ALASKA WORKERS' COMPENSATION BOARD

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

ACHIEK S. AYOL, Employee, Claimant, v. TRIDENT SEAFOODS, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201704029 AWCB Decision No. 21-0056 Filed with AWCB Anchorage, Alaska on July 6, 2021

Employee Achiek Ayol's, September 10, 2020 petitions appealing a designee's discovery order and to recuse the designee, September 17, 2020 petition for more time to request a hearing, May 10, 2021 petition for appointment of a legal guardian and Employer Trident Seafoods' September 11, 2020 petition to dismiss were heard on June 30, 2021, in Anchorage, Alaska, a date selected on May 13, 2021. A May 10, 2021 hearing request gave rise to this hearing. Employee represented himself and testified. Attorney Jeffrey Holloway represented Employer and its insurer. All parties attended telephonically. The record closed at the hearing's conclusion on June 30, 2021.

ISSUES

Employee contended he is not mentally or physically able to represent himself and sought an order appointing a legal guardian to help him with his case. He also requested a hearing continuance.

Employer contended Employee's request is "unintelligible." It contended the agency has no authority to appoint a guardian, which must be done by a court. Employer contended Employee produced no evidence of a mental disability. An oral order denied Employee's request for a guardian referral and for a related hearing continuance.

1) Were the oral orders denying Employee's request for a legal guardian referral and a hearing continuance correct?

Employer contends Employee refused to sign and deliver discovery releases and did not comply with a designee's order requiring him to sign and return them. It contends Employee's claims and petitions should all be dismissed as an appropriate discovery sanction.

Employee contends he has "cooperated enough" and will not participate in discovery because he alleges Employer has not "compromised" with him regarding his discovery requests. He contends some requests seek information Employee considers private or not relevant.

2) Should Employee's claims and petitions be dismissed at this time?

Employee contends the designee's August 12, 2020 discovery order compelling him to sign and return releases was wrong because the discovery process was "not being done right," the process "does not favor him" and he refuses to participate further in the discovery process or reveal "private" Social Security and education records. He seeks an order reconsidering or modifying the designee's order.

Employer contends Employee's request for reconsideration filed after the designee's order, was untimely and should be denied on that basis alone. It further contends the designee's order was correct because the releases are likely to lead to admissible evidence.

3) Should the designee's August 12, 2020 discovery order be affirmed?

Employee contends the prehearing conference designee should be disqualified from participating in his case; he requests a female designee. He contends the current male designee is not impartial and fair in the discovery process and fails to include his "rights and claims" in prehearing conference summaries.

Employer contends Employee's demand to recuse the current designee and for a female designee is sexist, unfounded legally, has no basis in fact and should be denied.

4) Should Employee's September 10, 2020 petition to disqualify the prehearing conference designee and appoint a female designee be granted?

Employee contends since he is not mentally able or prepared to represent himself and needs a legal guardian, he needs an extension of time to request a hearing under AS 23.30.110(c).

Employer contends Employee is deliberately evading discovery and preventing it from investigating his claim. It seeks an order denying his request for more time to request a hearing.

5) Should Employee be granted additional time to request a hearing so he can obtain a guardian?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On or about March 8, 2017, Employee slipped while climbing steps at work for Employer and hurt his right knee and left hip. (Claim for Workers' Compensation Benefits, May 10, 2019).

2) On June 13, 2018, Richard Schneider, M.D., psychiatrist, performed an employer's medical evaluation (EME) to assess Employee's mental health. He opined Employee did not have any psychiatric condition and needed no mental health treatment. (Schneider report, June 13, 2018).

3) On July 25, 2018, Employee claimed a rate adjustment, an unfair or frivolous controversion finding and $3,715 in medical costs. (Claim for Workers' Compensation Benefits, July 25, 2018).

4) On August 23, 2018, Employer denied Employee's July 25, 2018 claim. He had to request a hearing or more time to request a hearing by no later than August 23, 2018. (Controversion Notice, August 23, 2018; observation).

5) On May 13, 2019, Employee requested a hearing on the only claim he had at the time. The request does not show service on Employer. (Affidavit of Readiness for Hearing, May 13, 2019).

6) Employer did not immediately oppose the May 13, 2019 hearing request, suggesting it was not served on Employer. (Experience and inferences drawn from the above).

