision No. 97-0001 (January 6, 1997). "Willfulness" has been established when a party has been warned of the potential dismissal of his claim and has violated multiple discovery orders. *Erpelding.* It has also been established when a party has been warned of the potential dismissal of her claim and has refused to participate in proceedings and discovery multiple times. *Sullivan.* Since dismissal of a workers' compensation claim under AS 23.30.108(c) is analogous to dismissal of a civil action under Civil Rule 37(b)(3), the board has occasionally consulted the factors set forth in that subsection of the Rule when deciding petitions to dismiss. *Erpelding; Sullivan; McCarroll.*

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. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. . . 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.

The Supreme Court found the language of AS 23.30.110(c) clear, requiring an employee to request a hearing within two years of the controversion date or face claim dismissal of the particular claim. *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 913 (Alaska 1996). The Court also held the board owes a duty to every claimant to fully advise him of "all the real facts" bearing upon his right to compensation, and to instruct him how to pursue that right under law. *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445, 449 (Alaska 1963). Applying *Richard*, the Court concluded the board has a specific duty to inform a *pro se* claimant how to preserve his claim under §110(c). *Bohlmann v. Alaska Const. & Engineering*, 205 P.3d 316, 320 (Alaska 2009).

8 AAC 45.054. Discovery.

. . .

(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 45.060. Service.

. . .

(b) [S]ervice must be done, either personally, by facsimile, electronically, or by mail, in accordance with due process. Service by mail is complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to

> be done, three days must be added to the prescribed period when a document is served by mail. . .
> . . .
>
> (f) Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address.
>
> (g) If after due diligence, service cannot be done personally, electronically, by facsimile, or by mail, the board will, in its discretion, find a party has been served if service was done by a method or procedure allowed by the Alaska Rules of Civil Procedure.

While service is complete upon mailing with sufficient postage to the parties last known address, the board has repeatedly found parties have received actual notice of hearings when "although the return receipt from the notice sent via certified mail had not been received [by the board], neither had the notice sent via first class mail been returned as undeliverable." *See, e.g., Mendez v. Sundance Raceways*, AWCB 93-0173 at 3 (July 7, 1993); *Woodards v. Four-Star Terminals, Inc.*, AWCB 95-0167 at 3 (June 23, 1995); and *McCarroll v. Catholic Community Services*, AWCB 97-0001 at 5 (January 6, 1997), citing *Mendez*. Under such circumstances, the board found it proper to proceed with a hearing under 8 AAC 45.070(f)(1) in a party's absence. *Id.*

> **8 AAC 45.063. Computation of time.**
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> (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. . .
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> **8 AAC 45.150. Rehearings and modification of board orders.**
> . . .
>
> (b) A party may request a rehearing or modification of a board order by filing a petition for a rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.
> . . .
>
> (d) A petition for a rehearing or modification based on an alleged mistake of fact

by the board must set out specifically and in detail

(1) the facts upon which the original award was based;

(2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and

(3) the effect that a finding of the alleged mistake would have upon the existing board order or award.

(e) A bare allegation of . . . mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.

(f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

Civ. R. 37. Failure to Make Disclosure or Cooperate in Discovery.

. . .

(b) Failure to Comply with Order.

. . .

(3) Standards 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.

ANALYSIS

Employee confirmed his mailing address at the October 17, 2012 prehearing conference. Since then Employee was served with three prehearing conference summaries, two prehearing notices, three hearing notices (each by both first class and certified, return receipt requested mail) and two Decisions and Orders (also by both first class and certified mail). Pursuant to 8 AAC 45.060(f), all documents were sent to Employee's last known address.

Prior decisions found parties received actual notice when "although the return receipt from the notice sent via certified mail had not been received [by the board], neither had the notice sent via first class mail been returned as undeliverable." *Mendez; Woodards; McCarroll.* Here, out of 15 pieces of mail, only one was returned as undeliverable: the certified mail version of *Churchwell II*, which was promptly sent a second time by first class mail. A further indication of the diligence shown in attempting to notify Employee of the instant hearing is the board designee's unsuccessful attempts to reach him at the two most recent phone numbers on record. The fact Employee did not personally sign for the receipt of the certified mailings is of no legal consequence; Employee is found to have been properly served under 8 AAC 45.054.

