ALASKA WORKERS' COMPENSATION BOARD

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

FELIPE ESPINDOLA, Employee, Claimant, v. PETER PAN SEAFOODS, INC., Employer, and SEABRIGHT INSURANCE CO., Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201211994M and 200904833J AWCB Decision No. 22-0064 Filed with AWCB Anchorage, Alaska on September 16, 2022

Felipe Espindola's (Employee) June 16, 2022 petition to "keep the agreed sum" of a settlement was heard on September 7, 2022, in Anchorage, Alaska, a date selected on July 21, 2022. A July 6, 2022 hearing request gave rise to this hearing. Employee appeared telephonically, testified and represented himself. Attorney Michelle Meshke appeared and represented Peter Pan Seafoods, Inc. and its insurer (Employer). Telephonic witnesses included Seanne Popp who testified for Employer, and Janel Wright. The record closed at the hearing's conclusion on September 7, 2022.

ISSUE

Employee contends the parties agreed to settle his case for $42,250 (or $42,500 as stated in his petition) but Employer only paid him $40,250. He contends Employer purposefully typed words with the incorrect amount on the Compromise and Release (C&R) agreement but put the correct

numerals on the accompanying C&R Summary to confuse him so he would not know how much money he was getting. He seeks an order requiring Employer to pay him the "agreed sum."

Employer contends the parties agreed to settle his case for $40,250 as stated in the C&R. It contends the C&R Summary contains an accidental, typographical error. Employer contends Employee made a unilateral mistake and incorrectly believed he was going to receive $42,250 when the parties agreed, and their C&R clearly states, it was $40,250. It contends the C&R cannot be set aside, changed, rewritten or altered based on Employee's unilateral mistake.

Is Employee entitled to relief regarding his C&R?

FINDINGS OF FACT

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

1) On December 6, 2021, the parties gathered in Anchorage, Alaska, before hearing officer and mediator Janel Wright to try to resolve Employee's claims. The mediation resulted in a settlement, which Meshke's office reduced to writing on that same day and which Meshke and Employee signed that day. (Employee; Popp; Wright; C&R).

2) On December 7, 2021, Employer filed a cover email, a C&R "cover form," an interpreter's affidavit, a fully executed C&R and a C&R Summary form. In relevant part these state:

- The email stated that attached was a C&R that required Board approval, and an interpreter's affidavit.
- The "cover form" stated the C&R required Board approval because Employee waived future medical benefits and was not represented by counsel licensed to practice law in Alaska.
- The attached affidavit stated:

AFFIDAVIT OF INTERPRETER

I, Yolanda Martinez-Ley, being first duly sworn upon oath depose and say:

I am fluent in both the Spanish and English languages. I provided translation services to Mr. Espindola during the mediation occurring on 12/6/21. I have read this Compromise and Release and the attached Compromise and Release Agreement Summary written in the English language and interpreted the contents thereof to Mr. Espindola in the Spanish language. Mr. Espindola indicated to me

he understood the contents of the Compromise and Release and the Compromise And Release Agreement Summary.

Martinez-Ley signed the affidavit on December 6, 2021, before a Notary Public.

- The C&R agreement stated in relevant part:

COMPROMISE AND RELEASE AGREEMENT

1. INTRODUCTION

The parties whose signatures appear below do by this Compromise and Release agree to settle a disputed claim arising out of injuries to the employee on or about 03/06/09 and 08/05/12. . . .
. . . .

On 12/06/21, the parties attended mediation. This agreement memorializes the agreed upon terms through that mediation.
. . . .

5. COMPROMISE AND RELEASE OF CLAIMS

Based upon the foregoing disputes, the parties agree to settlement of this claim as follows:

A. Consideration

The employer and carrier agreed to pay the employee the sum of $ [FORTY THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS] without any offset or deduction.

In consideration thereof, the employee accepts said compromise funds in full and final settlement of all claims for the benefits outlined below in accordance with the terms and conditions described in this agreement.
. . . .

