ALASKA WORKERS' COMPENSATION BOARD

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

ROSILYN HILL,	)	
	)	INTERLOCUTORY
Employee,	)	DECISION AND ORDER
Claimant,	)	
	)	AWCB Case No. 201212390
v.	)	
	)	AWCB Decision No. 13-0113
ADECCO, INC.,	)	
	)	Filed with AWCB Anchorage, Alaska
Employer,	)	on September 16, 2013
and	)	
	)	
CHARTIS CASUALTY INSURANCE CO.,	)	
	)	
Insurer,	)	
Defendants.	)	

Adecco, Inc.'s (Employer) March 29, 2013 petition to compel discovery and June 28, 2013 petition to dismiss Rosilyn Hill's (Employee) case were heard on August 14, 2013, in Anchorage, Alaska, a date selected on July 11, 2013. Attorney Michelle Meshke appeared and represented Employer. Employee did not appear. Tina Arnold appeared as a witness and testified on Employer's behalf. The record remained open to allow Employer to submit supplemental legal authority. The record closed on August 16, 2013.

As a preliminary matter, the board considered whether Employee received sufficient notice of the August 14, 2013 hearing. Having found she did receive adequate notice, the panel issued an oral order to proceed in Employee's absence. This decision examines the oral order to proceed in Employee's absence and decides Employer's petitions on their merits.

ISSUES

Employer contended Employee was given adequate notice of the hearing. It contended the hearing should go forward.

Employee did not appear at hearing. Her position is therefore not known.

1) **Was it proper to conduct the hearing in Employee's absence?**

Employer contends Employee waived her right to file a Workers' Compensation Claim (claim) because she willfully and unreasonably failed to comply with two orders to sign and return medical releases. Employer contends Employee's conduct is prejudicial to Employer's ability to obtain information material to its defense, and constitutes an abuse and frustration of the Alaska Workers' Compensation Act (Act). Employer concedes Employee has not filed a written claim and Employer cannot cite legal authority to dismiss a nonexistent "claim." Employer therefore seeks a sanction of either a bar on a future claim, or reimbursement of Employer's attorney fees and costs.

Employee's position is unknown as she failed to attend the hearing or submit a brief. It is assumed Employee opposes Employer's requested sanctions.

2) **Should Employee be sanctioned for noncompliance with discovery?**

FINDINGS OF FACT

The following relevant facts and factual conclusions are either undisputed or established by a preponderance of the evidence:

1) On August 27, 2012, Employee completed a Report of Occupational Injury or Illness with the Alaska Division of Workers' Compensation (division). Employee stated on August 13, 2012 she suffered "back and neck spasms caused by stress/lack of sleep" (Report of Occupational Injury or Illness, August 27, 2012).

2) On September 4, 2012, Employee filed a Petition for Protective Order (Petition, September 4, 2012).

3) On September 13, 2012, the parties were served notice of a prehearing conference scheduled for September 25, 2012. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

4) On September 20, 2012, Employer filed an opposition to Employee's petition (Answer, September 20, 2012).

5) On September 25, 2012, the parties attended a prehearing conference. The conference summary stated:

> [Employee] has not filed a [claim] to date, and a copy of a blank one is attached if she wants to file one.
>
> The prehearing officer explained to [Employee] that if she didn't sign the release and discovery requests, or if she was denied her Protective Order, [Employer] would probably file a Controversion (a denial of her claims) . . . Ultimately, [Employee] thought the controversion may help her obtain medical care in that she has stated since she has been unable to obtain such care as long as her claim was active. . . (Prehearing Conference Summary, September 27, 2012).

6) Employee did not file a written objection to the September 27, 2012 Prehearing Conference Summary (Record; observations).

7) On October 12, 2012, Employer denied Employee's right to benefits arising from the August 13, 2012 injury (Controversion Notice, October 12, 2012).

8) On October 30, 2012, parties were served notice of a prehearing conference scheduled for November 6, 2012. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

9) On November 6, 2012, the parties attended a prehearing conference, at which Employee agreed to sign a medical release and "asserted her primary goal was to not pursue benefits until she gets better." The summary stated:

> Designee explained that by not signing the releases [Employee] would not receive medical benefits as well as time loss benefits. . .
>
> Designee explained that releases were used to conduct informal discovery or the exchange of information in cases, which helps speed along resolution of cases. . .
>
> The chair reviewed all of the releases in the file for relevancy and whether they were reasonably calculated to lead to evidence relevant to a material issue. The chair reviewed the Medical release which is limited to two years prior to the date of injury

> and to the body parts for which [Employee] is seeking treatment in relation to her work injury. Designee explained the board considers these limitations on releases to be appropriate in all cases and she should sign the release.
>
> **[Employee's] PETITION FOR A PROTECTIVE ORDER IS DENIED. Employee is ordered to sign the releases within 10 days of receipt of this pre-hearing summary or face possible dismissal of her claim.** (Prehearing Conference Summary, November 15, 2012; emphasis in original).

