ALASKA WORKERS' COMPENSATION BOARD

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

MATTHEW RIFE, Employee, Claimant, v. B.C. EXCAVATING, LLC, Employer, and ALASKA NATIONAL INSURANCE CO., Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201601856 AWCB Decision No. 18-0061 Filed with AWCB Anchorage, Alaska on June 26, 2018

Matthew Rife's (Employee) March 27, 2018 petition appealing a board designee's (designee) determination and his April 6, 2018 petition requesting a declaration B.C. Excavating, LLC's (Employer) attorney acted as Employer's representative and accepted his August 1, 2016 petition filed with the Alaska Workers' Compensation Appeals Commission (commission) on the basis of "offer and acceptance" and "matters of time" were heard in Anchorage, Alaska, on May 30, 2018, a date selected on April 18, 2018. Employee appeared and represented himself. Attorney Michelle Meshke appeared and represented Employer and Alaska National Insurance Company. The record closed at the hearing's conclusion on May 30, 2018.

ISSUES

Employee contends he should not be ordered to comply with the designee's order compelling Employee to execute and return medical and employment releases to Employer. Employee contends any employment information and any medical treatment he received prior to his reported September 5, 2013 and January 23, 2014 work injuries are irrelevant.

Employer contends it requested new releases for medical, employment, and insurance records because identical releases previously executed by Employee had expired. Employer contends the requested releases are necessary to obtain medical and rehabilitation information relative to Employee's work-related injuries and claims. Employer contends Employee's petition appealing the designee's order should be denied.

1. Did the board designee abuse his discretion when he determined the releases of information requested by Employer were likely to lead to information relative to Employee's work injuries?

Employee contends Employer's attorney accepted his August 1, 2016 petition filed with the commission on the basis of "offer and acceptance" and "matters of time" and should by default be ordered to pay Employee $14,000,000.00. Employee contended the Alaska Workers' Compensation Board (board) does not have jurisdiction to decide his April 6, 2018 petition.

Employer contends Employee's August 1, 2016 petition was not properly served on Employer until August 10, 2016. Employer contends on August 25, 2016, it timely filed its opposition to Employee's petition, which was ultimately denied by the commission. Employer contends Employee fails to understand basic procedural and legal workers' compensation rules, there is no legal basis to order Employer to pay Employee $14,000,000.00, and Employee's petition should be denied.

2. Does the board have jurisdiction to decide Employee's April 6, 2018 petition and, if so, should it be granted?

FINDINGS OF FACT

1) On January 19, 2016, Employee filed a workers' compensation claim (claim) for permanent partial impairment (PPI) benefits and a compensation rate adjustment. Employee's reason for filing his claim was:

> Currently, my previous injury was denied due process by Mr. Robert Haines, Mr. Nathan Haines & Mr. Gordon Bartell as a result my position as construction worker / construction manager and / or student has been drastically effected [sic] due to current and stipulating injuries.

(Workers' Compensation Claim, January 19, 2016.)

2) On January 28, 2016, Employee reported right-sided moderate to extreme mid and lower back pain. The pain first occurred on September 5, 2013, when he fell off a trench box onto a water line. The second injury occurred on January 23, 2014, when Employee was welding a flange onto a lift station in an open excavation. (Report of Injury, February 4, 2016.)

3) On February 4, 2016, Employee "was concerned with the inaccuracy of the documentation by the Anchorage office" and wrote a letter to the governor. He said, "I'm also concerned about the statute of limitations, which to my understanding is two years. If the Anchorage office does not reply to myself with a case number in a timely manner and the statue limitations will run out my future work opportunities will be mostly affected." Employee said he could not acquire legal representation without a case number and that by the time he got a case number the statute of limitations would have run. (Letter to Governor Walker from Matthew Rife, February 9, 2016.)

4) Employee's February 4, 2016 letter was not served upon the Employer. (Record.)

5) On February 8, 2016, Employer answered Employee's January 19, 2016 claim. It stated any PPI due to Employee's reported work injury will be paid once Employee reaches medical stability and has been properly rated under the American Medical Association's Guide, Sixth Edition and Employee's compensation rate will be calculated once Employer receives medical documentation stating Employee was due time loss benefits. Employer acknowledged it received numerous medical records, none of which indicated Employee was physically incapable of working "in a capacity his former employer would have been able to accommodate." (Answer, February 5, 2016.)

6) On February 24, 2016, Employee was advised the division's records showed he filed a report of injury and claim on January 25, 2016, and claim number 201601856 was assigned. Employee

was told "an injured worker is entitled to disability and medical treatment for a work related injury or illness. If the employer or its insurance company denies benefits by filing controversion notice, you have two years from the date of controversion to file a claim for benefits." Employee was notified a controversion notice had not been filed; the insurer's answer admitted liability for the benefits Employee sought; and the insurer needed additional information from Employee before it could pay benefits. Employee was advised to contact the insurer and discuss the additional information needed to be paid the benefits he was seeking. Employee was also advised if he had any additional questions or needed additional assistance, he could contact the division or discuss his issues at the scheduled prehearing conference. (Letter from Director Marie Marx to Matthew Rife, February 24, 2016.)

7) On February 25, 2016, Employee petitioned for a protective order from Employer's February 16, 2016 release requests. (Letter from Matthew Rife, February 22, 2016.)

8) On March 14, 2016, Employer filed a controversion denying retraining benefits. Employer's reason was:

> Employee has not met the criteria to be eligible for retraining evaluation. We have not received any medical documentation removing Mr. Rife from the workforce. Additionally, Mr. Rife effectively removed himself from workforce when he left his employment with B.C. Excavating in April, 2014 for other occupational opportunities. B.C. Excavating has light duty available for their employees with work related injuries.

(Controversion, March 1, 2016.)

9) On March 14, 2016, Employee asserted Employer's March 1, 2016 controversion notice had information that "seems to be misleading / misrepresented," including the injury date, date of Employer's first knowledge, insurer claim number, and denial reason. Employee requested "corrected action" and asserted Employer "does not have valid legal grounds or evidence to support denying payment." Employee said he was asking for a penalty and a determination on whether Employer's controversion was frivolous or unfair. Employee's February 22, 2016 letter "To Whom It May Concern" was attached. This letter had not previously been served upon Employer or filed. It states:

> In accordance with the progress of things, such as life and education [it] has been brought to my attention that during the week of January 11, 2016 new information is been brought to my attention. The factual information is in regards to the Spearin

> doctrine. The week of January 11, 2016 new information was brought to myself in regards to content, and erroneous statements. Concurrent with the delivery of this new information from this week forward I have several obligation [sic] as a future civil engineer to uphold the "code". This strictly applies to disclosing such information to future employers w.r.t. previous work related job injuries. Keeping current with things and keeping things consistent, I have a moral obligation according to the "code" to disclose this information, obviously this will affect my future employment possibilities in the future and I shall officially request that retraining be provided in terms [of] Alaska Worker's Compensation benefits. In accordance with the facts, this is secondarily the cause for leaving my job in Alaska, if you know the people know better and they lie to you, they have ill intent, therefore violating the Spearin doctrine, to the best of my knowledge and to my understanding.

(Letter to Director Marie Marx from Matthew Rife, March 9, 2016.)

10) Employee's March 9, 2016 letter was not served upon Employer. (Record.)

11) On March 16, 2016, Employee was notified the director does not have authority to intervene on Employee's behalf. Employee was advised how eligibility for reemployment benefits is determined and that Employer, on March 14, 2016, denied his eligibility for reemployment benefits. (Letter to Matthew Rife from Director Marie Marx, March 14, 2016.)

12) Director Marx's March 14, 2016 letter was not served upon Employer. (Record.)

13) On March 21, 2016, Employee was sent the Reemployment Benefits Administrator's employee rights letter. (ICERS Database, RBA Employee Rights Letter, March 21, 2016.)

14) On April 12, 2016, the law firm of Russell, Wagg, Gabbert & Budzinski entered its appearance on Employer's behalf. (Entry of Appearance, Michelle Meshke, April 11, 2016.)