7) On June 10, 2019, Employee sought temporary partial disability (TPD) benefits, a compensation rate adjustment, an unfair or frivolous controversion finding, $240 in transportation costs, $1,830 in medical costs, and $21,814 in "training." (Claim for Workers' Compensation Benefits, May 10, 2019).

8) On July 3, 2019, Employer denied Employee's May 10, 2019 claim that he filed on June 10, 2019. He had to request a hearing or more time to request a hearing by no later than July 3, 2021. (Controversion Notice, July 3, 2019; observation).

9) On January 21, 2020, Employee requested a hearing on his "Workers' Compensation Claim(s)" and on a petition. The hearing request did not show service on Employer. (Affidavit of Readiness for Hearing, January 21, 2021).

10) Employer did not immediately oppose the January 21, 2020 hearing request, suggesting it was not served on Employer. (Experience and inferences drawn from the above).

11) On January 24, 2020, Employer requested that Employee sign and return new releases and advised him he must either sign and return the releases or file a petition for a protective order within 14 days if he found the releases objectionable. The attached releases were nearly identical to those Employer sent on August 1, 2019, which Employee had signed and returned, except the IRS release covered 2015 through 2019, and included a release for Alaska Workers' Compensation Division records related to "hip & knee" and a request for Social Security information from 2015 through 2020. (Letter, January 24, 2020).

12) On February 21, 2020, Employer denied Employee's right to any and all benefits under the Act pursuant to AS 23.30.108, contending he failed to provide written authority to release medical and other information related to his claim and did not timely file a petition seeking a protective order. (Controversion Notice, February 21, 2020).

13) On February 21 and 24, 2020, Employee adequately requested a hearing on his "Workers' Compensation Claim(s)," "immediately," and showed service on Employer. (Affidavit of Readiness for Hearing, February 21, 2020; filed February 21 and 24, 2020).

14) On March 18, 2020, Employer said it had received a hearing request from Employee executed on "an unknown date" and objected to a hearing being set and to irregularities in the request, including Employee's failure to show service on Employer. (Affidavit of Opposition, March 18, 2020).

15) On June 17, 2020, the parties appeared before male Board designee Harvey Pullen for a conference. Pullen recorded, "Employee stated that he would not participate in the adjudications process as long as male individuals were representing the AWCB and the Employer." When Pullen asked him about a pending petition, Employee stated he would not participate "until or unless females are assigned to his case." (Prehearing Conference Summary, June 17, 2020).

16) On June 25, 2020, Employer through counsel sent Employee another letter asking him to sign and return releases within 14 days or file a petition for protective order if he found the releases objectionable. The attached releases included:

- Release of Medical Information (various providers) limited to "hip & knee" from March 6, 2015 forward
- Social Security Administration earnings and benefits release from 2015 through 2020
- Educational Records Release from March 6, 2007 forward
- Employment Records Release from March 6, 2007 forward
- Authorization to Release Protected Health Information (State Health Benefit Plan) limited to "knee & hip contusion from 03/06/2015 forward"
- Authorization for Disclosure of Protected Health Information (Grady Hospital) limited to "knee & hip-contusion 3/6/2015-forward"
- IRS Form 4506 Request for Copy of Tax Return for tax years 2015 to 2019. (Letter, June 25, 2020).

17) On June 26, 2020, Employee sought a protective order on the Grady Hospital release only, stating it went back too far in time. (Petition, June 26, 2020).

18) On July 28, 2020, Employer sought an order compelling Employee's signatures on releases it served on him on June 26, 2020. (Petition, July 28, 2020).

19) On August 12, 2020, the parties appeared before Pullen and Employee stated "he will no longer participate in the discovery process as it is not being done right." He further stated "the discovery process does not favor him" and Employee demanded a hearing be scheduled without him having to provide discovery. Pullen declined to schedule a hearing. Employee said he had petitioned to have Pullen disqualified on multiple occasions and was frustrated because this had not yet happened. Employer stated Employee had not signed and returned the discovery releases

it propounded to him; Employee reiterated "he will no longer participate in the discovery process" and "that Social Security and education records are private and cannot be obtained by Employer." Employer contended the education release going back to March 6, 2007, was necessary due to Employee's July 14, 2020 petition for reconsideration of the Rehabilitation Benefits Administrator's (RBA) decision finding him not eligible for retraining benefits. Pullen reviewed the other releases and found them to "be standard, relevant and likely to lead to discoverable information." Accordingly, Pullen granted Employer's July 28, 2020 petition to compel discovery from Employee and ordered him to sign, date and return the releases. He also advised Employee if he disagreed with the discovery order he had "two options." First, he could file a petition for reconsideration within 10 days at which time Pullen would review the file and respond in writing. Second, Employee could appeal the discovery order within 10 days at which time the Board would review the file at a written record hearing and respond in writing as to whether or not Pullen had abused his discretion in his discovery order. (Prehearing Conference Summary, August 12, 2020).

