ALASKA WORKERS' COMPENSATION BOARD

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

AMANDA K. LYNN, Employee, Claimant, v. FRED MEYER STORES, INC., Employer, and THE KROGER CO., Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201806813 AWCB Decision No. 22-0070 Filed with AWCB Anchorage, Alaska on October 21, 2022

Fred Meyer Stores, Inc.'s (Employer) March 22, 2022 petition to dismiss, and its August 2, 2022 petition to bifurcate issues, and Amanda Lynn's (Employee) May 23, 2018, February 28, 2019, July 9, 2019, April 3, 2020, December 9, 2020, December 21, 2020, May 4, 2021 and April 15, 2022 claims were heard in Anchorage, Alaska, on September 21, 2022, a date selected on September 1, 2022. A July 20, 2022 hearing request gave rise to this hearing. Employee represents herself but did not participate in the hearing. Attorney Vicki Paddock appeared and represented Employer and its insurer. There were no witnesses. After Employee did not appear for hearing at the designated time, an oral order issued to proceed with the hearing in her absence. The record closed at the hearing's conclusion on September 21, 2022. This decision examines the oral order to proceed in Employee's absence and decides Employer's petitions and Employee's claims on their merits.

ISSUES

Employee did not appear for a properly noticed hearing. The designated chair attempted to reach her by telephone, unsuccessfully. After 15 minutes, Employer requested the hearing go forward. The panel deliberated and issued an oral order to proceed with the hearing in Employee's absence.

1) Was the oral order to proceed with the hearing in Employee's absence correct?

Employer contends its petition to bifurcate its request to dismiss Employee's claims, from her claims on their merits, should be granted. It contends if Employee's claims are dismissed on procedural grounds, there is no need to reach the merits of her numerous claims for benefits.

Since Employee did not participate at hearing, her position on the bifurcation issue is unknown, but is presumed to be opposed.

2) Should Employer's petition to bifurcate be denied?

Employer contends Employee willfully impeded discovery by refusing to provide discovery as previously ordered. It contends long past and ongoing delays in providing releases and discovery documents make it is clear Employee does not intend to comply fully. Employer contends it incurred unnecessary attorney fees and costs trying to secure current releases and documents and its ability to investigate and make informed decisions on issues surrounding the claim are hindered by Employee's actions. It requests an order dismissing Employee's claims.

Employee's position is unknown, but this decision presumes she opposes claim dismissal.

3) Should Employee's claims be dismissed for failing to provide discovery, as ordered?

Employer contends it controverted Employee's claims on approved controversion notices, and she did not request a hearing, or more time to request one, within the statutory two-year limit. Moreover, it contends when she did ask for hearing, Employee asked for hearings on claims that do not exist. It seeks an order dismissing her claims under AS 23.30.110(c).

This decision presumes Employee opposes claim dismissal.

4) Should Employee's claims be dismissed for her failure to request a hearing, or more time to request one, timely?

Employee contends she is entitled to unspecified temporary total disability (TTD) benefits.

Employer contends Employee is not entitled to TTD benefits because her work with Employer was not the substantial cause of any disability arising from her symptoms. Alternately, it contends Employee voluntarily left her work when modified duty was offered and available.

5) Is Employee entitled to TTD benefits?

Employee contends her work with Employer rendered her permanently totally disabled (PTD) and she seeks appropriate PTD benefits from Employer.

Employer contends Employee is not entitled to PTD benefits because her work with Employer was not the substantial cause of any disability arising from her symptoms.

6) Is Employee entitled to PTD benefits?

Employee contends she is entitled to permanent partial impairment (PPI) benefits from Employer.

Employer contends Employee is not entitled PPI benefits because she has no rating greater than zero percent attributable to her work injury.

7) Is Employee entitled to PPI benefits?

Employee contends Employer made an unfair or frivolous controversion.

Employer contends all its controversions were supported by fact or law at the time they were issued. It contends none were unfair or frivolous.

8) Did Employer make an unfair or frivolous controversion?

Employee contends she is entitled to an unspecified penalty from Employer.
Employer contends Employee is not entitled to any benefits that were unpaid when due. It contends she is not entitled to a penalty.

9) Is Employee entitled to a penalty?

Employee contends she is entitled to interest on unspecified benefits.

Employer contends she is not entitled to interest because no benefits were unpaid when due.

