# ALASKA WORKERS' COMPENSATION BOARD

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

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| VANESSA J. LISTON,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>ALASKA CONSUMER DIRECT PERSONAL CARE, LLC,<br>Employer,<br><br>and<br><br>CNA INSURANCE COMPANY.<br>Insurer,<br>Defendants. | ) | FINAL DECISION AND ORDER<br><br>AWCB Case No. 201119632<br><br>AWCB Decision No. 13-0111<br><br>Filed with AWCB Anchorage, Alaska on September 10, 2013 |

Alaska Consumer Direct Personal Care, LLC, and its insurer CNA's March 12, 2013 petition for review of a March 1, 2013 board designee discovery order, was heard in Anchorage, Alaska, on June 19, 2013, a date selected on May 8, 2013. Attorney Adam Sadoski represents Alaska Consumer Direct Personal Care, LLC and CNA (collectively "Employer"). Attorney Keenan Powell represents Vanessa J. Liston ("Employee"). The hearing proceeded with a two-member panel, a quorum under AS 23.30.005(f). The record closed at the hearing's conclusion on June 19, 2013.

## ISSUES

Employer contends the board designee abused his discretion when he granted Employee's petition for a protective order from Employer's proposed Employment Records Release.

Employee contends the designee's order was based on controlling law and was not an abuse of discretion.

*1. Did the board designee abuse his discretion when he granted Employee's petition for protective order from Employer's proposed Employment Records Release?*

Employer contends the board designee abused his discretion when he granted Employee's petition for a protective order from Employer's proposed Medical Records Release, and by ordering bifurcated medical releases: one release for medical records pertaining to Employee's low back dating to 2002; a second release for medical records addressing Employee's hips dating to 2000. Employee contends the designee's order was based on controlling law and was not an abuse of discretion.

*2. Did the board designee abuse his discretion when he ordered bifurcated medical records releases?*

Employee contends she is entitled to an award of attorney fees should she prevail in her defense against Employer's petition for review of the board designee's discovery orders. Employer contends even if Employee prevails an award of attorney fees would be premature this early in the proceedings.

*3. Is Employee entitled to an award of attorney fees? If so, in what amount?*

## FINDINGS OF FACT

The following findings of fact and factual conclusions relevant to the limited discovery issues raised are established by a preponderance of the evidence:

1. Employee reported sustaining an injury to her lower back and left leg on November 19, 2011, while working as a personal care attendant when she used her body to break the fall of her six foot tall, 250 pound patient, who is also her son. (Report of Occupational Injury (ROI), December 2, 2011; Chart note, Deborah Warner, M.D., November 19, 2011).
2. The Report of Occupational Injury, completed by Employer, states Employee was hired by Employee on November 15, 2007, her earnings are calculated by the hour, at a rate of $15.35 per hour, she works seven days per week, with no days off. (ROI).

