

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

AMANDA LYNN, )  
)  
Employee, )  
Claimant, ) INTERLOCUTORY  
) DECISION AND ORDER  
v. )  
) AWCB Case No. 201806813  
FRED MEYER STORES, INC., )  
) AWCB Decision No. 21-0086  
Employer, )  
and ) Filed with AWCB Anchorage, Alaska  
) on September 16, 2021.  
SEDGWICK CMS, )  
)  
Adjuster, )  
Defendants. )  
\_\_\_\_\_ )

Fred Meyer Stores, Inc., and its adjuster Sedgwick CMS' (collectively Employer) June 7, 2021 petition to dismiss a claim was heard on the written record in Anchorage, Alaska, on August 19, 2021, a date selected on July 13, 2021. A June 28, 2021 hearing request gave rise to this hearing. Non-attorney Amanda Lynn (Employee) represents herself. Attorney Vicki Paddock represents Employer. The record closed at the hearing's conclusion on August 19, 2021.

## ISSUE

*Lynn v. Fred Meyer Stores, Inc.*, AWCB Decision No. 21-0037 (April 28, 2021) (*Lynn I*), ordered Employee to sign and return releases to Employer within 10 days of *Lynn I*'s issuance. Employer contends Employee signed and returned releases dated May 13, 2020, which rendered them invalid. Employer contends it re-sent new releases to Employee noting the deficiency; however, she did not return them. Employer seeks a claim dismissal.

Employee did not respond or offer any defenses to Employer's petition. This decision assumes she opposes it.

**Should this decision address Employer's June 7, 2021 request for a claim dismissal?**

FINDINGS OF FACT

All factual findings and conclusions from *Lynn I* are incorporated herein. The following additional facts are undisputed or established by a preponderance of the evidence:

- 1) On April 28, 2021, *Lynn I*, ordered Employee to sign and return releases to Employer within 10 days. (*Lynn I*).
- 2) Employer contends on May 4, 2021, Employee returned signed releases dated May 13, 2020, "not the same ones ordered by the Board," which rendered them invalid. It contends on May 18, 2021, it sent a letter with new releases for her signature noting such deficiency; however, as of June 7, 2021, Employer had not received properly executed releases from her. (Petition, Memorandum in Support of Petition to Dismiss, June 7, 2021).
- 3) On June 7, 2021, Employer asked for claim dismissal based on Employee's failure to provide releases. (Petition, June 7, 2021).
- 4) On July 13, 2021, Employee said she signed and returned the requested releases to Employer. Employer again contended she signed the wrong releases and they were incorrectly dated; it also reiterated its contention that it sent a letter explaining such with correct releases. Employee said she did not receive any correspondence from Employer, who had sent her the wrong releases. The designee set a written record hearing on the claim dismissal issue for August 19, 2021. (Prehearing Conference Summary, July 13, 2021).
- 5) On July 30, 2021, Employee spoke to a workers' compensation technician. The technician logged the conversation as follows:

EE called because she thought she had a hearing today. EE said her brother passed and she wanted to request moving the deadline when she has to have stuff in for the hearing. I explained that she would have to get with opposing party to stipulate about extending the deadlines since a hearing is set in two weeks. EE wanted to know what a written record hearing was and I explained. EE said she will file a petition to the ER and board and request that deadlines be extended. cac (Agency file).

6) A layperson may not appreciate the practical differences between an oral hearing and a written record hearing; primarily, not being able to give testimony if a hearing is held on the “written record.” (Experience; observation).

PRINCIPLES OF LAW

**AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that

....

(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 on not only 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, 533-34 (Alaska 1987).

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

....

(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 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. . . .

**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. . . .

The law has long favored giving a party her “day in court.” *Sandstrom & Sons, Inc. v. State of Alaska*, 843 P.2d 645, 647 (Alaska 1992). Dismissal should only be imposed in “extreme” circumstances and even then, only if a party’s failure to comply with discovery has been willful and when lesser sanctions are insufficient to protect the adverse party’s rights. *Id.* at 647.

*Richard v. Fireman’s Fund Insurance Co.*, 384 P.2d 445 (Alaska 1963), held the board must assist claimants by advising them of important facts bearing on their case and instructing them how to pursue their right to compensation.

### ANALYSIS

#### **Should this decision address Employer’s June 7, 2021 request for a claim dismissal?**

A written record hearing is appropriate when pending issues are strictly legal and there are no factual disputes. AS 23.30.135(a). Employer contends it received Employee’s releases dated May 13, 2020, “not the same ones ordered” in *Lynn I*, which rendered them invalid. Employer contends on May 18, 2021, it re-sent the correct releases to her noting the deficiency in the first set. However, it contends it did not receive properly executed releases from her as of June 7, 2021. Employee contended at a prehearing conference that she signed and returned requested releases to Employer; since then she had not received any correspondence from Employer. She also contended Employer sent her the wrong releases. There is insufficient evidence to determine Employee’s noncompliance, if any; there are factual disputes that require further inquiries. *Id.*

If a discovery dispute comes for review on a determination by a designee, the issue must be determined solely on the written record. AS 23.30.108(c). But this is not a discovery dispute; Employer seeks a claim dismissal. Notwithstanding the Technician’s explanation, it is unclear if Employee understands the practical implications of a written record hearing; mainly she will not be able to provide testimony to resolve remaining questions. *Rogers & Babler*. This confusion is evidenced by the July 30, 2021 Technician’s log entry stating “EE called because she thought she had a hearing today.” The division should have set a regular hearing so the parties could provide additional evidence and answer questions. *Richard*. Given Employee’s reported loss of a family member, deciding Employer’s dismissal request in a written record hearing is not

appropriate. Employee is entitled to her “day in court.” Obtaining her testimony and other evidence she may present will help the fact-finders fairly determine if her noncompliance has been willful and if any sanctions are necessary to protect Employer’s rights. AS 23.30.001(4); AS 23.30.135(a); *Sandstrom & Sons, Inc.*

CONCLUSIONS OF LAW

This decision will not address Employer’s June 7, 2021 request for a claim dismissal.

ORDER

- 1) This decision will not address Employer’s June 7, 2021 petition for a claim dismissal.
- 2) The parties are ordered to appear at a prehearing conference before October 8, 2021, to schedule an oral hearing for the claim dismissal issue.
- 3) The designee at the prehearing conference will explain to Employee her deadline to file and serve any documentary evidence upon which she may want to rely at the hearing.

Dated in Anchorage, Alaska on September 16, 2021.

ALASKA WORKERS’ COMPENSATION BOARD

\_\_\_\_\_  
/s/  
Jung M. Yeo, Designated Chair

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/s/  
Sara Faulkner, Member

\_\_\_\_\_  
/s/  
Anthony Ladd, 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 Amanda Lynn, employee / claimant v. Fred Meyer Stores, Inc., employer; Sedgwick CMS, adjuster / defendants; Case No. 201806813; 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 September 16, 2021.

\_\_\_\_\_/s/  
Nenita Farmer, Office Assistant