15) On April 22, 2016, an MRI of Employee's thoracic and lumbar spine showed alignment of the vertebral bodies was normal and intervertebral disc spaces were intact. Employee had no spinal stenosis or disc herniations and normal fat signal intensity was preserved in the bilateral intervertebral foramen. Employee's thoracic spine was normal. At L4-5, there was mild disc space narrowing with a central disc herniation with effacement of the anterior epidural fat. However, there was no impingement on the right or left lateral recess. There was a small central disc herniation with slight subligamentous extension at L5-S1. Alignment of these bodies was otherwise normal and the remaining disc spaces intact. The diameter of Employee's spinal canal was normal, as was marrow signal intensity. (MRI Report, Jesse Cole, M.D. April 22, 2016.)

16) On April 27, 2016, Employer filed an amended answer to Employee's January 19, 2016 claim. Employer admitted reasonable and necessary medical benefits related to Employee's September

5, 2013 work injury. It denied TTD from January 16, 2016 through March 3, 2016, because no medical evidence had been provided to support time loss benefits. Permanent partial impairment (PPI) benefits were denied because Employee had not been rated. Reemployment benefits were denied because no medical evidence had been provided that Employee was totally unable to return to his job of injury for a minimum of 60 days. Further affirmative defenses included Employee voluntarily resigned his position in 2014, moved out of state, and enrolled in college and Employer believed he had been working since March 3, 2016; and Employer also confirmed medical benefits had not been controverted and would be paid pursuant to the Act. (Amended Answer, April 27, 2016.)

17) On May 3, 2016, Employee provided Employer notice he had received, signed, and returned medical, employment, educational and rehabilitation, Social Security earnings and Alaska Worker's Compensation Division information releases. The medical, employment, and education and rehabilitation records releases signed on May 2 or 3, 2016, all expired one year from the date signed. Employee suggested Employer should also send medical releases for Mercury Street Medical and Big Sky Imaging. (Letter from Matthew Rife to Russell, Wagg, Meshke & Budzinski, May 3, 2016, Medical, Employment, Educational and Rehabilitation, Social Security Earnings and Alaska Worker's Compensation Division Information Releases, Matthew Rife, May 2 and 3, 2016.)

18) On May 5, 2016, Employee filed 373 pages of documents and requested the division copy them and serve them on Employer's attorney, which it did. The first document was a letter to the Reemployment Benefits Administrator (RBA). Employee said, "I have received an MRI and am waiting to convene with an industry professional to discuss the effects of my injury." Employee requested the RBA to make copies of the documents and send them to Employer's attorney and further, "I ask that your office be the point of contact to this entity for obvious reasons on my behalf." Employee asserted the difficulties he has had in working with the carrier "and the distant relationship that we have had, will add to more of myself experiencing more discomforts in life." Employee requested the RBA "take this consideration during the decision-making process and take the appropriate actions that may deem necessary during our pre-hearing conference on May 18, 2016." Employee stated:

> I feel that due to the recent findings of my injury, I am asking for compensation to the full amount, such amount is quantitatively respected at $7 million USD. During

> the initial stages of this injury a torturous was committed upon myself, I was deceived and fraud was committed upon myself by my previous employer. Due to their actions and unsafe working conditions I am forever impaired with the resulting back injury, it has been documented earlier in 2016 that I have missed "light duty" work due to the above fore mentioned injury. I have not received proper medical treatment for the past several years and have endured massive amounts of pain that have affected my personal and professional life thus far, along with events in the future.

The remaining documents include Employee's personal case diary from January 26, 2016 through May 2, 2016, medical summary and medical records, Employee's handwritten notes; e-mail correspondence between Employee and Kymberly LaRose; pleadings, medical records not on a medical summary; medical bills; explanation of benefits; Notice Regarding Your Rights to Reemployment Benefits; Employee's Request for an Eligibility Evaluation; medical releases; e-mail from Employee to Alaska National Insurance Company and to the RBA; records of medical bills paid by Employee; Employee's February 25, 2016 recorded statement; March 10, 2016 and May 18, 2016 correspondence from Employee to Matthew Curry, M.D.; March 2, 2016, March 9, 2016 and May 18, 2016 correspondence to Director Marx; February 24, 2016 and March 16, 2016 correspondence from Director Marx to Employee; e-mail correspondence from Employee to Mr. Bartel; March 1, 2016 Controversion Notice; Employee's March 3, 2016 letter to Commissioner Melanie Hall, Montana Division of Banking and Financial Institutions requesting assistance to "gain financial compensation" because Employee thought he had been "scammed" by Wells Fargo; February 20, 2016 designated attending physician for workers' compensation claims form; Social Security number verification form; Employee's statement; undated mileage request; February 3, 2016 letter from Dillon & Findley declining to represent Employee in a civil tort claim; Employee's claim; Employee's letter to Dr. Webb requesting corrections to a chart note; reimbursement proof to Employee from Employer; Employee's 2012, 2013 and 2014 Income Tax Returns; instructions for employee report of occupational injury or illness to employer; Employee's "official" work injury notice to Employer; January 19, 2016 report of occupational injury or illness; Employee's January 20, 2016 Montana Tech application for disability services; and a photo. (Letter from Matthew Rife to Marc – RBA with attachments, May 2, 2016.)

19) On May 6, 2016, Employee's 373 page filing was scanned into his electronic file and e-mailed to Employer's attorney. (E-mail message with MRife Notebook attached from Teresa Nelson to Michelle Meshke, May 6, 2016.)

20) On May 18, 2016, the first prehearing was held. Because Employee signed and returned releases, his February 25, 2016 petition for a protective order was moot. The prehearing conference summary states Employee's January 25, 2016 claim is for a compensation rate adjustment and PPI benefits and that Employee's medical and time loss benefits have not been controverted but no time loss benefits were due because a physician's note removing Employee from work had not been produced. Employee was provided a copy of "Workers' Compensation and You" and an attorneys list. Employee was also advised AS 23.30.110(c) provides, "when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion." (Prehearing Conference Summary, May 18, 2016.)

21) On May 26, 2016, Employee was served with notice his telephonic deposition would be taken on June 22, 2016, at 3:00 p.m. Montana time, at the Billings, Montana office of Charles Fisher Court Reporting, and the court reporter's phone number was provided. (Telephonic Deposition upon Oral Examination of Matthew Rife, May 26, 2016.)

22) On June 8, 2016, Employer requested Employee be directed to attend his deposition. Employer contended when it attempted to coordinate with Employee a date and time to take his deposition, Employee refused to provide Employer a date when he was available. Employer also requested Employee be directed to attend an independent medical evaluation (IME). (Petition to compel, June 8, 2016.)

23) On June 8, 2016, the parties were served notice for a June 20, 2016 prehearing. (Prehearing Notice, June 8, 2016.)

24) On June 15, 2016, Employer responded to Employee's June 14, 2016 letter requesting the June 20, 2016 prehearing be delayed for nearly four months. Employer objected to a prehearing continuance because the issues to be addressed at the prehearing were time sensitive. (Reply to Employee's Prehearing Continuance Request, June 15, 2016.)

25) On June 20, 2016, Employee did not attend the properly noticed prehearing to address Employer's June 8, 2016 petition. Employer contended Employee was "not fully cooperating with the process and is impeding the process." The designee reviewed Employer's petition and arguments at prehearing and found the deposition and independent medical evaluation were standard, relevant and normal practices in the discovery process. The designee did "not see any

obvious reasons or incomprehensible situations or any practical reason(s) that would create a hardship towards the EE to attend deposition and the IME." Employer's petition to compel was granted and Employee was advised that in accordance with AS 23.30.080(c), if he refused to comply with the order, in addition to any forfeiture of benefits, appropriate sanctions may be imposed, including his claim's dismissal. Employee was ordered to attend deposition scheduled for June 22, 2016 and to attend the IME scheduled for August 27, 2016. Employee was provided AS 23.30.108, an attorney list, and again advised of AS 23.30.110(c)'s requirements. (Prehearing Conference Summary, June 20, 2016.)

26) On June 20, 2016, Employee's June 14, 2016 letter to Employer was filed. It states:

> In earlier documents, it was stated that I would provide a date that would suite [sic] my needs in accordance with giving a deposition. Since then, I have noticed in my mail that a 2nd pre-hearing would commence in June as well. Likewise, it has come to my attention that I would need to attend an "EIME".
>
> Noted in prior documents, I would suggest that date w.r.t. the deposition, the date is 10-10-16, I also feel this would be a great day to have our 2nd pre-hearing as well. Issues concerning the "EIME" are as follows, we should find such an entity more local that would suite [sic] my needs as well.

(Letter from Mr. Rife to Russell, Wagg, Meshke & Budzinski, June 14, 2016.)

