ALASKA WORKERS' COMPENSATION BOARD

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

TRACY L. MAHON, Employee, Claimant, v. WALTER E. NEWMAN D/B/A NEWMAN'S HILLTOP SERVICES Employer, and ALASKA NATIONAL INSURANCE CO., Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201219263 AWCB Decision No. 13-0160 Filed with AWCB Anchorage, Alaska on December 5, 2013

Walter E. Newman d/b/a Newman's Hilltop Services' (collectively Employer) July 22, 2013 and August 29, 2013 petitions to dismiss Tracy L. Mahon's (Employee) January 28, 2013 workers' compensation claim (claim) for failure to comply with discovery were heard on November 14, 2013, in Anchorage, Alaska, a date selected on September 10, 2013. Attorney Theresa Hennemann appeared and represented Employer. Employee did not appear. Witnesses Tamie Jo Banahan, insurance adjuster, and Nina E. Bingham, legal assistant, testified on Employer's behalf. The record closed at the hearing's conclusion on November 14, 2013.

As a preliminary matter, the board considered whether Employee received sufficient notice of the November 14, 2013 hearing. Having found he did receive 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, and the hearing should go forward.

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

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

Employer contends Employee should be sanctioned for failure to return signed releases and attend a deposition, after being ordered to do so by a board designee. Employer contends Employee's behavior constitutes willful noncompliance, unduly prejudicing Employer's ability to obtain information material to its defense. Employer requests Employee's workers' compensation claim be dismissed with prejudice.

At the most recent prehearing held on September 10, 2013, Employee was reached by telephone but refused to participate, stating he did not want to pursue his case. He did not attend this hearing or submit a brief, and could not be reached telephonically. In the lack of evidence to the contrary, it is assumed Employee's position is unchanged, and he does not object to dismissal of his claim.

2) Should Employee's January 28, 2013 workers' compensation claim be dismissed 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 January 28, 2013, Employee filed an undated Report of Occupational Injury or Illness (ROI) stating "repetitive climbing, pulling hoses, etc." caused an injury to his lower back in October, 2012 (ROI, undated).

2) On January 28, 2013, Employee also filed a workers' compensation claim for temporary total disability, permanent partial impairment, medical costs, transportation costs and review of a reemployment benefit decision. Referring to his lower back injury, Employee wrote: "Well, I'm sure it happened from repetitive climbing up on fuel trucks, heavy equipment, dragging fuel hoses. [F]ueling homes standing on unstable, awkward ladders, etc. --" The stated reason for the claim was "to get help with all the medical bills and recooperate [sic] some lost wages" (claim, January 25, 2013).

3) On February 11, 2013, Employer controverted all benefits due to Employee's failure to report his injury to Employer within 30 days under AS 23.30.100 (controversion, February 11, 2013).

4) On February 19, 2013, Employer answered the claim and again controverted all benefits. The reason for controversion was expanded to read: "The claim is barred under AS 23.30.100, AS 23.30.105, AS 23.30.110(c) or otherwise barred by law or equity. The employee failed to timely report any injury within 30 days as required under AS 23.30.100" (answer and controversion, February 19, 2013).

5) At prehearing on April 4, 2013, Employee stated he told his supervisor about the injury in October, 2012, and Employer should have filed an ROI. Medical releases had been signed. Deposition was tentatively scheduled for April 23, 2013, but Employee was instructed to notify Employer if he needed to reschedule. Employee was instructed under AS 23.30.110(c) he needed to serve and file, within two years of the February 11, 2013 controversion, a request for either a hearing or additional time to prepare for one (prehearing conference summary, April 10, 2013).

6) On April 22, 2013, Employer notified Employee the deposition was rescheduled to May 23, 2013 (deposition rescheduling notice, April 22, 2013).

7) On May 1, 2013, Employer served Employee with seven additional releases, notifying him to return signed releases or petition for a protective order within 14 days of service (letter and releases, May 1, 2013).

8) Employer never petitioned for a protective order (record).