20) On August 17, 2020, Employee requested an order to compel discovery; requested a second independent medical evaluation (SIME); sought review of the RBA's eligibility determination; and requested unspecified "reconsideration or modification." As his reason for filing his request, Employee stated Employer was impeding discovery, and defaulted on payments and medical expenses. (Petition, August 17, 2020).

21) On September 9, 2020, the parties again appeared before Pullen. Employee reiterated his refusal to participate in discovery and Employer confirmed Employee had not provided the discovery releases Pullen had ordered him to provide at the August 12, 2020 prehearing conference. Pullen again declined to schedule a hearing on Employee's claims. (Prehearing Conference Summary, September 9, 2020).

22) On September 10, 2020, Employee sought an unspecified protective order; review of the RBA's eligibility decision; unspecified "reconsideration or modification"; and an order recusing Pullen as the prehearing conference designee, contending Pullen was not impartial or fair and omitted Employee's "rights and claims" in prehearing conference summaries. In summary, Employee further contended medical releases were too broad and some releases violated his privacy rights. (Petition, September 10, 2020).

23) On September 11, 2020, Employer sought an order dismissing Employee's claims and petitions for willful refusal to cooperate with discovery and sign and return releases to Employer as the designee had ordered. (Petition, September 11, 2020).

24) On September 17, 2020, Employee again sought review of the RBA's decision, opposed Employer's dismissal request and requested more time to request a hearing under AS 23.30.110(c), citing his need for a legal guardian to represent him while he sought psychiatric help. (Petition, September 17, 2020).

25) At hearing on January 6, 2021, the panel found Employee, a material witness, had become unavailable and could not participate telephonically because he did not have phone service. An oral order continued the hearing. *Ayol v. Trident Seafoods*, AWCB decision No. 21-0002 (January 7, 2021) (*Ayol I*), memorialized the oral order. (*Ayol I*).

26) On May 10, 2021, Employee sought an order for a legal guardian to help him with his claim, stating he was not "mentally and physically" able to self-represent. (Petition, May 10, 2021).

27) On May 13, 2021, the parties appeared before Pullen and set Employee's two September 10, 2020, his September 17, 2020, and his May 10, 2021 petitions and Employer's September 11, 2020 petition to dismiss on for hearing. (Prehearing Conference Summary, May 13, 2021).

28) At hearing on June 30, 2021, Employee testified "his mind is gone" and he is unable to represent himself. Employee said he cries often and reacts poorly to "mental pressure" from Employer. He referenced a report from a Georgia physician referring him to a psychiatrist for mental health care, as support for his guardian request. But Employee conceded he has never seen a psychiatrist or been in a mental health institution. He owned his own home before and after his work injury until January 2021, and was able to handle financial affairs related to it including performing some maintenance or hiring experts for some repairs. Employee also owned taxi medallions post-injury and leased them to others before it became unprofitable. Alternately, Employee requested an attorney to help him with his case. (Employee).

29) Employer contended the Board is not the proper forum for a guardian appointment, and the related statute requires a court finding that a person is mentally incompetent before the subject statute even applies. It contended what Employee really wants is a lawyer. (Record).

30) Given his request for a guardian, Employee also contended the hearing should be continued until he obtains one. (Employee).

31) Employer contended there was no basis to continue the hearing as Employee did not need and was not entitled to a legal guardian. (Record).

32) Employee next contends Board designee Pullen uses a "harsh tone" when speaking to him at prehearing conferences. He seeks an order recusing Pullen from participation in his case. Employee implies that because he is a minority, Pullen rejects his arguments and always rules in Employer's favor. He requests a female Board designee for future prehearing conferences and speculates how much better conferences would be. (Employee).

33) Employer contends that just because Pullen ruled against Employee, this does not mean Pullen is biased in Employer's favor or should be disqualified. Holloway contends he never heard Pullen use a harsh tone when dealing with Employee; Employer contends Employee's request for a female Board designee was "sexist." (Record).