27) On June 22, 2016, Employee did not appear for the telephonic deposition taken in Billings, Montana. (Transcript Telephonic Deposition upon Oral Examination of Matthew Rife, June 22, 2016.)

28) On June 25, 2016, after receiving a copy of the prehearing conference summary, Employee sent the following message to the designee:

> I am still currently waiting for AK national insurance to provide authorization to local doctors in my area as I wish to be seen more thoroughly. I have indicated to said insurance company, that we shall postpone the deposition and SIME along with the prehearing as well due to a lack of further access to medical treatment. I have still had no success finding an attorney nor a doctor to further document the matters at hand. I will be in touch in the coming months with, I feel that on Columbus Day shall provide myself with the opportunity to provide a deposition and prehearing as well.

(E-mail message from Matthew Rife to Gracieta Morfield, June 25, 2016.)

29) On July 11, 2016, Employee filed a letter "To whom it may concern, preferably the current RBA." Employee asserted he was compelled to rebut statements he believed had been made in "recent paperwork," including that he was not cooperating; that he was required to attend a deposition and second prehearing; and that he was required to attend an IME in another state. Employee asserted he attempted to cooperate but the actions of the carrier and the rules and regulations of interstate commerce "virtually stopped the discovery of my medical findings." Employee stated he was unable to attend the second prehearing or the deposition because he started a new job, he did not get notice of the prehearing because receipt of his forwarded mail is very slow, and Employee believed he "sent e-mails to the torturous law firm representing both parties." Employee said he could not attend the deposition because he could not miss work, it did not fit his schedule, Employer could submit its questions in writing and he would respond to them in writing, and Employer knew in advance he could not attend the deposition and proceeded anyway. Employee found it peculiar he could be seen by an IME physician in another state. He felt he should be allowed to see a doctor of his choice; preferably a doctor with a neutral position. Employee asserted he was unsuccessful in finding a local provider "when using the above said insurance company for billing purposes." Employee stated, "The current status of this claim appears to have no adjudication towards the injured, but rather allows the insurance company and employer to rather walk away from the issue rather than solving the problem." Employee asserted "there is more than enough evidence to support my claim under the following certified federal regulation, 29 CFR 1630.2(i)(1). Under this regulation I am totally imprudently disabled due to the torturous act committed by an agent of BC Leasing of which I feel that I was purposely knocked off of a trench box and nearly fell to my death." Employee contended "under Alaska state law and more enticingly federal law that I am due benefits to the maximum out of $7 million USD."

> I feel that the current RBA or the director of the workers comp board shall make this decision sooner rather than later, thus far there is more than enough evidence supporting my claim. I feel that somebody in the workers comp office should step to the plate in the name of humanity and make a decision, and if BC Excavating / Leasing disagrees with this decision than they can appeal it if they fell [sic] that they can overcome what is right and just. Last time I checked I had all of the information, and there is a lot of it.

(Letter from Matthew Rife to Alaska Department of Labor, July 7, 2016.)

30) On August 1, 2016, Employee filed a petition for review with the Alaska Workers' Compensation Appeals Commission (commission). Employee stated, "I have asked the board to make a decision while citing CFR and they have not made a decision." Employee asserted he is entitled to $14 million, $7 million from each employer for whom he worked. (Petition for Review, August 1, 2016.)

31) On August 9, 2016, the commission stated Employee did not provide an Alaska Workers' Compensation Board decision number, nor did he provide a copy of the decision or order, or a statement of the decision and order's substance if rendered orally, for which review was sought. Employee was given notice Employer's attorney had not filed a notice of consent to service by facsimile transmission or electronic mail and that his petition for review and attached exhibits were required to be served on Employer's attorney by mail or hand delivery pursuant to 8 AAC 57.040(b) and (g). The applicable regulations were provided to Employee. The parties were given notice that "No later than 15 days after service of the petition for review in accordance with 8 AAC 57.040, a party may file an opposition to the petition." (Commission Clerk's Docket Notice, August 9, 2016.)

32) On August 12, 2016, Employer provided Employee a reminder he was previously sent notice of an August 27, 2016 employer's medical evaluation (EME) via certified mail on June 8, 2016. Employee was provided a copy of the notice which told him he was required to attend the evaluation pursuant to AS 23.30.095(e) and a June 20, 2016 designee order, and failure to attend may affect his right to future benefits. Employee was provided copies of his itinerary and advanced $92.00 per diem. (Letter from Michelle Meshke to Matthew Rife August 12, 2016.)

33) On August 15, 2016, the commission's clerk's second docket notice was issued and informed Employee proof of service on the board was missing and that 8 AAC 57.075(f)(9) required him to "mail a copy of his petition for review to the office of the Board panel involved in his case." Employee was also directed to file with the commission AWCAC Form 08 as his proof of service and that he must mail a copy of the form to Employer's attorney. (Commission Clerk's Second Docket Notice, August 15, 2016.)

34) On August 15, 2016, Employee certified that on August 10, 2016, he served his August 1, 2016 petition for review upon Employer. (Certificate of Service by Self-Represented Litigant, August 15, 2016.)

35) On August 25, 2016, Employer objected to Employee's petition for review filed with the commission because the board had not issued a decision and Employee's petition admitted a decision had not issued. Employer confirmed Employee's claim was "currently accepted as compensable and open." Employer objected to Employee's request "the commission award him $14 million because the board had not made a decision on his request for $14 million." Employer stated the petition should be dismissed because the board has not issued a decision, either interlocutory or final, it is impossible to address the requirements of 8 AAC 57.073, and the commission has no jurisdiction to review Employee's claim as there is no board decision to review on appeal. (Opposition to Petition for Review, August 25, 2016.)

36) On August 26, 2016, the commission, treating Employer's opposition as a motion to dismiss, granted Employer's motion and dismissed Employee's petition for review. The commission found Employee served Employer with the petition for review on August 10, 2016, and that Employee's petition "does not identify the Board decision that would be the subject for review; in fact, he stated in his petition that 'I asked the commission to make a decision because the board has not made a decision.'" The commission stated its authority, under AS 23.30.007, .008, .009 and *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 34-38, is limited to hearing appeals of board decisions. The commission provided parties procedural guidance on how to request review of its dismissal of Employee's petition. It stated:

> A party may file a petition for review of this order with the Alaska Supreme Court as provided by the Alaska Rules of Appellate Procedure (Appellate Rules). *See* AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review within 10 days after the date of this order's distribution, shown in the box below.

The commission's order was distributed on August 26, 2016. (Commission Order on Petition for Review, August 26, 2016.)

37) Employee did not seek review of the commission's dismissal of his August 1, 2016 petition for review with the Alaska Supreme Court. (Record.)

38) On August 27, 2016, Scot Youngblood, M.D., reviewed Employee's medical records and diagnosed lumbar sprain / strains without evidence of fracture, dislocation radiculopathy, myelopathy, or internal derangement. He indicated Employee's lumbar sprain and strains were substantially caused by Employee's September 5, 2013 and December 10, 2013 work injuries, but

resolved long ago and were medically stable. Additionally, Dr. Youngblood diagnosed intermittent mechanical low back pain and mild lumbar degenerative disc disease, without evidence of significant nerve root impingement, radiculopathy, or myelopathy, substantially caused by Employee's "exogenous obesity, physical deconditioning, and intermittent activities." Dr. Youngblood said Employee's low back pain and mild lumbar degenerative disc disease were not substantially caused or permanently aggravated by either of Employee's work injuries. Dr. Youngblood indicated Employee's exogenous obesity, with a body mass index of 37.7, gave rise to and potentiated Employee's chronic lower back symptomatic condition. Dr. Youngblood noted "concern for drug seeking behavior expressed in the medical record by multiple providers," but not substantially caused or aggravated by Employee's industrial injuries. Dr. Youngblood recommended no further diagnostic studies or tests. Dr. Youngblood said the substantial cause of Employee's disability and need for medical treatment was due to the September 5, 2013 and December 10, 2013 lumbar sprain / strains for three months. However, Employee's continuing disability and need for treatment is substantially caused by his age, genetics, physical deconditioning, and exogenous obesity, not either of his work injuries. Dr. Youngblood determined Employee was medically stable on December 5, 2013, for the September 5, 2013 lumbar sprain / strain; and on April 24, 2014, for the January 24, 2014 "apparent" lumbar strain. Dr. Youngblood noted Employee's medical records documented Employee "sustained multiple re-injuries of his lower back that are clearly not related to either of the industrial injuries in question." Dr. Youngblood said there were no objective findings in the medical record that warranted a permanent partial impairment rating; Employee had no radiating pain or any evidence of radiculopathy or myelopathy. Dr. Youngblood determined Employee has chronic mechanical lower back pain aggravated with intermittent activities. He said no formal medical treatment was recommended other than aerobic conditioning, a self-directed home exercise program, and weight loss. Dr. Youngblood said no narcotics are recommended, neither is invasive treatment indicated, reasonable, necessary, or recommended. Dr. Youngblood recommended no physical restrictions or work restrictions due to any of Employee's diagnosed conditions. Dr. Youngblood did not deem Employee's intermittent right lower abdominal pain complaints related to or substantially caused by his work injuries. (EME Report, Dr. Youngblood, August 27, 2016.)