3. Employee's injuries included an L5-S1 disc protrusion and a labral tear of the left hip. Surgery was recommended. (MRI report, chart note, Larry Kropp, M.D., January 4, 2012; MR Arthrogram Report, University Imaging Center, July 17, 2012; chart note, Shawn Johnston, M.D., July 17, 2012).
4. On October 16, 2012, Employer filed a Controversion Notice, denying all benefits after obtaining the opinion of Employer Medical Evaluator (EME) Colin O'Riordan, M.D. (Controversion Notice).
5. On January 14, 2013, Employee filed a Workers' Compensation Claim (WCC or claim) seeking temporary partial disability benefits (TPD), permanent partial impairment benefits (PPI), medical and transportation costs, penalty, interest, unfair or frivolous controversion, attorney fees and costs. (Claim, January 14, 2013).
6. Employee returned to modified work and has not sought reemployment benefits. (Record).
7. On January 18, 2013, Employer tendered four releases for Employee's signature: (1) an Alaska Workers' Compensation Records Release; (2) a Social Security Administration Records Release; (3) an Employment Records Release, and (4) a Medical Records Release seeking records pertaining to Employee's "LOW BACK, BILATERAL HIPS AND LOWER EXTREMITIES," dating back to November 2000. (January 18, 2013 letter and enclosed releases).
8. On January 18, 2013 and January 24, 2013, Employee filed petitions for protective orders on each of the four releases. With respect to the medical records release, Employee contended the release was overbroad. She contended any release pertaining to her low back should date back only to "2002," for her lower extremities to 2007, and for her hips to 2008. (Petitions for Protective Order, January 18, 24, 2013).
9. At a February 28, 2013 prehearing conference, Employee withdrew her petition for a protective order with respect to the Alaska Workers' Compensation Records Release, but objected to the Social Security Administration Records Release, the Employment Records Release and the Medical Records Release. (Prehearing Conference Summary, February 28, 2013).
10. The board designee denied Employee's petition for protective order concerning the Social Security Administration records release. Employee did not seek review of this board designee decision. (Prehearing Conference Summary, February 28, 2013). (Record).
11. The Employment Records Release Employer sought provided:

> TO: Any Employer, Union Representative or Custodian of Records
> Re: Vanessa J. Liston
> SSN: [omitted]
> DOB: [omitted]
>
> You are hereby authorized to release to Holmes Weddle & Barcott, P.C., [address omitted] copies of any and all employment or personnel records, dispatch records, pension records, or other personnel records of any nature which are in your possession or control and which relate to the employment, termination, performance in employment or other records kept in the normal course of business relating to the employment of me by your company or through your union from November 2009, forward . . .

12. At the prehearing conference Employer stated its purpose for the employment records release was to obtain information about "potential work injur[ies]" suffered and "wage information." Employee argued an employment records release was irrelevant since reemployment benefits, for which a ten year work history would be relevant, were not sought. The board designee granted Employee's petition for protective order concerning the Employment Records Release, finding that unless or until Employer supplied documentation that the release would be likely to lead to the discovery of admissible evidence, it was improper. (Prehearing conference summary, February 28, 2013). Employer timely sought review of this decision. (Petition, March 12, 2013).

13. Employer's proposed Medical Records Release sought:

> Medical records and information relating to the treatment of my November 19, 2011, work injury, and the following parts of my body, diagnoses or conditions, organ systems, chief complaints, and/or symptoms: LOW BACK BILATERAL HIPS AND LOWER EXTREMITIES. This authorization releases medical information from **November 2000**, (which is 2 years before the first known treatment for conditions) through and including one year past the date of execution of this release. (Medical Records Release)(Emphasis in original).

14. Employee objected to the Medical Records Release as overbroad, arguing only medical records from two years prior to the first documented complaint for a specific body part would be likely to lead to the discovery of admissible evidence. Employee contended information concerning Employee's hips should date from 2008 forward; for her lower extremities from 2007 forward; and for her low back from 2002 forward. (Second Petition for Protective Order, January 24, 2013).

15. In support of its assertion it is entitled to a release for medical records dating back to 2000 for Employee's hip and back, Employer relies on a November 7, 2002 chart note written by Dr. Warner. (Employer's Hearing Brief, Ex. 2).

16. Specifically, in support of its request for a release for medical records concerning Employee's hips dating to November 2000, Employer relies on the following description of symptoms in Dr. Warner's November 7, 2002 chart note:

> "She also mentions that she has been having problems lately with her joints hurting, especially her feet, ankles, knees, hips and somewhat her hands." (Chart note, Dr. Warner, November 7, 2002; Employer's Hearing Brief, Ex. 2).