7. ALLOCATION OF BENEFITS; SECOND INJURY FUND

The settlement amount is allocated as follows:

TTD	$4,048
PPI	$8,850
Medical Benefits	$27,352

This allocation of the settlement proceeds is provided for reporting purposes and for the purpose of calculating payment to the Second Injury Fund pursuant to AS

> 23.30.040. The parties agree that the settlement amount represents full and complete consideration for any and all compensation or other benefits waived pursuant to this agreement, whether or not a specific portion of the settlement proceeds is allocated to the waived benefit.
> . . . .
>
> 11. AGREEMENT AS BOARD ORDER
>
> Pursuant to AS 23.30.012, this agreement shall be enforceable the same as an order or award of the Alaska Workers' Compensation Board and shall discharge the liability of the employer and carrier in this matter for the claims and benefits as described herein, notwithstanding the provisions of AS 23.30.130, AS 23.30.160, and AS 23.30.245.
>
> To the extent that there may be any discrepancies or conflicts between this Compromise and Release Agreement and the Compromise and Release Agreement Summary, this agreement shall govern the rights and obligations of the parties.
> . . . .
>
> RELEASE ACKNOWLEDGMENT
> . . . .
>
> I, Felipe Espindola, being first duly sworn, depose and say:
>
> I am the employee named in this Compromise and Release Agreement. I have read the agreement and understand that this is a release of certain workers' compensation benefits. I represent that I am fully competent and capable of understanding the benefits I am releasing and the binding effect of this agreement. To the best of my knowledge, the facts have been accurately stated in this Compromise and Release Agreement. No representations or promises have been made to me by the employer or carrier or their agents in this matter which have not been set forth in this document, and I have not entered into this agreement through any coercion or duress created by the employer or carrier or their agents in this matter.
>
> I am signing this agreement freely and voluntarily because I agree that settlement is in my best interest.

The amounts set forth in section 7, above, total $40,250 ($4,048 + $8,850 + $27,352 = $40,250). Employee signed the C&R agreement on December 6, 2021, before a Notary Public. (C&R, December 6, 2021).

- The C&R Summary form stated:

  . . . .

15. Agreed Settlement (allocations for reporting purposes only).

a. Compensation:	$4,048.00	(TTD)
	$8,850.00	(PPI)

b. Medical benefits released?

No X Yes, Amount $27,352.00

. . . .

f. Total Agreed Settlement Amount: $42,500

The compensation and medical benefits in 15(a) and (b), above, total $40,250 ($4,048 + $8,850 + $27,352 = $40,250). The C&R Summary form is not signed by any party but is dated December 6, 2021. (C&R Summary form, December 6, 2021).

3) On January 5, 2022, an experienced hearing officer, and a Board member, reviewed and approved the C&R; the Division served the approved C&R on all parties that day. (Agency file).

4) On January 15, 2022, Employer's adjuster sent Employee a check for $40,250, which cleared the bank on January 20, 2022. (Popp).

5) On June 16, 2022, Employee petitioned for an order to, "Keep the agreed sum of the C&R of $42,500." He further explained:

> In the compromise and Release Agreement it indicates that the settlement of the claim is $40,250 dollars, but in the Compromise and Release Agreement Sum[m]ary [it] notes the total amount of the settlement of the claim is $42,500 dollars. Clearly there is a difference between C&R and C&RS. The amount that was agreed upon as final payment on this claim was $42,500 dollars. (Petition, June 16, 2022).

In an attachment to his petition, Employee stated:

> Since January 2022, I have been trying to contact the Alaska Department of Labor & Workforce Development by phone, but they never answer me, they only transfer me to voicemail, I leave my contact information, but they never call me back. The reason why I wanted to contact you is precisely to ask why the Compromise & Release Agreement and the Compromise & Release Agreement Summary mention two different amounts of the settlement of the claim, if the agreed amount was $42,500 dollars.
>
> The Department of Labor & Workforce has been ignoring me by not returning any of my calls.

Employee also attached to his petition an unsigned copy of the C&R, and the C&R Summary form. (Petition, June 16, 2022).