10) Employee did not file a written objection to the November 15, 2012 Prehearing Conference Summary (Record; observations).

11) On November 15, 2012, Employee was served notice of a prehearing conference scheduled for January 22, 2013. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

12) On January 22, 2013, a prehearing conference was held. Employer appeared telephonically and Employee did not appear. The prehearing conference was adjourned without issues being discussed (Record).

13) On February 13, 2013, Employer sent Employee a letter requesting Employee sign and return medical releases (including a general release, provider-specific release, and Sacred Heart System release), an employment records release, and a request for Social Security earnings information. The letter also stated:

> Under Alaska Statute 23.30.107(a). . . you may request a protective order. . . if you have an objection to one or more of the releases. . . Failure to sign and return the release(s) or file a request for protective order. . . may result in a suspension of benefits. If the employer seeks and obtains a Board order, a failure to comply with that order may result in sanctions imposed by the Board, including the dismissal of your claim or petition. . . . (Employer's letter, February 13, 2013).

14) On February 14, 2013, Employer controverted Employee's right to benefits arising from the August 13, 2012 injury due to Employee's failure to return the executed medical releases (Controversion, February 14, 2013).

15) On March 29, 2013, Employer filed a petition to compel discovery. The petition stated, "the employee has failed to object to this discovery despite the employers' repeated request for information" (Petition, March 29, 2013).

16) Employee did not answer Employer's March 29, 2013 petition (Record; observations).

17) On April 18, 2013, Employer filed an Affidavit of Readiness for Hearing (ARH) on its March, 29, 2013 petition to compel discovery (ARH, April 18, 2013).

18) On May 6, 2013, Employee was served notice of a prehearing conference scheduled for June 11, 2013. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

19) On June 11, 2013, a prehearing conference was held. Employer attended and Employee did not. The conference summary stated:

> Employee has continually failed to sign and return releases. . .
>
> Employer sent Employee additional releases and interrogatories on February 13, 2013, which have not been returned. . . **Employee is ORDERED to sign the releases and complete interrogatories within 10 days of receipt of this prehearing summary or face possible dismissal of her claim.** (Prehearing Conference Summary, June 12, 2013; emphasis in original).

20) Employee did not file a written objection to the June 12, 2013 Prehearing Conference Summary (Record; observations).

21) On June 12, 2013, Employee was served notice of a prehearing conference scheduled for July 11, 2013. The notice was sent to Employee's address of record by first class mail, which was not returned as undeliverable (Record).

22) On June 28, 2013, Employer filed a petition to dismiss Employee's "claim," stating "the employee has failed to comply with the Board's 06/11/13 order and has not filed a written objection or appeal to the Prehearing Conference Summary. . . ." (Petition, June 28, 2013).

23) Employee did not answer Employer's June 28, 2013 petition to dismiss (Record; observations).

24) On July 11, 2013, a prehearing conference was held. Employer appeared and Employee did not. The prehearing conference summary stated:

> Employee did not appear or call in to this properly noticed prehearing, and designee was unable to reach her or leave a message at the phone number of record. Designee encourages [Employee] to contact a workers' compensation technician. . . regarding her case when she receives this prehearing conference summary to update her contact information and if she wishes to continue pursuing benefits under the Act. . .

> **A hearing is set on August 14, 2013** for one hour. The issues are Employer's 6/27/2013 petition to dismiss and 3/28/2013 petition to compel since [Employee] has not returned the releases she was ordered to sign at the last prehearing, nor has she made any contact with the board regarding the board's order. (Prehearing Conference Summary, July 12, 2013; emphasis in original).

25) Employee did not file a written objection to the July 12, 2013 Prehearing Conference Summary, nor did she provide an updated phone number (Record; observations).

26) On July 12, 2013, the board served notice of the August 14, 2013 hearing by both certified and first class mail (Record).

27) Employee signed the certified mail receipt on July 17, 2013, and corrected the delivery address to a post office box in Hay Springs, Nebraska. The first class mail notice was not returned as undeliverable (Record).

28) The division file does not contain evidence of any returned or undeliverable mail to Employee (Record; observations).

29) Employee did not file a brief for the August 14, 2013 hearing (Record; observations).

30) On August 13, 2013, at least three attempts were made to contact Employee at her telephone number of record; each time there was no answer or voice mail (Observations).

31) A few minutes before the August 14, 2013 hearing, another unsuccessful attempt was made to contact Employee by phone (Observations).

32) Employee did not appear at hearing. Neither Employer nor Adjuster had an updated telephone number for Employee. Two more unsuccessful attempts were made to call her; again there was no answer or voice mail. After waiting 15 minutes, the panel met to deliberate how to proceed, and orally decided to proceed in Employee's absence (Record).