17. In support of its request for a release for medical records pertaining to Employee's low back dating to November 2000, Employer relies on another portion of the same chart note:

> Vanessa's specific concerns today include that she has had some chest pain deep in the right side of her chest for about three to four months. She describes it as constantly low grade, but occasionally it gets significantly worse, especially if she does upper body work; for instance, when she washed the car recently. She said the pain got so bad she felt like it was stabbing through clear from her back through the front of her chest. . . She wanted to know what we could do to see if her heart was healthy. This is the issue which is bothering her the most . . . (Chart note, Dr. Warner, November 7, 2002; Employer's Hearing Brief, Ex. 2).

18. That portion of the November 7, 2002 chart note upon which Employer relies for a medical records release pertaining to Employee's low back dating back to November 2000, is a reference to chest pain suffered in 2002, and reflects Employee's concern about her heart health. It is not a reference to suffering or seeking medical attention for back pain. (Judgment, experience, observation, facts of the case and inferences therefrom).

## 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. . . .

> **AS 23.30.107. Release of Information.** (a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator 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 right to thoroughly investigate workers' compensation claims to verify information provided, properly administer claims, and effectively litigate disputed claims. *Cooper v. Boatel, Inc.*, AWCB Decision No. 87-0108 (May 4, 1987). Evidence is "relative" to the claim where the information sought is reasonably calculated to lead to facts having any tendency to make an issue in a case more or less likely. *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999). In *Granus* the board established a two-step analysis to determine whether information is properly discoverable:

> The **first step** in determining whether information sought to be released is relevant, is to analyze what matters are "at issue" or in dispute in the case. . . . In the **second step** we must decide whether the information sought by employer is relevant for discovery purposes, that is, whether it is reasonably "calculated" to lead to facts that will have any tendency to make a question at issue in the case more or less likely.
> . . . .
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> The proponent of a release must be able to articulate a reasonable nexus between the information sought to be released and evidence that would be relevant to a material issue in the case.
>
> To be "reasonably" calculated to lead to admissible evidence, both the scope of information within the release terms and the time periods it covers must be reasonable. The nature of employee's injury, the evidence thus far developed, and the specific disputed issues in the case determine whether the scope of information sought and period of time covered by a release are reasonable.

The burden of demonstrating the relevancy of the information sought rests with the proponent of the release. *Wariner v. Chugach Services, Inc.*, AWCB Decision No. 10-0075 (April 29, 2010).

For a discovery request to be "reasonably calculated," it must be based on a deliberate and purposeful design to lead to admissible evidence, and that design must be both reasonable and articulable. The proponent of a release must be able to articulate a reasonable nexus between the information sought and evidence relevant to a material issue in the case. *In the Matter of Mendel*, 897 P.2d 68, 93 (Alaska 1995). To be "reasonably calculated" to lead to admissible evidence, both the scope of information within the release terms and the time periods it covers must be reasonable. In *Granus*, the board noted that in most cases medical records relating to the body part or system at issue for two years prior to the date of injury were sufficiently likely to lead to admissible evidence to be discoverable. *Granus* at 15.

The two-year, same body part limitation has become a rule of thumb for medical releases. See, e.g., *Fernandez v. Trident Seafoods* Corporation, AWCB Decision No. 12-0155 (September 6, 2012); *Crain v. West Coast Paper Co.*, AWCB Decision No. 12-0018 (January 30, 2012).

Employment records releases were addressed, among other issues, in *Gorospe v. Net Systems, Inc.*, AWCB Decision No. 08-0229 (November 21, 2008). *Gorospe* held that where an employee has not sought reemployment benefits he cannot be compelled to sign a release of employment and union records covering the period going back ten years before the date of his injury." *Id.* at 10. However, *Fletcher v. Pacific Rim Geological Consulting, Inc.*, AWCB Decision No. 12-0021 (January 30, 2012) and *Carter v. Anchorage Daily News*, AWCB Decision No. 13-0050 (May 10, 2013) also addressed employment records releases where reemployment benefits were not at issue and allowed the releases. Both decisions held an employer's right to an employment records release is not solely dependent upon a claim for reemployment benefits, but on the relevance of information sought and the benefits claimed. *Fletcher* held that an employment records release may be relevant to causation and medical benefits in a dispute where an employee suffered a previous work injury to the same body part and filed a claim arising from that work injury. *Id.* at 35. *Carter* held an employment records release was appropriate where the employee's claim was one for an injury accumulated over time rather than a discrete injury. *Id*. at 14.