39) On September 2, 2016, Employer controverted all benefits because Employee failed to attend a properly noticed IME on August 27, 2016, which on June 20, 2016, Employee was ordered to attend. (Controversion Notice, September 2, 2016.)

40) On September 8, 2016, Employer amended its September 2, 2016 controversion to clarify it was effective August 27, 2016, the date Employee failed to attend an IME appointment. (Controversion, September 8, 2016.)

41) On September 12, 2016, Employer controverted all benefits based upon Dr. Youngblood's opinions. (Controversion Notice, September 12, 2016.)

42) On October 13, 2016, Employee requested Employer pay bills from Billings Clinic asserting he incurred bills "due to a work injury." Among other things, there were bills for blood tests for hepatitis B chronic antibody, serum protein electrophoresis (SPEP), ferritin level, erythrocyte sedimentation rate (ESR), and hemoglobin A1C. Additionally, Employee requested Employer pay for a hemochromatosis gene analysis. Employee's personal health insurance was billed for these tests. (Letter to Alaska National Insurance from Matthew Rife, October 30, 2016; Patient Billing Statement, Billings Clinic, October 3, 2016.)

43) On November 14, 2016, Employee was advised "to send all correspondence directed to Alaska National related to your workers' compensation claim to [attorney Meshke's] attention." Employee was notified his claim was controverted in September 2016, and the bills he submitted would not be paid. Employee was provided a copy of the controversion and notified a copy would also be sent to the Billings Clinic. (Letter from Michelle Meshke to Matthew Rife, November 14, 2016.)

44) On December 22, 2016, Employee was reminded his claim had been controverted by Employer and was told, "The only available resolution to this dispute is to reach a settlement agreement with the employer, or request a hearing before the Alaska Worker's Compensation Board (Board), who has sole statutory authority to adjudicate disputes under the Alaska Worker's Compensation Act. Employee was advised that to request a hearing, he must file and serve on all opposing parties an affidavit of readiness for hearing within two years of Employer's controversion. Employee was also advised:

> If you are unable to complete discovery and file an ARH within two years of the employer's controversion, you will need to petition the Board and serve the notice upon all opposing parties. Additionally, if you believe your physician and the

> employer/insurer's physician disagree on the nature or extent of your injury or illness, you have the right to petition the Board for an examination by a physician chosen by the Board (a Second Independent Medical Evaluation or SIME) (see enclosed petition and ARH forms).

(Letter from Director Marx to Matthew Rife, December 22, 2016.)

45) Director Marx's December 22, 2016 letter was not served upon Employer. (Record.)

46) On January 23, 2017, Employee requested clarification regarding which Employer filed controversion was applicable to his case, the September 12, 2016 or December 1, 2016 controversion. All six controversions filed in Employee's case were listed and the benefits denied by each were explained. Employee was notified Employer has not withdrawn any of the controversions and all remain in effect. Employee was also advised as follows:

> You filed a claim for benefits on January 25, 2016, seeking permanent partial impairment benefits and a compensation rate adjustment. This is the only claim on file with the Board. If you are seeking additional benefits (e.g., medical benefits, temporary total disability benefits), you should file another claim. I am including a claim form along with this letter.
>
> AS 23.30.110(c) requires an employee to file with the Board, and serve on all opposing parties, an affidavit of readiness for hearing (ARH) within two years of the employer's first post-claim controversion. In your case, the applicable controversion was filed March 14, 2016. **Therefore, in order to preserve your case and avoid dismissal, you must file an ARH by March 14, 2018.** I have also included an ARH form. (Emphasis in original.)

(Letter to Matthew Rife from Chief of Adjudications Amanda Eklund, February 6, 2017.)

47) Chief of Adjudications Eklund's February 6, 2017 letter was not served upon Employer. (Record.)

48) At a July 12, 2017 prehearing, Employee was advised his deadline to file an ARH was March 14, 2018. (Prehearing Conference Summary, July 12, 2017.)

49) On December 26, 2017, Employee filed an ARH for his August 1, 2016 petition and a request for cross examination of Dr. Youngblood. (Affidavit of Readiness for Hearing and Request for Cross, December 19, 2017.)

50) On December 28, 2017, Employer partially opposed Employee's ARH. Employer stated a hearing was not yet appropriate because it needed to schedule and take Dr. Youngblood's deposition to satisfy Employee's request for cross examination and because Employee sought a

hearing on an August 1, 2016 petition and there was no August 1, 2016 petition or claim. Employer did, however, agree that to the extent Employee sought a hearing on the merits, Employer would discuss another date. (Affidavit of Partial Opposition, December 26, 2017.)

51) On January 4, 2018, Employer provided Employee medical, employment records, and insurance records releases and requested they be signed and returned within 14 days. Employer explained Employee's right to request a protective order and that failure to sign and return the releases or request a protective order within 14 days may result in suspension of benefits until the releases are signed. (Letter from Michelle Meshke to Matthew Rife, January 4, 2018.)

52) On January 18, 2018, an April 4, 2018 hearing was set to determine the merits of Employee's January 25, 2016 claim for compensation rate adjustment and PPI benefits. Deadlines to file and serve evidence and legal memoranda were provided. Employee was given an opportunity to amend his claim to include reemployment benefits, but declined. The following discussion ensued:

> Ms. Meshke stated that ER sent releases to EE but those have not been returned. Ms. Meshke further explained that these releases were to renew the expired releases that the EE had signed in the past. EE verbally agreed to sign the releases and return them to Ms. Meshke as soon as possible. Parties agreed that EE would return these no later than 01/25/2018.

(Prehearing Conference Summary, January 18, 2018.)

53) On January 18, 2018, Employee petitioned for a protective order and an extension of time to request a hearing under AS 23.30.110(c). Employee requested the protective order because "the IME submitted information for controversion of claim, but has not seen MLR in person for analysis." Employee also sought additional time "to seek medical analysis, MLR asks for extensions of time with regards to due dates of evidence and brief." (Petition, January 18, 2018.)

54) On February 8, 2018, Employer objected to Employee's petition. Employer was unable to determine what Employee's petition for a protective order sought; objected to it and requested it be denied for the following reasons:

> On 06/08/16, the employer filed a petition to direct the employee to attend his telephonic deposition on 06/22/16. In addition, the employer sought a Board order directing the employee to attend an independent medical evaluation set for 08/27/16 in Tigard, Oregon. On 06/14/16, the employee wrote a letter to the Board asking that a prehearing conference set for 06/20/16 be continued until October 2016. The employer opposed rescheduling the prehearing conference, and the prehearing conference occurred on 06/20/16. The employee failed to appear at the prehearing

> conference. The Board Designee attempted to reach him and waited 15 minutes for him to call in for the prehearing conference. The Board considered the employer's petition, and the petition to compel was granted. The employee was ordered to attend the deposition scheduled for 06/22/16 and ordered to attend the IME scheduled for 08/27/16. *See* 06/20/16 PHC Summary. The employee refused to attend either event. Due to Mr. Rife's refusal to attend the IME, Dr. Youngblood could not examine the employee in person and could only complete a records review. Dr. Youngblood's report is admissible and constitutes substantial evidence, which the employer relied on to controvert the employee's claim.

(Answer to Employee's Petition for Protective Order and Request for Prehearing, February 7, 2018.)

55) On February 8, 2018, Employee received Employer's answer to his petition for protective order and notice Dr. Youngblood's deposition was canceled. Employee stated he "merely ask for an extension, the board can either deny or accept. I would like a response from the AK DOL Workers Compensation Board." (E-mail from Matthew Rife to Board and Karen Warne, February 8, 2018.)