9) On May 23, 2013, Employee failed to appear at deposition (statement of nonappearance, May 24, 2013).

10) On May 23, 2013, Employer controverted all benefits from that day forward "due to the claimant's failure to provide executed releases required by AS 23.30.107. Benefits will remain suspended, in accord with AS 23.30.108(a), until receipt of the requested, executed releases" (controversion, May 23, 2013).

11) On May 31, 2013, Employer petitioned to compel Employee to execute and return the May 1, 2013 releases (petition, May 31, 2013).

12) On May 31, 2013, Employer also petitioned to compel Employee to attend a deposition as soon as possible. Employer sought an order awarding costs associated with the cancelled May 23, 2013 deposition: court reporter cost estimated at $152.25, and attorney's fees of $430.00 (*id.*).

13) Employee did not attend a prehearing conference on June 4, 2013. The board designee reviewed all releases in the file, determined they were reasonably calculated to lead to evidence relevant to a material issue, and ordered Employee to sign the releases within 10 days of receipt of the prehearing conference summary. The designee advised Employee he may face possible dismissal of his claim if he did not sign the releases. The designee also ordered Employee to attend a deposition on either July 8 or July 10, 2013, and advised him failure to attend could result in claim dismissal. Employee was reminded under AS 23.30.110(c) he needed to serve and file, within two years of the February 11, 2013 controversion, a request for either a hearing or additional time to prepare for one (prehearing conference summary, June 6, 2013).

14) On June 20, 2013, Employer served Employee notice to attend an oral deposition on July 8, 2013 (deposition notice, June 20, 2013).

15) On July 8, 2013, Employee failed to appear at deposition (statement of nonappearance, July 17, 2013).

16) On July 22, 2013, Employer petitioned to dismiss Employee's claim for noncompliance with the board designee's order to attend his deposition (petition, July 22, 2013).

17) On August 29, 2013, Employer petitioned to dismiss Employee's claim for failure to return signed releases (petition, August 29, 2013).

18) At prehearing on September 10, 2013, Employee told the board designee the conference "was not going to happen." Employee stated he had moved to Indiana, and did not want to pursue his case or participate in the proceedings. A hearing was set for November 14, 2013, on

the sole issue of whether Employee's claim should be dismissed for Employee's failure to comply with discovery (prehearing conference summary, September 11, 2013).

19) The Alaska Workers' Compensation Division (division) served Employee notices and summaries of all his prehearing conferences (April 4, 2013; June 4, 2013; and September 10, 2013) by first-class mail to Employee's last known address. No mail was returned as undeliverable or lacking sufficient postage (record).

20) Employee did not file a written notice of change of address for service with the board (record).

21) On October 11, 2013, the division served Employee notice of the November 14, 2013 hearing by both first-class and certified mail to his last known address. The first-class mail was not returned as undeliverable or lacking sufficient postage. The certified mail was forwarded to Kokomo, Indiana, where pick-up notices were left on October 19, 2013, and October 24, 2013. On November 4, 2013, the certified notice was returned to the division as unclaimed (*id.*).

22) On November 13, 2013, the division left two voicemail messages on Employee's last known phone number, reminding him of the date and time of the hearing (record).

23) On November 14, 2013, Employee did not appear at hearing. Employer did not have an updated telephone number for Employee. Two more voicemail messages were left, informing him he needed to call the division immediately. After waiting 15 minutes, the panel orally decided to proceed in Employee's absence (*id.*).

24) Nina E. Bingham, Employer's legal assistant, credibly testified she sent releases and deposition notices to Employee's last known address, and no mail was returned as unclaimed, undeliverable or lacking sufficient postage (Bingham).

25) Tamie Jo Banahan, Employer's insurance adjuster, credibly testified the medical releases she possessed were incomplete and vague. She testified she needed Employee's deposition testimony and additional medical records regarding Employee's lower back to determine if Employee's injury was compensable (Banahan).

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. . .

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. . . .