34) Employee perceives unfairness in the discovery process, likening it to a negotiation rather than a legal obligation to produce discovery. He is annoyed because he asked Holloway to provide a pre-hire physical exam report, which Employee contends would show he had good health before he was hired. Employee is also unhappy because Employer failed to produce a videotape or photographs showing his actual injury. He contends Employer deliberately erased or destroyed the pictures so it would not have to produce them. Employee refuses to sign additional releases because he thinks Employer is not being fair and equally responsive to his discovery requests. He contends he has "cooperated enough" and Employer needs to "compromise." (Employee).

35) Employer contends Employee's testimony is not relevant to the discovery issue. Furthermore, it contends Employee did not timely appeal from the designee's discovery order and on that basis alone his request should be denied. Employer contends the releases at issue seek information relevant to his various claims including medical records from Grady Hospital and Social Security documents going back to 2015, and Medicaid information through 2017, to determine if there is an offset or lien. Since Employee appealed from the RBA's decision finding him not eligible for reemployment benefits, Employer contends it has a right to obtain education and employment records for the 10 years prior to Employee's injury and similar records since his injury, to date. Lastly on the discovery issue, Employer notes Employee repeatedly said he would not cooperate any further with discovery and it contends his position is

prolonging litigation and costing Employer and its insurer unnecessary attorney fees and costs. (Record).

36) Regarding its petition to dismiss Employee's claims and petitions, Employer contends Employee's refusal to sign and return releases wastes time. It contends he has no excuse for not signing them or a valid objection to the releases, a designee ordered him to sign them and yet Employee refuses. Employer cites increased costs trying to get discovery from Employee for over one and one-half years. It contends only claim dismissal will afford Employer an adequate remedy given Employee's expressed unwillingness to cooperate any further with discovery. (Record).

37) Employee presented himself as a well-educated, composed person who did a good job representing himself at hearing. From a layperson's perspective, nothing in Employee's oral presentation or his pleadings suggests mental incompetence or an inability for Employee to understand the litigation process and represent himself. (Experience, judgment and observations).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. 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;
> . . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony, medical findings 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, 531 (Alaska 1987).

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

(h) . . . Process and procedure under this chapter shall be as summary and simple as possible. The . . . board . . . may for the purposes of this chapter subpoena witnesses, administer or course 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 23.30.107. Release of information. (a) Upon written request, an employee shall provide written authority to the employer, [or] carrier . . . to obtain medical and rehabilitation information relative to the employee's injury. . . .

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) . . . 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 written record. . . . The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

AS 23.30.110. Procedure on claims. . . .
. . . .

(c) . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied. . . .

> **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 by 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. . . .
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> **AS 23.30.140. Appointment of guardian by court**. The director may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent . . . to receive compensation payable to the person under this chapter and exercise the powers granted to or to perform the duties required of the person under this chapter. . . .
> **AS 44.62.570. Scope of Review**. . . .
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> (b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.
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> (c) . . . If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by
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> (1) the weight of the evidence; or
> (2) substantial evidence in the light of the whole record.

An agency's failure to properly apply the controlling law may also be considered an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962).

> **8 AAC 45.054. Discovery**. . . .
> . . . .
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> (d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request. . . .

Parties have a constitutional right to defend against claims or petitions. *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999). A thorough investigation allows parties to verify information provided by the opposing party, effectively litigate disputed issues and detect fraud. *Id*. Information inadmissible at a civil trial may be discoverable in a workers' compensation case if it is reasonably calculated to lead to relevant facts. *Id*.

> **8 AAC 45.065. Prehearings.** (a) . . . At the prehearing, the board or designee will exercise discretion in making determinations on

> . . . .
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> (10) discovery requests; . . . .
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> **8 AAC 45.095. Release of information.** (a) an employee who, having been properly served with a request for release of information, feels that the information requested is not relevant to the injury must, within 14 days after service of the request, petition for a prehearing under 8 AAC 45.065.
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> (b) If after a prehearing the board or its designee determines that information sought from the employee is not relevant to the injury that is the subject of the claim, a protective order will be issued.
> (c) If after a prehearing an order to release information is issued and an employee refuses to sign a release, the board will, in its discretion, limit the issues at the hearing on the claim to the propriety of the employee's refusal. If after the hearing the board finds that the employee's refusal to sign the requested release was unreasonable, the board will in its discretion, refuse to order or award compensation until the employee has signed the release.