56) On February 14, 2018, Employer requested Employee be compelled to sign and return releases as, during the January 18, 2018 prehearing, he had committed to do. Employer had not received the releases. (Petition, February 13, 2018.)

57) On February 15, 2018, Employee's request was granted and the April 4, 2018 hearing was continued. Employee clarified he intended his January 18, 2018 petition for protective order to "preclude him from signing updated discovery releases." His request for a protective order was denied. Employer's February 14, 2018 petition to compel Employee to sign updated releases was granted. Employee was ordered to sign, date and return the updated releases within 10 days from the prehearing conference summary's service. Employee was advised of his right to request reconsideration of the designee's order, how to pursue reconsideration, and how to appeal the designee's discovery order. Employee agreed to attend an EME scheduled on March 30, 2018 or March 31, 2018. (Prehearing Conference Summary, February 16, 2018.)

58) On February 16, 2018, Employee asserted there have been new developments after the February 15, 2018 prehearing. Employee continued to object to signing updated releases and stated:

> I have advised the AK DOL and board and others to look at the work-related injury(s) of 9-5-13 and 1-23-14 while working for BC Excavating and BC Leasing, nothing more and nothing less. We are evaluating work injury(s) during this time. Nothing more. I will stand with the filing of the protective order as described above

> will not be submitting signed medical and prior work releases as asked of Meshke and Harvey (AK DOL) during the prehearing as described above (2-15-18). Forward this to Meshke and others.

(E-mail From Matthew Rife to Alaska Workers' Compensation, February 16, 2018.)

59) On February 20, 2018, Employer explained to Employee how to properly appeal the designee's decision ordering Employee to sign updated medical and employment releases. She told Employee an e-mail to the board's electronic filing system saying he was not going to sign the releases was not an official appeal of the designee's decision. Employee was notified a March 31, 2018 EME appointment was scheduled and confirmed. (E-mail from Michelle Meshke to Matthew Rife, February 20, 2018.)

60) On February 22, 2018, Employee through e-mail correspondence continued to object to signing updated releases. He maintained he filled out the appropriate medical and work history releases and he filed his original claim and that Employer already had the necessary releases. (E-mail from Matthew Rife to Michelle Meshke and Alaska Workers' Compensation, February 22, 2018.)

61) On February 27, 2018, Employer controverted all benefits.

> The employer suspends all benefits pursuant to AS 23.30.107, for the employee's failure to sign and return releases. The employee was ordered to sign and return releases per the prehearing conference summary order on 01/08/18. At the 02/15/18 prehearing, employee was again ordered to sign and return the releases within 10 days of the prehearing summary which was served on 02/16/18. Signed releases have not been received from the employee.

(Controversion Notice, February 27, 2018.)

62) On March 1, 2018, Employer requested Employee be directed to attend the March 31, 2018 EME. (Petition, March 1, 2018.)

63) On March 21, 2018, the adjudications process with an emphasis on discovery's importance and what constitutes discovery was explained to the parties. Employee agreed he would attend the March 31, 2018 EME in Tigard, Oregon; however, Employer requested the designee to make a ruling on its March 1, 2018 petition to compel. Employer's petition was granted and Employee was ordered to attend the March 31, 2018 EME. Employee was advised how to request reconsideration of and how to appeal the designee's determination. (Prehearing Conference Summary, March 21, 2018.)

64) On March 27, 2018, Employee requested a protective order.

> The employee (MLR) asks that the AWCB disregard the requirement of the employee (MLR) to fill out and return the previous medical and employer releases as asked for by the legal representative of the employer and insurer. The employee (MLR) indicates that any previous employer and/or medical incident prior to the 9/5/13 and 1/23/14 work injury(s) are irrelevant.

(Petition, March 27, 2018.)

65) On March 31, 2018, Employee attended the EME appointment with James Schwartz, M.D. Dr. Schwartz opined Employee's September 2013 and January 2014 acute traumatic injuries were soft tissue lumbosacral strains. Dr. Schwartz noted, "The history as he related is one of chronic low back pain, unrelated to a specific anatomic injury," which resolved over several months. Treatment is appropriate; however, given Employee's "patchy" history and "patchy" medical treatment, Dr. Schwartz did not relate the need for medical treatment to any work related structural injury. The treatment regimen Dr. Schwartz recommended for Employee's chronic back pain was therapy, hamstring stretch, physical conditioning, nonsteroidal anti-inflammatories, and a mild muscle relaxant. He said the treatment needed to be on a consistent basis. Dr. Schwartz opined the substantial cause of Employee's current need for medical treatment is lumbar degenerative disc disease; work was the substantial cause of Employee's need for medical treatment for three months after his injuries. Dr. Schwartz arrived at his conclusions because Employee continued to work for several days after his injury, was treated without a significant amount of pain medication, and continued to work, which is indicative of a soft tissue injury. Dr. Schwartz stated Employee's work was relatively strenuous and was uninterrupted by back pain complaints, therefore, Dr. Schwartz opined the work injury was no longer the substantial cause for disability or need for medical treatment "approximately into January of 2014." Dr. Schwartz indicated Employee has no ratable impairment related to the 2013 injury, imposed no physical restrictions related to the September 5, 2013 or January 24, 2014 work incidents, and determined Employee has the physical capacities to perform work in the medium category. (EME Report, Dr. Schwartz, March 31, 2018.)

66) On April 6, 2018, Employee requested Employer's attorney "acting representative (acting agent)" be declared to have "accepted 'THE PETITION' dated 08-01-16 on the basis of 'Offer and Acceptance' and 'Matters of Time'." (Petition, April 6, 2018.)

67) On April 12, 2018, Employer objected to Employee's April 6, 2018 petition because "the employee's petition makes no legal sense and should be denied." Employer had no idea what Employee believed "Offer and Acceptance" and "Matters of Time" mean in the context of his petition. Employer could not determine what Employee sought by requesting a declaration. Employer stated there is no petition or claim dated August 1, 2016 before the board; and Employee was likely referring to an August 1, 2016 petition for review filed before the commission, which was dismissed on August 26, 2016. Employer noted Employee's August 1, 2016 petition for review requested the commission to award him $14 million. "It appears the employee wanted the Commission to hear the merits of his claim, even though there has been no hearing before the board. . . . Employee's petition reflects a deep misunderstanding of the appropriate procedures before the Alaska Worker's Compensation Board." (Answer to Employee's Petition Dated 04/06/18, April 12, 2018.)

68) On April 18, 2018, the issues identified for the May 30, 2018 hearing were Employee's March 27, 2018 appeal of the designee's March 21, 2018 decision to deny Employee's January 18, 2018 petition for a protective order and Employee's April 6, 2018 petition for a declaration regarding his August 1, 2016 petition filed with the commission. The designee explained the adjudications process to Employee:

> [N]oting, the difference between a procedural hearing and a merits hearing and further explaining that procedural issues related to the completion of the discovery process must be dealt with before parties can potentially proceed to a hearing on the merits of this case.

(Prehearing Conference Summary, April 18, 2018.)

69) On May 25, 2018, a prehearing was necessary to clarify the issues for the May 30, 2018 hearing. Employee said he would like an order his claim is compensable. It was explained the issues set for the hearing are not on his claim's compensability, but rather his March 27, 2018 petition for a ruling the designee's order denying Employee's petition for a protective order was an abuse of discretion and his April 6, 2018 petition. Employee was told the prehearing's purpose was to clarify what order he is seeking from his April 6, 2018 petition. Employee requested Ms. Meshke be declared to be Employer's agent and issuance of the following orders: 1) Ms. Meshke was properly served with his August 1, 2016 petition for review filed with the commission; 2) her answer to the August 1, 2016 petition was late; and 3) because her answer was

late, Employer owes Employee $14 million by default. (Prehearing Conference Summary, May 25, 2018.)

70) On May 30, 2018, Employee asserted the board lacks jurisdiction to decide his April 6, 2018 petition. (Rife; Record.)

71) Employer asserts the board does not have jurisdiction to determine if its answer to Employee's August 1, 2018 petition for review was timely filed, or if Employer is liable to Employee for $14 million dollars by default. Employer asserts the board does have the authority to deny Employee's April 6, 2018 petition. (Record.)