6) At hearing on September 7, 2022, Employee testified this is a "very easy case." He contended the "first part," presumably the C&R, did not contain the correct settlement amount but "the ending," presumably the C&R Summary, did. He contended the wrong settlement amount was typed in words in the C&R; but the correct settlement amount was typed in the C&R Summary with numerals. Employee said Employer purposefully changed the way it typed the settlement amounts between the C&R and the C&R Summary to confuse him so he would not know how much money he was getting. He insisted the "mediation lady" has the "correct amount" and said he tried to call her, to no avail. According to Employee, Employer agreed to pay $42,250 as the final settlement amount. With that settlement amount in mind, Employee said he signed the C&R on December 6, 2021, after a Spanish language interpreter read it to him right after the mediation was over. He was in Anchorage and the interpreter was present at the mediation. Though he thought she did a good job interpreting and read the entire C&R to him, Employee said the interpreter did not talk about the amount he was to receive. To his recollection, the interpreter never mentioned $40,250. When asked if the interpreter simply skipped over the amount stated on page six of the C&R, Employee testified, "I don't recall having listened to that part." Employee agreed he attended the mediation because he wanted to get money for surgery. He insisted that $42,250 was the agreed amount. When asked if the amount he was going to receive in the settlement was the most important part of the agreement, Employee stated "no," he just "wanted the nightmare to be over." Employee said he first learned about the settlement discrepancy when he received his settlement check around January 15, 2022. He testified that in late January 2022, he tried calling the mediator but did not speak to her; he also called the Alaska Division of Workers' Compensation (Division) four to six times, but no one ever returned his calls. At this point, the panel changed interpreters because the first one had an emergency. (Employee; record).

7) After the hearing resumed, Employee admitted he had talked to a Spanish-speaking Workers' Compensation Officer with the Division on May 27, 2022. When the designated chair quoted the officer's note from his electronic file on that date, Employee admitted he had talked to an officer and to mediator Wright who said she was going to check her notes to confirm the settlement amount, but never called him again. Wright did not tell him the settlement amount during that call. (Employee).

8) On cross-examination, Employee admitted his niece had spoken to Wright on February 4, 2022. However, he maintained that Wright did not tell her what the settlement terms were because she did not have her notes with her. Employee admitted Wright was present when the Spanish interpreter read the C&R to him in Spanish. He acknowledged he received and cashed the settlement check for $40,250. Employee said if he had known the settlement was $40,250, he "never would have signed" the C&R. He reiterated that the Spanish interpreter "skipped" the amount typed in words on page six of the C&R, but he saw the amount written in numerals on the C&R Summary. He concluded, "somebody made a mistake." Employee agreed he had a fair hearing. (Employee).

9) Popp is a Senior Claims Examiner and has worked on Employee's case since 2014. She too attended the mediation; she authorized settlement for $40,250. This was slightly above the target amount of $40,000 and Popp had to get additional authority for the extra $250 that Employee wanted. Popp testified the figure on the C&R Summary form at line "f" was a typographical error. She was adamant that her superiors did not give her authority to settle for $42,000. (Popp).

10) Employee insisted on calling Wright as a witness; Employer had no objection. She did not hear Employee's or Popp's testimony. (Record).

11) Wright testified she is a hearing officer with the Division. She mediated Employee's case and the parties signed a C&R on the same date. Wright unequivocally testified that the agreed settlement amount was $40,250. Because the matter was resolved, Wright purged her mediation notes. However, she recalled the carrier had a certain amount authorized for settlement, but Employee insisted on $40,250. Wright remembered that Employer had to get additional authority for this amount and all parties eventually agreed to $40,250. (Wright).

12) Employer contends this is not a question of somebody lying or not lying; Employee simply made a mistake. It contends Supreme Court case law unequivocally states a settlement may not be set aside based on a unilateral mistake. A local Spanish language interpreter read the C&R and C&R Summary to him in Spanish. Employer contends the lack of numerals showing the settlement amount on page six is irrelevant because the agreement spells out the correct settlement amount in all capital letters. It relies on Popp's and Wright's testimony that the agreed settlement was $40,250. Employer contends $40,000 was the total authority it had going into the mediation, and it had to get additional authority for the extra $250. Most importantly, Employer contends language in section 11 in the C&R unequivocally states, if "there may be any discrepancies or

conflicts between this Compromise and Release Agreement and the Compromise and Release Agreement Summary, this agreement shall govern the rights and obligations of the parties." Consequently, it contends Employee's petition must be denied. (Record).

13) The two most important parts of a C&R to the injured worker are: (1) how much money is he getting, and (2) what is he giving up in exchange. (Experience; judgment).

PRINCIPLES OF LAW

A decision may be based not only on direct testimony and other tangible evidence, but also on "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 23.30.012. Agreements in regard to claims.** (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order.
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> (b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

Once approved, a C&R has the same legal effect as a Board award, but they are more "difficult to set aside." The Board's power to modify its own decisions to correct a factual mistake does not apply to settlements. *Olson Logging Company v. Lawson*, 850 P.2d 1155, 1158 (Alaska, 1993).