10) Is Employee entitled to interest?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:
1) On July 2, 2012, Employee had a cervical computer tomography (CT) scan that disclosed significant degenerative disc disease at several cervical levels. (CT, July 2, 2012).
2) On July 2, 2012, Employee also recorded a lien against a couple for $200,000 in medical bills, lost wages and pain and suffering. (Property Lien, July 2, 2012).
3) On June 9, 2014, Employee reported "chronic back pain" along with arthritis, rheumatism and bursitis to Denise Jones, whose specialty was not identified. (Jones report, June 9, 2014).
4) On April 24, 2017, David Barnes, DO, evaluated Employee's for continued right shoulder pain and "neck discomfort" with multiple joint pain elsewhere in the body. Her rheumatoid arthritis indicators were elevated. (Barnes report, April 24, 2017).
5) On April 30, 2017, John Moore, PA-C, noted Employee complained of "neck discomfort ongoing for quite some time." Her neck hurt and pain migrated to her head. Employee reported no recent neck trauma. (Moore report, April 30, 2017).
6) On May 10, 2017, Employee began work for Employer. (Unemployment Request, May 18, 2018).
7) On May 23, 2017, Employee's cervical x-rays disclosed degenerative "arthritic" changes mostly in the lower cervical levels. (X-ray report, May 23, 2017).

8) On August 14, 2017, Employee told Summer Engler, MD, she had joint pains since 2003 and morning "back" stiffness that wakes her up "constantly," "all night long." She also reported muscular neck pain and a history including multiple fractures including breaking her right leg six times and her right foot, left ankle, right elbow, right shoulder, multiple ribs and "possibly other fractures as well." Employee had 45 minutes of morning stiffness in her low back every day. (Engler report, August 14, 2017).

9) On October 2, 2017, Dr. Engler saw Employee who had, among other things, neck and hand pain. (Engler report, October 2, 2017).

10) On February 22, 2018, Employee told PA-C Moore that she slipped while getting out of her car at home and fell, and continued to have pain over the right wrist and forearm. She also had thoracic back pain and cervical arthritis. She mentioned lifting at work, but Employee denied any recent injury to her thoracic spine. (Moore report, February 22, 2018).

11) On March 6, 2018, Employee again complained of cervical neck pain and was seeing a rheumatologist for this. PA-C Moore provided a slip stating Employee needed to wear a sling on her right upper extremity for the next two weeks and not use her arm. The record does not disclose the reason why Employee needed to wear the sling. (Moore report, March 6, 2018).

12) The above visit led to March 7, 2018 cervical x-rays, which again noted moderate degenerative disc disease and osteoarthritis in the cervical spine. (X-ray reports, March 7, 2018).

13) On March 8, 2018, Employee told Eric Olson, DO, she had chronic right-sided neck and shoulder pain since a 2012 injury after an altercation with her brother. This involved her brother picking her up overhead and throwing her to the ground, where she shattered her rotator cuff and shoulder, requiring extensive surgery. Employee also had chronic low back pain since then. She said moving items at work had increased her symptoms recently. (Olson report, March 8, 2018).

14) On March 15, 2018, Wasilla Physical Therapy recorded Employee's cervical disc disorder and she complained of right upper extremity pain, which got better, and then left upper extremity symptoms developing. She reported lifting at work and getting tingling and burning in her back and by the end of the day her arms felt weak. The therapist treated her right wrist symptoms. (Wasilla Physical Therapy report, March 15, 2018).

15) On May 14, 2018, Employer reported to the Alaska Workers' Compensation Division (Division) that Employee claimed she injured her lower back on May 7, 2018, when she

stretched in the parking lot and felt a pop. (Employer First Report of Injury or Illness, May 14, 2018).

16) On May 14, 2018, Employee reported cervical, thoracic and lumbar pain with left leg radiculopathy after she injured her back at work on May 7, 2018, after lifting heavy furniture. She said she had thoracic pain when she felt a popping sensation and the pain moved to her cervical and lumbar spine. She was already going to physical therapy for an unrelated right upper extremity issue. The diagnosis included back pain, and Employee received a restriction to light-duty work, at her request, stating "she cannot stay off work." Dr. Barnes' report implies but does not state Employee's May 7, 2018 injury caused the symptoms and recommended treatment. On his referral to physical therapy, Dr. Barnes stated, however, "This is a work-related injury." (Barnes note, May 14, 2018).