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 at 6 (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. *Granus* at 5, citing AS 21.36.120 and 3 AAC 26.010 - .300. The board has long recognized a thorough investigation of workers' compensation claims allows employers to verify

information provided by the claimant, properly administer claims, effectively litigate disputed claims, and detect fraud. *Granus* at 6, citing *Cooper v. Boatel, Inc.*, AWCB Decision No. 87-0108 (May 4, 1987). Employers are authorized to obtain information reasonably calculated to lead to facts relevant for evidentiary purposes. *Granus* at 14.

> **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. . .

Within 14 days of service of a request to sign and return releases, an employee must either deliver written authority to the employer or file a petition with the board seeking a protective order. By operation of law under AS 23.30.108(a), if the employee fails to take one of these actions, the employee's rights to benefits are automatically suspended until the releases are delivered. If an employee does not comply with a board designee's order regarding discovery matters, AS 23.30.108(c) confers broad authority for the imposition of "appropriate sanctions"

including and in addition to forfeiture of benefits. Another 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. *See, e.g., 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).

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 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). "Willfulness" has been established when a party was warned of the potential dismissal of his claim and violated multiple discovery orders. *Erpelding*. It has also been established when a party was warned of the potential claim dismissal and refused to participate in proceedings and discovery multiple times. *Sullivan*. Since a workers' compensation claim dismissal under AS 23.30.108(c) is analogous to dismissal of a civil action under Civil Rule 37(b)(3), the factors set forth in that subsection when deciding petitions to dismiss have occasionally been applied. *Erpelding; Sullivan; McCarroll*.

> **AS 23.30.110. Procedure on claims.** . . .
> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for 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 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.
> . . .

Because §110(c) is a procedural statute, its application is directory rather than mandatory, and substantial compliance is acceptable absent significant prejudice to the other party. *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196 (Alaska 2008). Though substantial compliance does not require a formal affidavit be filed, it still requires a claimant to file, within two years of a controversion, a request for either a hearing or additional time to prepare for one. *Denny's of Alaska v. Colrud,* AWCAC Decision No. 148 at 11 (March 10, 2011).

> **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.

> **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 releases 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 the prehearing conference summary notifying him of the hearing date. The hearing notice was served by both certified and first-class mail. All were sent to Employee's last known address. The certified mail was forwarded to Kokomo, Indiana, where it was unclaimed for more than two weeks, then returned to the division. No first-class mail was returned as undeliverable or lacking sufficient postage. Under 8 AAC 45.060(b), service was complete at the time the hearing notice was mailed. Employee is found to have been properly served, and to have received actual notice of the November 14, 2013 hearing.

In consideration of Employee's unrepresented status, diligent efforts were made to ensure he was given the opportunity to participate in this hearing. *Richard.* On November 13 and 14, 2013, four voicemails were left on Employee's telephone number of record, each informing him of the time and dial-in phone number for the hearing. Moreover, the panel waited fifteen minutes after the scheduled hearing time before deliberating. The oral decision to proceed with the hearing in Employee's absence was proper under 8 AAC 45.070(f)(1).

2) Should Employee's January 28, 2013 workers' compensation claim be dismissed for noncompliance with discovery?

Medical and rehabilitation evidence, as well as employee testimony, are vital to workers' compensation cases. Discovery clarifies an employee's issues, assists employers defend against claims, and helps fact-finders ascertain the parties' rights. Failure to participate in discovery contravenes the Alaska Workers' Compensation Act's (Act) intent to ensure quick, efficient, fair and predictable delivery of benefits to injured workers at a reasonable cost to employers. AS 23.30.001.

Employee initially pursued his claim, including signing releases and participating in an April 4, 2013 prehearing conference. However since then he has not cooperated with either Employer or the board. Although he appears to have moved to Indiana, there is no evidence he did not receive first-class mail from either Employer or the board. Employee did not return the releases sent to his last known address on May 1, 2013, nor did he petition for a protective order.

Employee did not attend the May 23, 2013 deposition. He also did not attend the June 4, 2013 prehearing conference, in which the board designee ordered him to return signed releases and attend a deposition, or face possible dismissal of his claim. Employee failed to comply with either order contained in the prehearing conference summary, which was properly served to Employee's last known address.