Common Law contract formation standards apply to forming and rescinding workers' compensation settlement contracts to the extent these standards are not overridden by statute. The standard of proof for setting aside a C&R in cases under the Alaska Workers' Compensation Act (Act) is "clear and convincing evidence." *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079 (Alaska 2008). While the Board can set aside a settlement agreement based on fraud, the Act does not permit avoidance of a settlement contract based on mistakes of fact. *Id.* at 1094. To avoid a contract based on misrepresentation, the party seeking to avoid the contract must show: 1) a misrepresentation, 2) which was fraudulent or material, 3) which induced the party to enter the contract, and 4) upon which the party was justified in relying. *Id.* at 1095.

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* *Seybert* found no fiduciary relationship between a workers' compensation claimant and an employer's workers' compensation insurer. The Act created an adversarial system, such that claimant's and insurer's interests were in conflict. While regulations imposed some duties on a workers' compensation insurer vis-a-vis a claimant, they did not impose a fiduciary relationship. Requirements imposed on insurers by regulation did not impose duties of loyalty and the disavowal of self-interest that were the hallmarks of a fiduciary's role. In evaluating a claimant's assertion that a C&R should be set aside because of misrepresentation, the Board is required to consider whether there was an intentional misrepresentation or a material representation on the part of the employer. *Id.* at 1094.

> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter; . . .

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). The presumption's application involves a three-step analysis. To attach the presumption, and without regard to credibility, an injured employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once

the presumption attaches, and without regard to credibility, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Id*. This means the employee must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*.

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical . . . reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. . . .

The Board's credibility findings and weight accorded to evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.
>
> (b) A new order does not affect compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board determines.

> **8 AAC 45.160. Agreed settlements.** (a) The board will review a settlement agreement that provides for the payment of compensation due or to become due and that undertakes to release the employer from any or all future liability. A settlement agreement will be approved by the board only if a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's beneficiaries. The board will, in its discretion, require the

> employee to attend, and the employer to pay for, an examination of the employee by the board's independent medical examiner. If the board requires an independent medical examination, the board will not act on the agreed settlement until the independent medical examiner's report is received by the board.
>
> (b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117. . . .

ANALYSIS

Is Employee entitled to relief regarding his C&R?

It is difficult to pinpoint the exact legal remedy Employee seeks from his petition. He does not contend the C&R was not in his best interest or that the assigned panel should not have approved it. Rather, after a panel reviewed and approved the C&R and he received the check, Employee contends he recognized the check was not the agreed amount; nevertheless, he cashed it. He now contends Employer deliberately typed the incorrect settlement amount using words in the C&R, and typed the correct settlement amount using numerals in the C&R Summary to confuse him so he would not know how much money he was getting. Employer denies this allegation and contends the C&R contained the correct, negotiated settlement amount and the C&R Summary contains a typographical error.

Assuming for argument's sake the statutory presumption of compensability applies to the factual dispute part of this case, Employee raises the presumption with his testimony that the settlement was $42,250. *Meek*; *Tolbert*. Employer rebuts it with the signed C&R stating the agreed-upon settlement amount is $40,250 and with Popp's and Wright's testimony. *Huit*. Both Popp and Wright testified the parties settled for $40,250. Any applicable presumption drops out and Employee must prove his claimed settlement amount by a preponderance of the evidence. *Saxton*. He fails to prove his settlement was for more than $40,250 because the C&R speaks for itself, Popp and Wright agree on the $40,250 amount and Wright has no interest in the case and was an experienced, neutral mediator. Thus, their testimony is given greater weight and credibility than Employee's. AS 23.30.122; *Smith*. Moreover, it appears Employee is still confused about the settlement amount. In his June 16, 2022 petition, three times he stated the settlement was $42,500.

However, at hearing he testified it was $42,250. His testimony overall will be given less weight and credibility. AS 23.30.122; *Smith*. The agreed settlement was $40,250.

Employee does not specifically seek to set aside his C&R; his request sounds more like one for modification of the approved agreement, so it conforms to his understanding of the amount he was to receive. On the other hand, his petition also sounds in "fraud" or "misrepresentation" to some extent. He raises no other objections to the C&R or to the process by which Division staff approved it; he simply contends the C&R contains an incorrect settlement amount, and he wants what he contends was the correct amount. This decision will review and analyze each possible legal basis upon which he could rely as gleaned from Employee's petition, hearing testimony and arguments.

A) The C&R cannot be modified under AS 23.30.130.