Dismissal should only be imposed when a party's failure to comply with discovery has been willful and when lesser sanctions have not adequately protected the other party's rights. *Sandstrom*. "Willfulness" exists when a party has been warned of the potential dismissal of his claim and has violated multiple discovery orders. *Erpelding*.

At the October 17, 2012 prehearing conference, Employee agreed to sign and return the releases to Employer by October 26, 2012, but failed to do so. He subsequently violated the discovery orders of both *Churchwell I* (November 20, 2012) and *Churchwell II* (May 14, 2013).

In *Churchwell II* Employee was warned his claim might be dismissed if he failed to sign and return the releases. *Churchwell II* also imposed a sanction: Employee was excluded from

presenting any evidence that was the subject of Employer's releases at a hearing on the merits on Employee's claim. 8 AAC 45.054(d).

Since October 17, 2012, Employee gave no indication he wished to pursue his claim. He did not participate in any judicial event, including prehearings on February 13, 2013 and July 18, 2013; and hearings on November 14, 2012; February 27, 2013; and July 31, 2013. He did not file written objections to either prehearing conference summary, nor did he file a petition for reconsideration, modification or review of either *Churchwell I* or *Churchwell II.* He did not respond to Employer's December 12, 2012 or June 3, 2013 petitions to dismiss, nor did he oppose Employer's January 4, 2013 or June 26, 2013 affidavits of readiness for hearing.

Employee is found to have willfully abandoned his claim on the basis of his total lack of participation in the judicial process; his violation of two explicit discovery orders, despite being warned that noncompliance could result in dismissal of his claim; and the prior imposition of a sanction. *Sandstrom*; *Erpelding*; *Sullivan.* Employer has been considerably prejudiced by not being able to thoroughly investigate evidence relevant to Employee's claim. *Granus.* Under AS 23.30.108(c), the claim will be dismissed.

Pursuant to *Richard*, claimants are entitled to be fully advised of "all the real facts" bearing upon their rights to compensation, and instructed how to pursue those rights under law. If Employee believes this order was based on a mistake of fact, he may request a rehearing or modification of the order within one year of its issuance. Employee's attention is therefore drawn to "8 AAC 45.150. Rehearings and modification of board orders." *See above, pp. 11-12.*

If there is cause to modify this order to dismiss, Employee is advised the time constraints of AS 23.30.110(c) would still apply: "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." On May 17, 2012, Employer controverted TPD and TTD after March 8, 2012; medical treatment after March 22, 2012; and PPI. Employee's deadline for filing an Affidavit of Readiness for hearing on those denied benefits is therefore May 21, 2014. 8 AAC 45.063; 8 AAC 45.060(b).

CONCLUSIONS OF LAW

Employee's May 2, 2012 workers' compensation claim will be dismissed under AS 23.30.108(c) for noncompliance with discovery.

ORDER

Employer's May 31, 2013 petition to dismiss Employee's May 2, 2012 workers' compensation claim is granted.

Dated in Anchorage, Alaska on August 14, 2013.

ALASKA WORKERS' COMPENSATION BOARD

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Margaret Scott, Designated Chair

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Patricia Vollendorf, Member

APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the board's office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers' Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the board are parties to an appeal. 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 because the board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers' Compensation Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers' Compensation Division and all parties. Any party may cross-appeal by filing with the Alaska Workers' Compensation 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 grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of ROBERT J. CHURCHWELL, employee / respondant v. EZ DELIVERY, LLC, employer; ZURICH AMERICAN INSURANCE CO., insurer / defendants; Case No. 201120502; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, on August 14, 2013, and served upon the parties this 14th day of August, 2013.

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Pamela Hardy, Office Assistant