72) Employee's rationale for not signing releases is the physicians he saw in Montana were hesitant to continue to treat him because he has so much "baggage." Employee said it took him five or six months to get an appointment with a provider in Reno, Nevada. He stated if he is required to sign medical and employment releases, he would like the due date to be after he is released to drive a motor vehicle for work. In the winter of 2017, Employee said his back was acting up and, when he walked across the parking lot at work, every nerve in his spine fired from his cervical to lumbar spine. He got out of his truck, went to work and could not sit down. When Employee completed an application for a federally issued identification card he was required to respond to an inquiry regarding whether he had ever lost control of bodily function. He responded "yes" due to the incident in the winter of 2017. He is now required to obtain medical clearance to receive permission to drive a motor vehicle for work. Employee is employed by the federal government. Employee stated he is not seeking past medical benefits; but qualified his statement by saying he would like to receive any compensable benefits for his work injury, including future medical benefits. Employee confirmed he is seeking reemployment benefits. Employee filed the April 6, 2018 petition because he wants the board or the commission to decide something. (Rife.)

73) Employer contends it is unable to go to hearing on Employee's claims until it has updated medical records related to Employee's claimed body parts, thoracic and lumbar spine. Employer contends Employee last signed releases on May 3, 2016 and those releases have expired. The new releases requested are not unusual; they request records for two years prior to Employee's work injury and continuing. Employer acknowledges Employee's claim for a compensation rate adjustment and PPI benefits, and his letter to the RBA requesting reemployment benefits. However, Employer contends Employee's March 21, 2016 letter and a prehearing conference summary amended Employee's claim to include medical benefits, and Employee's August 1, 2016

petition filed with the commission seeks far more than a compensation rate adjustment and PPI benefits. Hence, on April 27, 2016, Employer amended its answer. (Record.)

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
>
> (3) this chapter may not be construed by the courts in favor of a party;
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The general purpose of workers' compensation statutes is to provide workers with a simple, speedy remedy to be compensated for injuries arising out of their employment. *Hewing v. Peter Kiewit & Sons*, 586 P.2d 182 (Alaska 1978). The board may base its decisions not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

In *Richard v. Fireman's Fund Ins. Co.*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court instructed the board of its duty with respect to an unrepresented claimant:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

The board owes a duty to inform an unrepresented claimant how to preserve his claim for benefits. *Bohlmann v. Alaska Const. & Engineering, Inc.*, 205 P.3d 316 (Alaska 2009).

> **AS 23.30.005. Alaska Workers' Compensation Board.**
> . . . .
>
> (h) The department shall adopt rules for all panels, and . . . shall adopt regulations to carry out the provisions of this chapter. The department may by regulation provide for procedural, discovery, or stipulated matters to be heard and decided by the commissioner or a hearing officer designated to represent the commissioner rather than a panel. If a procedural, discovery, or stipulated matter is heard and decided by the commissioner or a hearing officer designated to represent the commissioner, the action taken is considered the action of the full board on that aspect of the claim. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate to questions in dispute. . . .

AS 23.30.005(h) empowers the board to order a party to release and produce records that relate to questions in dispute. Additional authority to order a party to release information is set forth, not only in specific statutes, but in broad powers given to best ascertain and protect the rights of the parties under AS 23.30.135(a) and AS 23.30.155(h).

> **AS 23.30.007. Workers' Compensation Appeals Commission.** (a). . . .The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter.

> **AS 23.30.008. Powers and duties of the commission.** (a) The commission shall be the exclusive and final authority for the hearing and determination of all questions of law and fact arising under this chapter in those matters that have been appealed to the commission, except for an appeal to the Alaska Supreme Court. The commission does not have jurisdiction in any case that does not arise under this chapter or in any criminal case. On any matter taken to the commission, the decision of the commission is final and conclusive, unless appealed to the Alaska Supreme Court, and shall stand in lieu of the order of the board from which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.
> . . . .

> **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.
>
> (b) Medical or rehabilitation records, and the employee's name, address, social security number, electronic mail address, and telephone number contained on any record, in an employee's file maintained by the division or held by the board . . . are not public records subject to public inspection and copying under AS 40.25. This subsection does not prohibit
>
> > (1) the reemployment benefits administrator, the division, the board, or the department from releasing medical or rehabilitation records in an employee's file, without the employee's consent, to a physician providing medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a governmental agency; or
> >
> > (2) the quoting or discussing of medical or rehabilitation records contained in an employee's file during a hearing on a claim for compensation, or in a decision and order of the board.
>
> . . . .

The scope of evidence admissible in administrative hearings is broader than is allowed in civil courts generally, because AS 23.30.135 makes most civil rules of procedure and evidence inapplicable. Under relaxed evidence rules, discovery should be at least as liberal as in a civil action and relevancy standards should be at least as broad. *Schwab v. Hooper Electric*, AWCB Decision No. 87-322 (December 11, 1987).

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 any possible fraud. Medical and other releases are important means of doing so. *Cooper v. Boatel, Inc.*, AWCB Decision No. 87-0108 (May 4, 1987).

AS 23.30.107(a) is mandatory. An employee must release all evidence "relative" to the injury. "If the information sought appears to be 'relative,' the appropriate means to protect an employee's right of privacy is to exclude irrelevant evidence from the hearing and the record, rather than to

limit the employer's ability to discover information that may be relative to the injury." *Smith v. Cal Worthington Ford, Inc*., AWCB Decision No. 94-0091 (April 15, 1994).

In *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999) at 11-15, in addition to guidance in determining admissibility, established a two-step analysis to determine whether information is properly discoverable:

> Information which would be inadmissible at trial, may nonetheless be discoverable if it is reasonably calculated to lead to admissible evidence. Under our relaxed rules of evidence, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad.
>
> To be admissible at hearing, evidence must be 'relevant.' However, we find a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing. *Smart v. Aleutian Constructors*, AWCB Decision No. 98-0289 (November 23, 1998).
>
> 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. . . . .
>
> 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.

Information is relevant for discovery purposes if 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. *Granus* at 14.

Information that may have a "historical or causal connection to the injuries" is generally discoverable. *Id*. In attempting to balance the goals of liberal discovery and reasonable protection

of injured workers' privacy, discovery is generally limited to two years before the earliest evidence of related symptoms. *See, e.g., Smith*.

The Alaska Workers' Compensation Appeals Commission stressed the importance of making decisions based on a complete record:

> The exclusion of evidence, whether offered by the employee or the employer, does not serve the interest of the board in obtaining the best and most thorough record on which to base its decision . . . .
>
> Proceedings before the board are to be "as summary and simple as possible." AS 23.30.005(h). The board is not bound by "common law or statutory rules of evidence or by technical or formal rules of procedure." AS 23.30.135(a). The fundamental rule is that "any relevant evidence is admissible." 8 AAC 45.120(e). The result of an exclusionary rule is inherently contrary to the open access to all relevant information regarding the claimant's injury that the workers' compensation statutes are designed to promote. . . .

Guys with Tools v. Thurston, AWCAC Decision No. 062 (November 8, 2007).

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.** (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.
>
> (b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both,

> if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. 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 decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.
> . . . .

The designee's decision on releases must be upheld, absent "an abuse of discretion." An abuse of discretion consists of "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

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

Teel v. J.E. Thornton General Contracting, et. al, AWCB Decision No. 09-0091 (May 12, 2009) provided a comprehensive explanation of the workers' compensation system in general and the policies governing the discovery process under the Act. This explanation is repeated here verbatim for the parties' benefit in this case:

> The purpose of the Alaska Worker's Compensation Act (Act) is to provide injured workers with a simple and speedy remedy to compensate them for work related injuries. Misunderstandings about rights and obligations can slow the process down considerably. Assuming an employee has 'slight' or 'minimal' evidence to support his claims, he is presumed to be entitled to benefits under the Act.
>
> Employers have a statutory duty to adjust workers' compensation claims promptly, fairly and equitably. Employers must begin paying benefits within 14 days after receiving knowledge of an employee's injury, and continue paying all benefits claimed, unless or until it 'controverts,' i.e., denies liability. The Act gives employers a direct financial interest in making timely benefit payments. Employers have a right to defend against claims. However, because injured employees who have minimal

evidence supporting their claims are presumed to be entitled to benefits, before an employer may lawfully and in good faith controvert a benefit, it must have substantial evidence sufficient in the absence of additional evidence from the employee, to warrant a Board decision the employee is not entitled to the benefit at issue.