Once approved, a C&R has the legal effect of an award. However, they are more difficult to set aside or modify than a decision and order. *Olson*. The Act specifically excludes C&R modification under AS 23.30.130 based on a factual error. AS 23.30.012(b). Therefore, to the extent Employee contends he misunderstood the amount of money he was to receive through the mediated settlement, which appears to be one of his contentions, that was a unilateral mistake of fact on his part that is not subject to change. *Olson*; *Seybert*.

If Employee believed he was going to receive $42,500 in settlement as he stated in his petition, or $42,250 as he testified at hearing, he made a mistake of fact because the C&R clearly states his settlement was "FORTY THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS." There is no statute or regulation requiring a C&R to contain the settlement amount written in numerals or otherwise. Thus, the fact section "5A" on C&R page six did not contain numerals indicating the settlement amount is irrelevant. Employee read the proposed C&R and was assisted by a Spanish language interpreter. The mediator was present the entire time and, if Employee or the interpreter had any questions, they could have asked her for clarification. They did not. Employee signed the agreement and, with his initials, stated he "Read and Understood" each page, and was signing it freely and voluntarily. Employee cashed the settlement check.

Moreover, Employee's testimony is not credible. AS 23.30.122; *Smith*. He admitted at hearing that he entered the mediated settlement because he wanted money. Nevertheless, even though he said the Spanish language interpreter did a good job reading the C&R to him in Spanish, Employee testified she may have "skipped" the part about how much money he would receive. Specifically, he stated he was unsure if she skipped it but, "I don't recall having listened to that part." The two parts important to an injured worker in a C&R are: (1) how much money he is receiving and (2) what is he giving up in return. *Rogers & Babler*. The agreement was clear that Employee gave up everything to which he could be entitled under the Act; there was no dispute about that. Thus, the only other important part of the settlement agreement was how much money he was going to get. It is inconceivable that the Spanish interpreter would skip over, or that Employee would not focus on, the most important part of the C&R -- the amount of his settlement. Furthermore, Employee remains confused about the settlement amount as he sees it. In his June 16, 2022 petition in three places he said the agreed settlement was $42,500. However, at hearing he repeatedly said the agreed settlement amount was $42,250. Given this analysis, his request to enforce the C&R based on his unilateral mistake will be denied. *Olson*.

B) Employer made no intentional, negligent or material misrepresentation.

A C&R is a contract subject to interpretation just as any other contract. *Seybert*. Common law contract formation standards apply to C&R formation and rescission to the extent these standards are not overridden by statute. *Id*. Thus, a C&R may be set aside for fraud or misrepresentation. A party seeking to avoid a C&R for fraud or misrepresentation must show by clear and convincing evidence: (1) a misrepresentation occurred; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. *Id.*

Employee does not specifically seek to set aside the approved C&R. He does, however, contend Employer deliberately wrote the wrong settlement amount in words in the C&R, but wrote the correct settlement amount in numerals in the C&R Summary. Implicit in this accusation is a contention that he was duped through fraud or misrepresentation. Employee bears the burden of proving that fraud or misrepresentation occurred, by "clear and convincing evidence." *Id*. The elements Employee must prove will be addressed in order:

(1) *Did a misrepresentation occur*? Employee's contention in this regard is difficult to follow. The C&R is the controlling legal document vis-a-vis the C&R Summary, which makes the C&R Summary irrelevant to the C&R. AS 23.30.012. Further, the C&R expressly makes the C&R Summary form irrelevant, and Employee agreed, "To the extent that there may be any discrepancies or conflicts between this Compromise and Release Agreement and the Compromise and Release Agreement Summary, this agreement shall govern the rights and obligations of the parties." Therefore, it is hard to understand how Employee could contend Employer made a misrepresentation in the C&R. The exact amount of the agreed settlement was stated in the C&R on page six. There was no misrepresentation in the C&R.

This decision found above that the agreed settlement was $40,250. Nothing in the statutes or regulations requires that a settlement amount be presented in the C&R in a particular way; in other words, there is no requirement that a monetary amount be written out in numerals rather than in words, or vice versa. The C&R at page six states the settlement amount clearly in all-capitalized letters, "[FORTY THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS]." A Spanish language interpreter read this amount to Employee, who does not remember "having listened to that part." He initialed each page stating he "Read and Understood" it, and agreed the C&R "agreement memorializes the agreed upon terms." Since the C&R contained the agreed amount, there was no fraud; using the same analysis, intentional or negligent misrepresentation in the C&R could not exist. As for the C&R, Employee failed to present any evidence showing fraud or intentional or negligent misrepresentation, much less by clear and convincing evidence. If this is his contention, it fails.