> **AS 23.30.108(c). Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance**. . . .
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> . . .
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> (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. . . .

AS 23.30.108(c) gives the board designee authority and responsibility to decide all discovery issues at the prehearing conference level, with the right of both parties to seek board review. *Smith v. CSK Auto, Inc*., AWCAC Decision No. 002 (January 27, 2006). The board has broad statutory authority in conducting its hearings. *De Rosario v. Chenenga Lodging*, AWCB Decision No. 10-0123 (July 16, 2010). In *Bowles v. Inlet Towers Suites*, AWCB Decision No. 08-0051 (March 20, 2008), at 12, an appeal from a designee's prehearing decision, the board held:

> AS 23.30.108(c) provides procedure and authority for the Board and its Designee's [sic] to control discovery and resolve discovery disputes. Under AS 23.30.108(c) discovery disputes are initially decided at the level of a prehearing conference by a Board Designee (footnote omitted). Although the first sentence of that subsection specifically refers to 'releases' and 'written documents,' the subsection repeatedly uses the broader term 'discovery dispute' as the subject matter of the prehearing conference. We interpret AS 23.30.108 to apply to the general subject of discovery (footnote omitted). We also interpret AS 23.30.108 to apply to disputes concerning any examination, medical reports or other records held by the parties (footnote omitted).

"The scope of review for an agency's application of its own regulations . . . is limited to whether the agency's decision was arbitrary, unreasonable, or an abuse of discretion." *AT&T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007) *citing J.L. Hodges v. Alaska Constructors, Inc*., 957 P.2d 957, 960 (Alaska 1998). A board designee's decision on releases must be upheld absent "an abuse of discretion." AS 23.30.108(c).

Although no definition of "abuse of discretion" appears in the Act, it has been defined to include "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from

an improper motive," failing to apply controlling law or regulation, or failing to exercise sound, reasonable and legal discretion. *Smith v. CSK Auto, Inc*., 204 P.3d 1001, 1013 (Alaska 2009) (footnote omitted); *Irvine v. Glacier General Construction*, 984 P.2d 1103, 1107, n. 13 and accompanying text (Alaska 1999); *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985); *Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979) (footnote omitted); *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

The Administrative Procedure Act (APA) at AS 44.62.570 provides another definition for reviewing administrative agency decisions. It contains terms similar to those noted above, but also expressly refers to a "substantial evidence" standard:

> **AS 44.62.570. Scope of review.**
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> . . .
>
> Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. . . . If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence; or (2) substantial evidence in the light of the whole record.

On appeals to the Alaska Workers' Compensation Appeals Commission or the courts, decisions reviewing Board designee determinations are subject to reversal under the "abuse of discretion" standard in AS 44.62.570, incorporating the "substantial evidence test." Concerned with meeting that standard on appeal, the board also applies a substantial evidence standard when reviewing a Board designee's discovery determination. *Augustyniak v. Safeway Stores, Inc*., AWCB No. 06- (April 20, 2006). When applying a substantial evidence standard, "[the reviewer] may not reweigh the evidence or draw its own inferences from the evidence. If, in light of the record as a whole, there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, then the order . . . must be upheld." *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1049 (Alaska 1978).