The Alaska Supreme Court in *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 320 (Alaska 2009) considered the board's duty to advise unrepresented claimants in workers' compensation cases how to preserve their claims:

> The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants.

ANALYSIS

1) Were the oral orders denying Employee's request for a legal guardian referral and a hearing continuance correct?

The panel first addressed Employee's request for an order appointing a legal guardian. If Employee had presented some evidence that a guardian may be necessary because he is "mentally incompetent," it would have been unfair and inappropriate for the panel to decide other issues before a guardian was appointed, since a mentally incompetent person could not represent himself. AS 23.30.001(4); AS 23.30.135(a). Though the Workers' Compensation Division Director may "require the appointment" of a guardian or other representative for a person who is mentally incompetent, only "a competent court" may actually appoint a guardian. AS 23.30.140. This panel does not have authority to appoint a guardian or other representative

for Employee; it can only review any evidence suggesting Employee is incompetent and if any is found, refer the case to the Director who may ask the court to appoint a guardian. Since Employee did not present evidence he was mentally incompetent, has never been treated for mental health issues, comported himself well at hearing, and EME Dr. Schneider said Employee did not meet criteria for any psychiatric condition and needed no mental health treatment, there was no factual basis for this decision to ask the Director to ask the court to appoint a guardian under AS 23.30.140. The oral order denying his request for an order appointing a legal guardian was correct. Accordingly, the oral order denying his related request for a hearing continuance on this ground was also correct.

2) Should Employee's claims and petitions be dismissed at this time?

Employer wants an order dismissing Employee's claims and petitions because he has refused to obey discovery orders. AS 23.30.108(c). His hearing testimony shows Employee misunderstands discovery. He likens discovery to a negotiation or "compromise" between the parties; in other words, he thinks he must get something in return for what Employer requests from him. Because Employee perceives unfairness and alleges deliberate evidence spoliation by Employer, he concludes he no longer needs to sign informational releases. He is mistaken. One party's alleged failure or refusal to provide discovery does not absolve the opposing party from its duty to provide discovery. Either party has an effective remedy. If Employee believes Employer has evidence that it has withheld or refused to produce upon his request, he may either file a petition for an order to compel Employer to produce that evidence or, if he has already filed such a petition, he may request a hearing on it by filing an Affidavit of Readiness for Hearing. Employee must serve a copy of his petition and hearing request on Holloway. It is inappropriate for Employee to withhold discovery simply because he alleges Employer has done so.

Statutes and regulations require discovery in these cases. AS 23.30.005(h). One legislative mandate is to make legal process and procedure including discovery under the Act as "summary and simple as possible." (*Id.*). Discovery is not a negotiation; injured workers must release relevant information. AS 23.30.107(a). Designees at prehearing conferences may direct parties to produce documents or other discovery. 8 AAC 45.065(a)(10). If a party refuses to comply with a designee's

order concerning discovery, sanctions may be imposed in addition to "forfeiture of benefits, including dismissing the party's claim, petition or defense." Parties who refuse to provide discovery may not present related evidence at a hearing. 8 AAC 45.054(d). Further, a hearing panel may refuse to order or award compensation while Employee's refusal to provide discovery continues. AS 23.30.108(c); 8 AAC 45.095(c); *Bohlmann*.

Another legislative mandate is for this panel to interpret the law and conduct its investigations, inquiries and hearings quickly, fairly, predictably, and impartially and to provide due process so all parties' rights may be best ascertained, at a reasonable cost to Employer; Employee's refusal to provide discovery has cost Employer money. AS 23.30.001(1), (4); AS 23.30.135(a). There has already been one hearing in this case that was continued to protect Employee's rights. *Ayol I*. Given these mandates, and his misunderstanding about his rights and duties, Employee will be given one more chance to comply with discovery orders in accordance with the next section. Therefore, Employer's petition to dismiss his claims and petitions will not be granted at this time.

Employee is advised that his benefits are suspended by operation of law because he did not sign and deliver releases within 14 days after the designee ordered him to. AS 23.30.108(b). Should he refuse or fail to comply with the orders in this decision, some or all of his claimed benefits may be forfeited or dismissed for his failure to comply with this decision. AS 23.30.108(c); *Bohlmann*.