(2) *Was any misrepresentation fraudulent or material?* Employee may be contending fraud or misrepresentation occurred in the C&R Summary. But that document is not legally binding and is not signed by any party. Further, Popp testified credibly that the form contained a typographical error, which is supported by arithmetic. When the numbers on the C&R Summary are added, they total $40,250, just like they do in the C&R, notwithstanding the typographical error beneath them on the C&R Summary saying they total $42,500. AS 23.30.122; *Smith*. Employee expressly agreed in the C&R that the C&R Summary had no bearing on the C&R. Thus, any misrepresentation whether intentional or negligent in the C&R Summary could not be material to

the C&R. Moreover, the Spanish language interpreter also read this document to Employee, and he had ample opportunity to question the obvious discrepancy between the amount stated clearly in the C&R and the amount stated clearly in the C&R Summary, while the mediator was present to clarify. He did not. As for the C&R Summary, Employee has similarly failed to present clear and convincing evidence showing fraud, intentional or negligent misrepresentation or materiality. If this is his contention, it too fails.

(3) *Did any fraud or misrepresentation induce Employee to enter the contract?* Employee said it did, but his testimony shows otherwise. At hearing, Employee said the most important part of the settlement was to get this "nightmare over." The most important part of the C&R to him was the amount he was going to get, as evidenced by his June 16, 2022 petition to get more. *Rogers & Babler*. It is inconceivable that the interpreter would not emphasize the settlement amount or that Employee would not focus on it. At hearing, he candidly admitted he did not recall listening "to that part." If Employee failed to listen as the interpreter read the C&R to him, there can be no fraud or misrepresentation on Employer's part. Therefore, his testimony that he would not have signed the C&R had he known it was for $40,250 is not credible. AS 23.30.122; *Smith*.

(4) *Was Employee justified in relying on the C&R Summary?* Since the C&R contained the correct settlement amount, the only thing Employee could have relied on in signing the C&R was the C&R Summary. For the reasons stated above, he was not justified in relying on a non-binding document, which by his agreement, could not alter the binding C&R. To the extent he is contending that the combination of the written words denoting the settlement amount in the C&R, combined with the numerical statement found in the C&R Summary induced him to sign the C&R, the same analysis applies, and he was not justified. This contention fails as well.

C) Employee has not shown coercion or duress.

A party seeking to void a C&R for coercion or duress must show by clear and convincing evidence: 1) a party involuntarily accepted the terms of another, 2) circumstances permitted no other alternative, and 3) such circumstances were the result of coercive acts by the other party. *Seybert.* Employee did not allege this, but this decision will also address coercion and duress.

Employee does not contend, and there is no evidence much less clear and convincing evidence, he (1) involuntarily accepted Employer's terms, (2) he had no alternative but to sign the agreement, or (3) he agreed to the C&R's terms through Employer's coercive acts. To the contrary, the settlement terms were fresh in his mind during mediation and an interpreter read the C&R agreement and the C&R Summary to him before he initialed each page of the C&R saying he "Read and Understood" it and signed the C&R before a Notary Public. He expressly agreed, "I have not entered into this agreement through any coercion or duress created by the employer or carrier or their agents in this matter. I am signing this agreement freely and voluntarily because I agree that settlement is in my best interest." Because it was read to him, Employee had additional time to ponder and consider the terms before he signed the C&R. Therefore, to the extent Employee contends he signed the C&R through coercion or duress, his contention is rejected.

There is no basis in fact or law to set-aside, change, alter or otherwise modify the C&R in this case. Employee's June 16, 2022 petition to "keep the agreed sum" of the settlement in the parties' C&R will be denied because Employer paid the agreed amount as stated in the C&R.

CONCLUSION OF LAW

Employee is not entitled to relief regarding his C&R.

ORDER

Employee's June 16, 2022 petition is denied.

Dated in Anchorage, Alaska on September 16, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Robert C. Weel, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the board and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord 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 accord 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 Final Decision and Order in the matter of Felipe Espindola, employee / claimant v. Peter Pan Seafoods, Inc., employer; Seabright Insurance Co., insurer / defendants; Case No. 201211994; 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, 2022.

/s/
Rachel Story, Office Assistant