33) The record remained open until Friday, August 16, 2013, for Employer to submit supplemental authority regarding imposition of sanctions (Record).

34) On August 20, 2013, Employer filed supplemental authority citing *Smith v. Cook Drilling*, AWCB Decision No. 02-0226 (October 30, 2002), in which an employee was ordered to pay Employer's costs after failing to appear for a deposition (Employer's Notice of Supplemental Authority, August 20, 2013).

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 . . . to ensure the 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;

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, 533-34 (Alaska 1987).

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

(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 23.30.105. Time for filing of claims.
(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. . .

(b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard. . .

The Alaska Supreme Court 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 instruct him how to pursue that right under law. *Richard v. Fireman's Fund Ins. Co.*, 384 P.2d 445, 449 (Alaska 1963).

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 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 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 a party's claim, petition or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. . . .

The 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 rights of the adverse party. *Sandstrom* at 647.

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., Garl v. Frank Coluccio Contr. Co.*, AWCB Decision No. 10-0165 (October 1, 2010); *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); *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 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*.

By operation of law under AS 23.30.108(b), an employee's noncompliance with a board-ordered discovery request automatically generates two sanctions lesser than dismissal: (1) the employee's rights to benefits are suspended until the releases are delivered; and (2) those benefits are

forfeited during the period of suspension unless the board finds good cause existed for the employee's noncompliance. A third pre-dismissal lesser sanction is found in 8 AAC 45.054(d), which authorizes the exclusion at hearing of any evidence that was the subject of a discovery request an employee refused to honor. *Sullivan; McCarroll.*

> **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). . . Service 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 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 4 (July 7, 1993); *Woodwards v. Four-Star Terminals, Inc.*, AWCB 95-0167 at 3 (June 23, 1995); and *McCarroll v. Catholic Comm. Svcs.*, 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. (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. . .

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,

(1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the application or petition. . .

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.

. . .

(d) Failure of a Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6)

> or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under sections (A), (B), and (C) of subparagraph (b)(2) of this rule.
> . . .

When considering dismissal of claims for failure to sign releases, the guidelines of Alaska Civil Rule 37(b)(3) have been applied, including determining the nature of the violation, the willfulness of the employee's conduct, the materiality of the information sought by the employer, the prejudice to the employer, and whether a lesser sanction would adequately protect the employer's interests or deter other discovery violations. In *Vildosola v. Sitka Sound Seafoods*, AWCB Decision No. 11-005 (January 20, 2011), an injured worker's failure to sign was found willful because she "failed or refused to provide the releases [she was previously ordered to sign], without any legal justification or compelling excuse." In *Abramson v. Trident Seafoods Corp.*, AWCB Decision No. 10-0140 (August 18, 2010), Employee's steadfast refusal to sign and return releases after being ordered to do so was similarly deemed willful.

ANALYSIS

1) Was it proper to conduct the hearing in Employee's absence?

Employee was served five prehearing conference notices, four prehearing conference summaries, and one hearing notice, the latter by both certified and first class mail. Pursuant to 8 AAC 45.060(f), all documents were sent to Employee's last known address. Because Employee signed the receipt for the hearing notice and no documents were returned as undeliverable, Employee is found to have been properly served, and to have received actual notice. *Mendez; Woodwards; McCarroll*.

In consideration of Employee's unrepresented status, especially diligent efforts were made to ensure she was given the opportunity to participate in this hearing. *Richard.* On August 13 and 14, 2013, six unsuccessful attempts were made to contact Employee via telephone at her number of record. Moreover, the designated chair waited fifteen minutes after the scheduled hearing time before

deliberating. The decision to proceed with the hearing in Employee's absence was proper under 8 AAC 45.070(f)(1).

2) Should Employee be sanctioned for noncompliance with discovery?

Medical evidence is vital to workers' compensation cases. Discovery clarifies an employee's issues, assists employers defending against claims, and helps the fact-finders ascertain the parties' rights. AS 23.30.135. Failure to participate in discovery contravenes the Act's intent to ensure quick, efficient, fair and predictable delivery of benefits to injured workers at a reasonable cost to employers. AS 23.30.001.

An employer's right to investigate, controvert or otherwise defend its case arises with the report of injury, not a written claim. Here, Employee stated she was deliberately delaying filing her claim. On November 6, 2012, she "asserted her primary goal was to not pursue benefits until she gets better." The deadline for Employee to file a written claim is within two years of the date she knew the nature of her disability and its alleged connection with her employment and after disablement. AS 23.30.105(a). The report of Employee's August 13, 2012 injury was filed on August 27, 2012. So long as Employee retains a right to bring a claim for benefits, Employer has a right to receive signed informational releases from her.