We have 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 any possible fraud. We find Employers' statutory duty to adjust claims fairly and equitably, necessarily implies a responsibility to conduct a reasonable investigation. An employer's right to develop evidence that may support a good faith controversion serves its direct financial interest. However, we also find Employers' resistance to unmeritorious claims is essential to maintaining the integrity of the benefits system under the Act.

The Board has wide latitude to conduct its investigations, inquiries, and hearings in the manner which best ascertains the parties' rights. We have consistently construed our statutes and regulations to favor liberal discovery. Process and procedure under the Act shall be as 'summary and simple' as possible. Unnecessary disputes over discovery releases make our process and procedure lengthier and more complicated. Because the Act does not permit the parties to engage in most formal discovery proceedings, unless a written claim for benefits is filed pursuant to 8 AAC 45.050(b), we must not unduly circumscribe the availability or effectiveness of less intrusive, less litigious discovery procedures, such as informational releases. We have long recognized medical and other record releases are an important means by which an employer can investigate a claim.

In 1988, the legislature directed the Act 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.' Our duty to ensure a speedy and economical remedy requires the discovery process to move quickly. An injured employee signing discovery releases assists in speedy claim resolution. We have always encouraged parties to cooperate in the discovery process and to only seek our assistance when voluntary compliance is not forthcoming.

We take administrative notice thousands of Alaskan workers annually file notices of injury and receive workers' compensation benefits. Most of the cases of reported injury with time loss are never litigated. In our experience, one reason employers pay many claims without dispute is because employees release sufficient information to verify the nature and extent of their injuries and their entitlement to benefits. We find the prompt execution of reasonable releases plays a critical role in making it possible for employers to fulfill the Act's intent to provide a speedy remedy to injured workers. We also find demanding overly broad releases is destructive to the cooperative spirit on which informal discovery depends, delays the delivery of benefits, results in needless claim administration, and creates excessive litigation costs. *Teel*, at 11-13 (citations omitted).

8 AAC 45.050. Pleadings. (a) A person may start a proceeding before the board by filing a written claim or petition.
. . . .

(c) **Answers**.

(1) An answer to a claim for benefits must be filed within 20 days after the date of service of the claim and must be served upon all parties. A default will not be entered for failure to answer, but, unless an answer is timely filed, statements made in the claim will be deemed admitted. The failure of a party to deny a fact alleged in a claim does not preclude the board from requiring proof of the fact.
. . . .

8 AAC 45.178. Appearances and withdrawals. (a) A person who seeks to represent a party in a matter pending before the board shall file a written notice of appearance with the board, and shall serve a copy of the notice upon all parties. . .
. . . .

8 AAC 57.040. Filing and service of documents.
. . . .

(b) Service is a procedure whereby a party provides copies of documents filed with the commission to the other parties to an appeal. A copy of each document a party files with the commission must

(1) be served on each of the other parties except and employee is filed a notice of nonparticipation, as provided in 8 AAC 57.020(f); and

(2) Be hand-delivered, sent by first-class mail, or transmitted as provided in 8 AAC 57.050(c).
. . . .

8 AAC 57.050. Facsimile transmission or electronic mail filing and service.
. . . .

(c) a party may serve a document on another party by facsimile transmission or electronic mail the party being served has filed with the commission and served on the other parties a notice of consent to service by

(1) facsimile transmission, including the recipients facsimile numbers; or

(2) electronic mail, including the recipients electronic mail address.

. . . .

8 AAC 57.073. Petitions or cross-petitions for review of interlocutory or other non-final board decisions or orders. (a) A party may petition or cross-petition the commission, as provided in 8 AAC 57.075, for review of an interlocutory or other non-final board decision or order that is no otherwise appealable under this chapter.

(b) Review will be granted only if the policy that appeals be taken only from final decisions and orders is outweighed because

(1) postponement of review until appeal may be taken from a final decision or order will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship, or other related factors;

(2) the decision or order involves an important question of law on which there is substantial ground for difference of opinion, and an immediate review of the decision or order may materially advance the ultimate resolution of the claim;

(3) the board has so far departed from the accepted and usual course of proceedings as to call for the commission's review; or

(4) the issue is one that might otherwise evade review, and an immediate decision by the commission is needed for the guidance of the board.

> **8 AAC 57.075. Procedure on petitions or cross-petition for review.**
> . . . .
>
> (g) No later than 15 days after service of a petition . . . for review, a party may file an opposition. . . .

ANALYSIS

1. **Did the designee abuse his discretion when he determined the releases of information requested by Employer were likely to lead to information relative to Employee's work injuries?**

There is no question Employee has failed to sign and return appropriately-tailored medical and employment releases, despite at least two orders to do so. Instead, Employee contends because he signed releases when he filed his claim, Employer has everything it needs, despite expiration of the initial releases. Employer contends updated releases are designed to produce information related to Employee's work injuries and Employee's current medical and employment records.

When reviewing a designee's decision under the abuse of discretion standard, the question is not whether the designee reached the best decision or whether the board would have reached the same decision. The designee's decision must be upheld unless it is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive. *Sheehan*. Here, neither party has argued, nor is there any evidence, the designee's decision was arbitrary, capricious, manifestly unreasonable, or stemmed from improper motive.

The duty to ensure the "quick, efficient, fair, and predictable delivery of . . . benefits to injured workers at a reasonable cost to . . . employers" under the Act requires a speedy discovery process. AS 23.30.001; *Teel*. Prompt execution of reasonable releases plays a critical role in facilitating the fulfillment of the Act's intent and assuring a complete record upon which to make a decision. *Guys with Tools*. On the other hand, demanding overly broad releases is destructive to the cooperative spirit on which informal discovery depends, delays the delivery of benefits, and results in needless administrative and litigation costs. *Teel*.

The review of a designee's determination in a discovery dispute may not consider evidence or arguments not presented to the designee. AS 23.30.108(c). Here, the written record as of February 15, 2018, is examined.

Employee filed a claim on January 19, 2016. On February 16, 2016, Employer requested Employee sign releases. On February 25, 2016, Employee petitioned for a protective order; however, two and a half months later, on May 3, 2016, Employee signed and returned medical, employment, educational and rehabilitation, Social Security earnings, and Alaska Worker's Compensation Division information releases to Employer.

On June 8, 2016, Employer requested Employee be ordered to attend his deposition because when Employer attempted to coordinate with Employee a date and time to take his deposition, Employee refused to provide a date when he was available. The parties were provided notice for a June 20, 2016 prehearing; however, Employee requested the prehearing be delayed for four months. Employer objected to Employee's request. The prehearing proceeded on June 20, 2016, but Employee did not attend. Employer, for the first time, contended Employee's lack of cooperation was impeding the adjudications process. The designee found no hardship to Employee or reason why Employee could not attend either the deposition or EME; granted. Employer's petition to compel; and ordered Employee to attend his June 22, 2016 telephonic deposition and an August 27, 2016 EME.

Employee did not appear for his deposition and on July 11, 2016, contended he tried to cooperate and blamed the carrier's actions and interstate commerce rules and regulations for stopping his "medical findings" discovery. Employee did not attend the August 27, 2016 EME appointment either and, therefore, on September 2, 2016, Employer controverted all benefits.

On January 4, 2018, Employer requested Employee sign and return medical, employment records, and insurance records releases within 14 days. Employee did not sign and return the releases, but did request a protective order on January 18, 2018, although it was unclear what Employee sought from his petition. On February 14, 2018, Employer requested Employee be compelled to sign and return releases as he had agreed to do at the January 18, 2018 prehearing. On February 15, 2018,

Employee clarified he intended his January 18, 2018 petition for a protective order to "preclude him from signing updated discovery releases." Employee objected to signing the releases because Dr. Youngblood merely performed a records review and had not examined Employee in person. Had Employee complied with the designee's order and attended the EME, Dr. Youngblood could have taken Employee's history and evaluated Employee in person. Employee's January 18, 2018 request for a protective order was denied and Employer's February 14, 2018 petition to compel was granted. Employee was ordered to sign, date and return the updated releases within 10 days from the prehearing conference summary's service.

Instead of complying with the designee's order, Employee continued to object to the updated releases and definitively stated he would not return signed releases as ordered on February 15, 2018. Employee asserted Employer had all necessary releases because he completed them when he filed his claim. On February 27, 2018, Employer again controverted all benefits because Employee failed to sign and return the releases.