3) Should the designee's August 12, 2020 discovery order be affirmed?

The releases at issue are identified in factual finding 16, above; the designee's August 12, 2020 discovery order requiring Employee to sign and return the releases to Employer is the order in dispute. The designee's discovery order said Employee had two options if he was dissatisfied with the discovery order -- he could seek reconsideration or he could appeal. Employer contends Employee did not timely appeal from this order and his request should be denied on that basis alone. However, on August 17, 2020, only five days after the August 12, 2020 discovery order, Employee timely filed a petition requesting unspecified "reconsideration or modification." While Employee requested "reconsideration or modification" but did not specify what action his petition addressed, in fairness to him as a layperson, this decision treats his request as an appeal

from the designee's discovery order. AS 23.30.001(1); AS 23.30.135(a). Because he appealed the designee's determination of a discovery dispute, the limitations in AS 23.30.108(c) apply and the panel may not consider any evidence or argument that was not presented to the designee and must decide this issue solely on the written record. AS 23.30.108(c).

Employee has filed claims for a compensation rate adjustment, an unfair or frivolous controversion finding, $3,715 in medical costs, TPD benefits, $240 in transportation costs, $1,830 in medical costs, and $21,814 in "training." The benefits Employee seeks result in Employer's ability to broadly discover potentially relevant evidence with which to defend against his claims. *Granus*. His claim for medical expenses allows Employer to obtain releases with which to find relevant medical records that might show he had a preexisting condition or a post-injury accident that could account for his ongoing symptoms. AS 23.30.107(a). Employer does not have to believe Employee; it has a right to obtain a release with which to verify his assertions about any preexisting issues or post-injury accidents or injuries to the same body parts. Employers have a constitutional right to defend against claims, including the right to thoroughly investigate and gather evidence concerning claims for benefits under the Act for which they ultimately may be responsible. *Granus*; AS 23.30.001(1), (4). Included is the right to obtain records concerning medical history, which may be relevant to the claim or to affirmative defenses. AS 23.30.107(a); AS 23.30.108(c). The releases in question are properly limited to the injured body parts -- Employee's hip and knee. Records related to the opposite hip and knee may provide evidence of a systemic condition. The releases are properly limited to two years prior to the injury date. *Granus*.

Employee's compensation rate adjustment claim allows Employer to discover income tax returns and other documentary evidence that may show Employee's historical earnings, his earnings at the time of injury, and the likelihood higher earnings would continue through the duration of his expected disability. This is used to determine if he is entitled to a rate adjustment. *Granus*.

His request for an SIME, not decided here because it was not included as an issue for hearing, requires all relevant medical records so if an SIME is ordered, the SIME physician can have all relevant records on which to base and offer an opinion. The basic rule on medical records is that

Employer is entitled to begin its search two years prior to the injury date. If those medical records disclose evidence Employee had other relevant conditions, accidents or injuries, Employer has the right to go back even earlier to obtain records or to review post-injury records. *Granus*.

Employee's request for retraining benefits and his appeal from the RBA's decision denying them allow Employer to obtain education and employment records going back 10 years prior to his injury date, and similar records post-injury. This information is useful and relevant in determining if the RBA erred in finding him not eligible. *Granus*.

For the reasons discussed, the releases listed in factual finding 16 all appear likely to lead to the discovery of evidence admissible at hearing. All appear to have appropriate date limitations. *Granus*. Pullen did not abuse his discretion in requiring Employee to sign and deliver them to Holloway. His order was in compliance with applicable law. AS 44.62.540(b), (c); *Manthey*. Hopefully, now that Employee has a better understanding of how discovery works, he will sign and deliver the releases to Holloway as will be ordered here, and his case can move forward.

Employer's petition to dismiss Employee's claims and petitions for failure to sign and return these releases is not granted at this time. Employee will be given 14 days from the date of this decision to sign and return the releases to Holloway by first-class mail or email if he has that capability. If Employee no longer has the subject releases, he will be directed to contact Holloway immediately and request new copies of the same releases. In that event, the 14 day period set forth in this decision will begin to run from the date Holloway mails or emails Employee replacements.

4) Should Employee's September 10, 2020 petition to disqualify the prehearing conference designee and appoint a female designee be granted?