Employee has shown no active involvement in her case since November 6, 2012, when the designee determined all releases in her file were reasonably calculated to lead to evidence relevant to a material issue. At two prehearings, on November 6, 2012 and June 6, 2013, Employee was ordered to sign and return releases but failed to comply. Employee offered no legal justification or compelling excuse for her noncompliance. After being properly noticed, Employee failed to participate in three prehearing conferences and this hearing. Employee is found to have prejudiced Employer by willfully preventing it from obtaining information material to its defense. Civil Rule 37(b)(3); *Vildosola*; *Abramson*.

On the other hand, Employee is not represented by counsel and may not realize the full legal weight of prehearing orders under AS 23.30.108(c). Employee will therefore be given one final

opportunity to provide written authority to Employer. Employer will be ordered to provide, and Employee to sign and deliver, all releases approved by the designee on June 12, 2013.

Because Employee has not filed a workers' compensation claim, there is nothing to dismiss. Employer sought, but provided no legal authority for, an order barring future claims arising from Employee's injury; this sanction will not be imposed.

Employer cites *Smith v. Cook Drilling*, AWCB Decision No. 02-0226 (October 20, 2002), to support its position Civil Rule 37(d) entitles it to receive fees and costs from Employee. However, both *Smith* and Rule 37(d) are distinguishable. *Smith* concerned an employer's successful petition for reimbursement of costs resulting from an employee's failure to appear for a properly scheduled and noticed deposition; it did not address a discovery dispute. Similarly, Rule 37(d) authorizes sanctions for failure of a party to attend a deposition, serve answers to interrogatories, or respond to requests for inspection; it does not provide for imposition of sanctions for general noncompliance with a designee's orders, or refusal to sign medical releases. The only section of the Act to specifically authorize an award of attorney's fees and costs to an employer is AS 23.30.250, which deals with penalties for fraudulent or misleading acts, and damages in civil actions. That not being the case here, Employer's request for monetary sanctions will also be denied.

Employee did not comply with two prehearing discovery orders to sign releases. By operation of law, Employee's right to benefits has been suspended until she delivers written authority to Employer to obtain medical information relative to her injury. AS 23.30.108(b). Should Employee seek these suspended benefits in the future, it will be decided these past benefits have also been forfeited during the suspension period unless she shows good cause for her refusal to provide written authority. *Id.*

The legislative intent of AS 23.30.108(b) places the burden of going forward with Employee's claims squarely on her. If Employee again fails to comply by the deadline provided in this decision and order, another sanction will be imposed. Under authority of 8 AAC 45.054(d), unless Employee demonstrates good cause for noncompliance, the following will be excluded

from a hearing on the merits:

(1) any written or oral evidence that was the subject of the discovery requests Employee refused to honor; and

(2) Employee's own testimony in support of her claim for benefits arising from her August 27, 2012 Report of Occupational Injury or Illness.

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. Employee is therefore reminded her reported date of injury was August 13, 2012. Under AS 23.30.105, Employee must file a written workers' compensation claim on that injury within two years of her knowledge of the nature of her disability and its relation to her employment, and after disablement. If she fails to timely file a claim, her right to compensation for that disability may be barred.

CONCLUSIONS OF LAW

1) It was proper to conduct the August 14, 2013 hearing in Employee's absence.
2) Employee will not be sanctioned for noncompliance with discovery at this time.

ORDER

1) Employer's June 28, 2013 petition to dismiss Employee's case for noncompliance with discovery is denied.

2) Employer is directed to provide Employee, by certified mail, return receipt requested, the releases ordered signed at the June 11, 2013 prehearing. Materials are to be sent both to Employee's address of record in Florida and to her most recent mailing address: P.O. Box 63, Hay Springs, NE 69347.

3) Employee is ordered to sign and return the releases, with original signatures, to Employer within 14 days of receipt.

4) Employee's right to benefits was and is suspended and will be forfeited unless she demonstrates good cause for her past and any future failure to comply.

5) If Employee does not timely sign and return the releases as ordered above, and does not demonstrate good cause for this noncompliance, Employee will be barred from entering at a substantive hearing any written or oral evidence that was the subject of the discovery requests

Employee refused to honor; and Employee's own testimony in support of her claim for benefits arising from her August 27, 2012 Report of Occupational Injury or Illness.

Dated in Anchorage, Alaska on September 16, 2013.

ALASKA WORKERS' COMPENSATION BOARD

_____
Margaret Scott, Designated Chair

_____
Amy Steele, Member

_____
Mark Talbert, Member

PETITION FOR REVIEW

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order Errata in the matter of ROSILYN HILL employee / applicant; v. ADECCO, INC., employer; and CHARTIS CASUALTY INSURANCE CO., insurer / defendant; Case No. 201212390, dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, on September 16, 2013.

_____
Kimberly Weaver, Clerk