> **AS 23.30.145. Attorney fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of

> compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under what authority attorney's fees may be awarded in workers' compensation cases. A controversion is required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id.* at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

In *Adamson v. University of Alaska*, 819 P.886 (Alaska 1991), the Alaska Supreme Court held the language of AS 23.30.145(b) makes it clear that to be awarded attorney's fees and costs, the employee must "be successful on the claim itself, not on a collateral issue. . . The word 'proceedings' also indicates that the Board should look at who ultimately is successful on the claim, as opposed to who prevails at each proceeding." *Syren v. Municipality of Anchorage*, AWCB Decision No. 06-0004 (January 6, 2006), cited *Adamson* in holding an employee must be successful

on a claim on the merits, not a collateral issue such as discovery, to be entitled to an award of attorney's fees and costs.

> **8 AAC 45.065. Prehearings**. (a) . . . At the prehearing, the board or designee will exercise discretion in making determinations on
> . . .
> (10) discovery requests . . . .
> . . .
> (15) other matters that may aid in the disposition of the case.

## ANALYSIS

***1. Did the board designee abuse his discretion when he granted Employee's petition for protection order from Employer's Employment Records Release?***

Employer contends the board designee acted arbitrarily and capriciously by refusing to order Employee to sign an employment records release. Citing *Gorospe v. Net Systems, Inc.*, AWCB Decision No. 08-0229 (November 21, 2008), Employee contends that since she is not seeking reemployment benefits, her past employment history is not relevant, past employment records are not discoverable, and the board designee followed controlling law when he granted her a protective order for employment records.

In response, Employer argues the proffered release was limited in scope to two years prior to the work injury, and while reemployment benefits are not at issue, they may become an issue in the future. Employer further contends past employment records can lead to information regarding "employee's earnings history, alternative sources of causation, prior work injuries or other relevant medical conditions, potential pre-employment physical examination, and/or previously rated permanent impairment."

Because an employee's ten-year work history is relevant in determining whether the employee is entitled to reemployment benefits, employment records releases are most frequently seen in that context. However, the fundamental test for any discovery remains the two-prong test set out in *Granus*: First, the matters or issues in dispute in the particular case must be examined. Second, it must be determined whether the information sought is reasonably calculated to lead to facts that would have a tendency to make any question at issue more or less likely.

Here, Employee suffered a single discrete work injury, on November 19, 2011, to her low back, left leg and hip. As far as currently known, this was not a cumulative injury as in *Carter*, or a second work injury to a same body part as in *Fletcher*. She filed a claim for TPD, PPI, and medical and transportation benefits.[1] She is not seeking reemployment benefits. Employer contends its employment records release is reasonably calculated to lead to facts relevant to Employee's claim for TPD, PPI and medical benefits, because it may reveal "employee's earnings history, alternative sources of causation, prior work injuries or other relevant medical conditions, potential pre-employment physical examinations, and/or previously rated permanent impairment."

But Employer's employment records release seeking "all employment or personnel records, dispatch records, pension records, or other personnel records of any nature . . . and which relate to the employment, termination, performance in employment or other records kept in the normal course of business relating to [Employee's] employment. . ." will not obtain the relevant information sought. Information Employer seeks pertaining to "alternative sources of causation," "prior injuries" or "other relevant medical conditions" are best obtained and obtainable through the medical records releases signed and to be signed. Information concerning previous "impairment ratings" and "prior work injuries" are found and acquired through the signed medical records releases and workers' compensation records releases.

While "earnings history" is relevant to Employee's claim for TPD, that information can be gleaned from Employee's W-2 forms. Employer's proffered employment records release, requesting Employee's entire personnel, pension and union files, is far too broad for the simple purpose of obtaining her two year earnings history. The board favors informal discovery. If Employer is unable to obtain Employee's W-2 forms through an informal request through her attorney, it may seek the assistance of the board designee through an appropriately limited formal request for the relevant W-2 forms.

[1] Her additional claims for penalty, interest, unfair or frivolous controvert, attorney fees and costs, derive from her substantive claims for TPD, PPI and medical benefits.

The board designee's decision granting Employee protection from Employer's overbroad employment records release applied controlling law. Employee's petition for review of the board designee's decision will be denied.