On March 27, 2018, nearly three months after Employer requested Employee to sign releases, he again requested the requirement he sign releases be disregarded and a protective order issued. Employee asserted any employers or medical treatment he had prior to his work injuries are irrelevant.

On May 25, 2018, a prehearing on the board's motion was held to clarify the issues for the May 30, 2018 hearing. Employee stated he wanted an order regarding his claim's compensability. Despite explanations of the adjudications process, Employee still did not understand discovery must be completed prior to a hearing on the merits, the compensability, of his claim. *Roger & Babler*.

The lengthy factual findings are provided to demonstrate that arriving at a point where Employee's claims' merits can be decided has been anything but quick, efficient, or predictable. When the discovery process outlined in AS 23.30.107 and AS 23.30.108 is followed, it is summary and simple, even when a protective order is requested. AS 23.30.005(h). All evidence relevant to Employee's claims has not been obtained and is not yet in the record, which delays hearing

Employee's claims on their merits. *Guys with Tools*. Employee's struggles to comply with the Act's statutes and regulations eventually led him to a dead end when he filed an August 1, 2016 petition for review with the commission. Unnecessary disputes over discovery releases have made the adjudications process and procedure lengthier and more complicated. *Teel*.

May 3, 2017 was the last time Employer was able to request medical records relating to treatment for Employee's thoracic or lumbar spine or records regarding Employee's employment dates, wage rate, positions held, the length Employee held positions, and his work duties. Employer made a request for renewed releases on January 4, 2018, and five months later Employee still has not signed the releases despite his promise and, subsequently, an order compelling him to sign and return them.

Discovery in workers' compensation cases must be liberal, which leads to quick, fair, efficient, and predictable determinations regarding benefits due injured workers. AS 23.30.001 *Schwab*; *Hewing*. Employer desires and has a right to thoroughly investigate Employee's claims so that it can properly administer his claim and effectively litigate its disputes with Employee. *Cooper*. Employee must abide by the mandatory requirement he release all information relative to his work injury. AS 23.30.107(a).

The issues in dispute are Employee's claim for a compensation rate adjustment and PPI benefits. Additionally, he has requested reemployment and medical benefits, both past and future. Employer has controverted all benefits. Employer has controverted all benefits, putting all Employee's claims in dispute. *Granus.* Employer requested medical releases for Employee's thoracic and lumbar spine from 2011 forward. Medical and other record releases are an important means by which Employer can investigate Employee's claim. *Teel.* The Act requires work be the substantial cause of Employee's disability or need for medical treatment. In order to investigate if Employee has any pre-existing conditions that are a contributing factor, Employer's request for records from 2011 until the date of the releases' expiration are likely to lead to relevant information and information that may have a historical or causal connection to Employee's work injury and are reasonable. *Id.*; *Smith*; *Guys with Tools*.

Employee's request for reemployment benefits allows Employer to request Employee release information regarding positions he held going back as far as 10 years before his work injury and his current job. Eligibility for reemployment benefits requires Employee has permanent physical capacities that as less than those required of his job when he was injured or other jobs he held or received training for in the 10 years before his injury or that he has held for a sufficient period since his work injury to obtain skills necessary to compete in the labor market. Both the scope of information Employer requests and the time period covered for the employment releases is reasonable and likely to lead to admissible evidence. *Granus*.

Employee did not assert the designee's decision was arbitrary, capricious, manifestly unjust, unreasonable, or stemmed from an improper motive. Employee stated he did not want to sign medical releases because he believes when they are presented to his physicians the releases have a chilling effect on his physicians' willingness to continue to treat him. He added he did not want to be ordered to sign releases until after he receives clearance to drive motor vehicles in his current position with the federal government. Unfortunately, neither of these stated reasons are a part of the record upon which the designee's determination was made. However, even if they were, they are not a basis to find the designee abused his discretion. AS 23.30.108.

The designee's order Employee sign releases will be affirmed. Employee will be ordered to sign the medical, employment information and insurance information releases provided to Employee on January 4, 2018.

Employee is reminded, to preserve his claim, he must comply with the order to sign and return releases to Employer. *Bohlmann*. Employee is advised if he refuses to comply with this order, in addition to benefits forfeiture, appropriate sanctions may be imposed, including dismissal of his claim. AS 23.30.108(c); *Richard*.

2. Does the board have jurisdiction to decide Employee's April 6, 2018 petition?

Employee has made it clear he is dissatisfied because his claim for benefits has not been decided. Employee apparently expected a decision to be made by the RBA or by a designee at prehearing, and when none was not made, on August 1, 2016, Employee filed a petition for review with the

commission. His petition was dismissed because the commission's authority is limited to hearing appeals of board decisions. AS 23.30.007; AS 23.30.008.

Employee's dissatisfaction with the lengthy process to get his case to hearing worsened because he failed to comply with valid discovery orders. Employee ultimately requested an extension to complete discovery and file his ARH, and for a continuance of the April 4, 2018 hearing set to determine his claim's compensability. However, on April 6, 2018, still seeking a determination, Employee filed a petition requesting Ms. Meshke be declared Employer's representative and agent, that she did not timely answer his August 1, 2018 petition before the commission and, therefore, by default Employer owes Employee $14 million.

Ms. Meshke entered her appearance on Employer's behalf and is Employer's representative for all purposes related to Employee's claim. 8 AAC 45.178. Employee properly served Ms. Meshke with his August 1, 2016 petition before the commission on August 10, 2016, after receiving instruction from the commission clerk in the first and second docket notices. 8 AAC 57.040; 8 AAC 57.050. Ms. Meshke was required to file an opposition to the petition within 15 days of proper service. 8 AC 57.075(g). Employer's opposition to Employee's petition was filed on August 25, 2016, 15 days after Employee properly served Employer with his August 1, 2016 petition. Employer's petition was timely filed. *Id.*

The commission treated Employer's opposition to Employee's petition for review as a motion to dismiss the petition. Because Employee had not yet filed an affidavit of readiness for hearing and the board had not heard Employee's claim or issued a decision, the commission determined it did not have authority to decide Employee's petition for review. The commission stated its authority is limited to hearing appeals of board decisions. The commission also notified the parties of the procedure to be followed if they wished to appeal the commission's decision. Employee did not file a petition for review with the Alaska Supreme Court. *Rogers & Babler.* Jurisdiction to challenge a commission order lies with the Alaska Supreme Court. Alaska Rules of Appellate Procedure. Employee's April 6, 2018 petition will be dismissed for lack of jurisdiction.

Under *Richard* and *Bohlmann*, it is important to educate Employee of his rights and how to pursue them under the Act. When a claim is filed, an employer has 20 days after the claim is serve to answer. A default will not be entered for an employer's failure to answer. 8 AAC 45.050(c)(1). If an answer is not timely filed, statements made in an employee's claim will be deemed admitted. However, regardless of statements being "deemed admitted," a party's failure to deny a claim's alleged fact does not preclude the board from requiring the fact be proved. *Id.* This provision is applicable to workers' compensation claims. Employer timely answered Employee's claim; however, even had Employer failed to timely answer Employee's claim he is entitled to $14 million dollars, Employee would be required to prove his entitlement. AS 23.30.135; 8 AAC 45.050(c)(1). The "default" provision does not apply to appeals before the commission or petitions filed with the board. When Employee's claim goes to hearing on its merits, Employee will be required to prove his entitlement to the benefits he claims.

CONCLUSIONS OF LAW

1. The designee did not abuse his discretion when he determined the releases of information requested by Employer were likely to lead to information relative to Employee's work injuries.
2. The board does not have jurisdiction to decide Employee's April 6, 2018 petition.

ORDER

1. Employee's January 18, 2018 petition for a protective order and a determination the designee abused his discretion is denied.
2. The designee's order granting Employer's February 14, 2018 petition to compel is affirmed.
3. Employee must sign the medical, employment information, and insurance information releases provided to Employee on January 4, 2018, within 10 days of this decision's issuance.
4. Employee's April 6, 2018 petition is dismissed.

Dated in Anchorage, Alaska on June 26, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Donna Phillips, Member

/s/
Robert Weel, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory 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 MATTHEW RIFE, employee / claimant; v. B.C. EXCAVATING, LLC, employer; ALASKA NATIONAL INSURANCE CO., insurer / defendants; Case No. 201601856; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on June 26, 2018.

/s/
Charlotte Corriveau, Office Assistant