Employee made no attempt to offer an explanation for his noncompliance. He then declined to participate in the September 10, 2013 prehearing conference, stating he had moved to Indiana and did not want to pursue his case. Employee unreasonably refused to cooperate in the discovery process and prejudiced Employer by willfully preventing it from obtaining information material to its defense: medical records and testimony Employer needed to determine if Employee's lower back injury was compensable. Civil Rule 37(b)(3); *Erpelding; Sullivan; Vildosola*.

On the other hand, Employee is not represented by counsel. He may not realize: (1) the due process rights he triggered by filing a claim; (2) the full legal weight under AS 23.30.108 of the orders contained in the June 4, 2013 prehearing conference summary; (3) he does not have to be living in Alaska to pursue a workers' compensation claim in the state; or (4) he does not have to appear in person at a deposition. Employee therefore will be given one final opportunity to cooperate with discovery.

Employer will be ordered to provide, and Employee to sign and deliver unaltered, all releases approved by the designee on June 4, 2013. Employee will also be ordered to schedule and participate in a deposition.

Employee's mailing address appears to have changed. Employee will be ordered to file with the board and serve on Employer his current address. This decision and order will be served on Employee at his last known address contained in the record. 8 AAC 45.060(f).

AS 23.30.108(c) confers broad discretionary authority to impose sanctions for noncompliance with board designee orders concerning discovery. By operation of law Employee's rights to benefits have already been suspended until he delivers signed releases to Employer. AS 23.30.108(a). Unless he demonstrates good cause for his refusal to provide written authority, additional sanctions will be imposed.

First, if Employee seeks his suspended benefits in the future, it will be decided these benefits were forfeited during the suspension period. Second, under authority of 8 AAC 45.054(d), 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 his January 28, 2013 claim for benefits.

Moreover, if Employee fails to fully comply with the January 15, 2014 discovery deadline provided in this decision and order, and does not demonstrate good cause for this noncompliance, his claim will be dismissed with prejudice.

CONCLUSIONS OF LAW

1) It was proper to conduct the November 14, 2013 hearing in Employee's absence.

2) Employee's January 28, 2013 workers' compensation claim will not be dismissed for noncompliance with discovery at this time.

ORDER

1) Employer's July 22, 2013 and August 29, 2013 petitions to dismiss Employee's case for noncompliance with discovery are denied.

2) Employer is directed to provide Employee, by both first-class and certified mail, return receipt requested, the releases ordered signed at the June 4, 2013 prehearing. Employee is ordered to sign and deliver the unaltered releases, with original signatures, to Employer no later than January15, 2014.

3) Employee is ordered to contact Nina Bingham, Employer's legal assistant, at (907) 274-5100 to schedule a deposition to take place no later than January 15, 2014. Employee is ordered to participate in that deposition.

4) Employee's rights to benefits were and are suspended until he delivers written authority to Employer.

5) Unless Employee demonstrates good cause for his past failures to return the signed releases and participate in a deposition, his suspended benefits are forfeited. Additionally, Employee is 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 his January 28, 2013 claim for benefits.

6) If Employee does not both return the signed releases and participate in a deposition by January 15, 2014, Employee's claim will be dismissed with prejudice.

7) If Employee's change of address for service has changed he is ordered to file with the board and serve on Employer written notice of his new mailing address of record no later than January 1, 2014.

Dated in Anchorage, Alaska on December 5, 2013.

ALASKA WORKERS' COMPENSATION BOARD

_____
Margaret Scott, Designated Chair

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Robert Weel, Member

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Pam Cline, 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 in the matter of TRACY L. MAHON, employee / claimant; v. WALTER E. NEWMAN D/B/A NEWMAN'S HILLTOP SERVICES, employer; ALASKA NATIONAL INSURANCE CO., insurer / defendants; Case No. 201219263; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on December 5, 2013.

_____
Anna Subeldia, Office Assistant