***2. Did the board designee abuse his discretion when he ordered bifurcated medical records releases?***

Evidence is "relative" to a claim, and thereby discoverable, where the information sought is reasonably calculated to lead to facts having any tendency to make an issue in a case more or less likely. To be "reasonably calculated" to lead to admissible evidence, both the scope of information within the release terms and the time periods it covers must be reasonable. The two-year, same body part limitation has become a rule of thumb for medical releases.

The November 2002 medical record upon which Employer relied when it sought a medical records release dating back to November 2000 for Employee's low back, did not refer to low back pain, the injured body part at issue here. That medical record was a consult for and reference to chest pain, and Employee's concerns about her heart health. The board designee's refusal to extend Employer's medical release for low back issues to November 2000, and instead limiting it to low back issues to 2002, applied controlling law by properly limiting the scope of the release.

Based on the same November 2002 chart note where Employee complained about pain in her feet, ankles, knees, and hips, the board designee correctly allowed Employer's release seeking medical records pertaining to Employee's bilateral hips and lower extremities back to November 2000. Employer objects, however, to the board designee requiring two separate medical releases: one for Employee's hips and lower extremities dating to November 2000, and a second for her low back dating only to 2002. Employer contends that bifurcating the releases is "non-sensical and increases litigation costs to the employer." Employer does not explain how the use of separate medical releases for separate body parts with different record dates increases its costs. The cost for an office assistant's time to change a date on a form document would be *de minimis*. The board designee's decision to bifurcate the releases reflects a considered weighing of Employer's right to obtain relevant medical records, and Employee's right to privacy in

medical records not relevant because they seek information outside established reasonable time and body part limitations. While a single medical release referencing each body part and the applicable year may be marginally more efficient, the designee's decision to require separate releases for body parts with different release dates was not arbitrary, capricious, or stemmed from improper motive. The board designee applied controlling law when he ordered separate medical releases for body parts with different release dates.

***3. Is Employee entitled to an award of attorney fees? If so, in what amount?***

Although Employee prevailed in part on these preliminary discovery issues, because she has not yet obtained a benefit, an award of attorney fees and costs is premature at this time and will be denied. *Adamson, Syren.*

CONCLUSIONS OF LAW

1. The board designee did not abuse his discretion when he limited the medical records release pertaining to Employee's low back to 2002.
2. The board designee did not abuse his discretion when he ordered bifurcated medical records releases, requiring one release for Employee's hips and lower extremities dating back to November 2000, and a separate release for Employee's low back dating back to 2002.
3. The issue of attorney fees and cost is premature and will be denied.

ORDER

1. Employer's petition for review of the board designee's decision granting protection from Employer's proposed Employment Records Release is denied.
2. Employer's petition for review of the board designee's decision limiting medical records releases to hips and lower extremities dating back to 2000, and low back dating back to 2002, and requiring separate releases for each body part, is denied.
3. Employer shall revise, and Employee shall sign a medical records release pertaining to Employee's bilateral hips and lower extremities dating back to November, 2000.
4. Employer shall revise, and Employee shall sign a medical records release pertaining to Employee's low back dating back to 2002.

5. Employee's petition for an award of attorney fees for prevailing on this collateral and preliminary issue is premature and is denied at this time.

Dated at Anchorage, Alaska this 10 day of September, 2013.

ALASKA WORKERS' COMPENSATION BOARD

Linda M. Cerro
Designated Chairperson

Pamela Cline, Member

## 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.

## PETITION FOR REVIEW

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

## CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of VANESSA J. LISTON employee / applicant; v. ALASKA CONSUMER DIRECT PERSONAL CARE, LLC., employer; AMERICAN CASUALTY CO. OF READING, PA., insurer / defendants; Case No. 201119632; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, and served upon the parties this 10th day of September, 2013.

Kimberly Weaver, Clerk