Employee's September 10, 2020 petition also sought an order disqualifying Pullen as the prehearing conference designee in this case. Employee contends Pullen is not impartial and is unfair while handling prehearing conferences in his case; he suggests Pullen does not record his

"rights and claims" in the prehearing conference summaries and uses a "harsh tone." He failed to provide any specifics about what Pullen did or did not do that made him partial and unfair.

Assuming authority exists for a party to disqualify the designee assigned to conduct a prehearing conference, Employee has not provided justification for his recusal request. The fact Pullen is male and ruled against Employee on the record release issue does not mean Pullen is partial or unfair. A "harsh tone" is subjective and not adequate evidence to impute bias or unfairness on Pullen's part. *Rogers & Babler*. Consequently, Employee failed to demonstrate any reason in law or fact to justify his request to disqualify Pullen as the designee for prehearing conferences in his case. Similarly, Employee's request for a female designee to preside at his prehearing conferences is without a legal or factual basis. His request to disqualify Pullen will be denied.

5) Should Employee be granted additional time to request a hearing so he can obtain a guardian?

Employee's September 17, 2020 petition seeks more time to ask for a hearing as required under AS 23.30.110(c), which is the statute requiring him to ask for a hearing within two years of the date Employer controverted his claim, to avoid claim denial. He contends he is mentally unprepared to represent himself and is seeking psychiatric help with hopes of obtaining a legal guardian. This decision denied his request for a legal guardian referral to the Director.

Employee filed two claims and Employer controverted them both. It controverted Employee's July 25, 2018 claim on August 23, 2018; to avoid claim dismissal, Employee would have had to either request a hearing or request more time to request one by no later than August 23, 2020. Employee requested a hearing on his July 25, 2018 claim on May 13, 2019, by filing the appropriate form, but failed to provide proof he served it on Employer.

He filed another claim on June 10, 2019; on July 3, 2019, Employer controverted it. Employee had to either request a hearing on that claim or request more time to request one by no later than July 3, 2021. On January 21, 2020, Employee requested a hearing on his January 16, 2020 claim but again did not show he served this on Employer. However, on February 21, 2020, Employee filed and served an affidavit requesting a hearing on his pending claims "immediately." On

March 18, 2020, Employer filed an objection to an affidavit and hearing request executed "on an unknown date" to which it objected because the request lacked service and had other infirmities. Since the February 21, 2020 hearing request was completed properly with the required signature and proof of service, Employer's March 18, 2020 opposition must have been to the January 21, 2020 hearing request, proving that Employer received it, eventually.

Though some hearing requests were not perfect and omitted information, Employee asked for a hearing on his claims repeatedly. His February 21, 2020 hearing request satisfied his requirement to timely request a hearing under AS 23.30.110(c) on both claims. Since this decision denied his guardianship referral request, and he has already requested hearings on his two claims, there is no current basis for an extension of time under §110(c) and this request will be denied as moot.

CONCLUSIONS OF LAW

1) The oral orders denying Employee's requests for a legal guardian and a hearing continuance were correct.
2) Employee's claims and petitions will not be dismissed at this time.
3) The designee's August 12, 2020 discovery order will be affirmed.
4) Employee's September 10, 2020 petition to disqualify the prehearing conference designee and appoint a female designee will not be granted.
5) Employee will not be granted additional time to request a hearing so he can obtain a guardian.

ORDER

1) Employee's request for an order appointing a legal guardian, and his related request for a hearing continuance on this ground are denied.
2) Employer's petition to dismiss Employee's claims and petitions is denied at this time.
3) The designee's August 12, 2020 discovery order is affirmed. Employee is ordered to sign and deliver the June 25, 2020 releases to Holloway within 14 days of this decision's date. If he no longer has the releases, Employee is directed to contact Holloway immediately for a new set. If

Holloway provides a new set to Employee, the 14 days provided for in this decision begin to run on the date Holloway mails or emails the releases to Employee.

4) Employee's September 10, 2020 petition to disqualify Pullen is denied.

5) Employee's request for more time to request a hearing under AS 23.30.110(c) so he can obtain a guardian is denied as moot.

Dated in Anchorage, Alaska on July 6, 2021.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Robert C. Weel, Member

/s/
Nancy Shaw, Member

PETITION FOR REVIEW

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

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 Achiek S. Ayol, employee / claimant v. Trident Seafoods, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201704029; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 6, 2021.

/s/
Nenita Farmer, Office Assistant