17) On May 14, 2018, PA-C Moore completed Employer's work release request and, effective May 15, 2018, at Employee's request, released her to light-duty work. She could work eight hours per day but should not lift or push or pull anything over five pounds. On an attachment, PA-C Moore stated Employee could do sedentary work such as customer service. The form stated:

> Kroger provides transitional temporary "light duty" work for all Associates injured on the job. It is our desire to work closely with you and our injured associate for a successful return to their regular duty position. . . . (Work Release Request, May 14, 2018).

18) On May 16, 2018, Employee's cervical x-rays showed moderate degenerative disc disease in the cervical spine, consistent with her x-rays from March 2018. (X-ray report, May 16, 2018).

19) On May 16, 2018, PA-C Moore completed another return-to-work slip for light-duty until May 21, 2018, at which time he would reevaluate her ability. (Moore note, May 16, 2018).

20) On May 21, 2018, PA-C Moore recorded Employee had yet to start physical therapy (PT) because she was already going to PT for her right wrist pain "that was not Workmen's Comp. related." The report does not explain why this prevented Employee from getting PT for her neck and back. She reported Employer fired her on May 18, 2018; PA-C Moore was "unsure of the details" but charted he had placed Employee on light-duty "with no lifting over 20 pounds" but she had continued to do her job. The report does not state if continuing to do her job was coerced or voluntary. PA-C Moore referred Employee to pain management, but she declined and

stated she did not want to take pain medication. Her neck was "by far" her biggest pain source. (Moore report, May 21, 2018).

21) On May 23, 2018, Employee filed her only medical summary. She listed PA-C Moore's "12/17, 3/18 and 5/7" reports but they were not attached. (Medical Summary, May 23, 2018).

22) On May 23, 2018, Employee sought unspecified temporary partial disability (TPD) benefits, a finding of an unfair or frivolous controversion and a penalty for unspecified late-paid compensation. (Claim for Workers' Compensation Benefits, May 23, 2018).

23) On May 30, 2018, PA-C Moore said, "Patient can now return to work ["with" symbol] no restrictions 5/30/18." He also stated Employee could return to "regular occupation," "full-time" on May 30, 2018. (Moore Release to Return To Work Form; Met Life Attending Physician Statement, Group Disability Income Claims form, May 30, 2018).

24) On June 5, 2018, Employer timely denied Employee's right to TTD and her claim for TPD benefits related to her neck and low back, and contended she never saw a doctor to obtain a work restriction until May 14, 2018, was released to light-duty on May 14, 2018, and had light-duty available, which she declined. It further contended Employee voluntarily resigned and applied for unemployment benefits. (Controversion Notice, June 1, 2018).

25) On June 18, 2018, PA-C Moore provided another release like the May 15, 2018 release, stating on the first page that Employee was released to light-duty work, and "sedentary work" such as customer service on the second page. There was no explanation for the change from a full-duty release on May 30, 2018, to this release. (Work Release Request, June 18, 2018).

26) On June 23, 2018, Employee went to an urgent care clinic and complained about persistent neck and low back pain after a May 7, 2018 work injury stocking and lifting heavy furniture boxes and furniture. She reported stretching in the parking lot "at the end of the day" and said she felt a painful popping in her neck. Employee told this provider that workers' compensation paperwork had not been filed. She said she had returned to work after taking Family Medical Leave. Employee also reported right wrist issues for the prior six weeks and was wearing a wrist brace. She reported, "No prior history of injury or similar problem." The clinic diagnosed back spasms, low-back pain and tenosynovitis in the right wrist. The clinic partially completed a physician's report form but did not complete the portion stating if the diagnosed conditions were work-related. (Physician's Report, June 23, 2018).

27) On June 28, 2018, Employee began PT for her low-back pain. She reported "she waited to seek treatment," but eventually went to the urgent care clinic five days earlier and was referred to therapy. Employee denied any previous back injuries. She told the therapist, "she is currently on light-duty and not performing any heavy lifting but is required to walk and stand for a majority of the day." As for the splint on her right wrist, Employee said "this is a previous issue with repetitive lifting." (PT report, June 28, 2018).

28) By July 10, 2018, Employee reported she was "still off work at this time." She had "helped a friend stain their deck" but "did not do anything to hurt her back." (PT report, July 10, 2018).

29) On July 16, 2018, Employee returned to the urgent care clinic for her right wrist. She told the clinic she attributed her wrist pain to "last December where she [made] repetitive hand movements at work gripping and lifting items." Employee said, "She filed a workmen's comp case on the neck and back discomfort which apparently does not include her wrist problem." (Urgent care clinic report, July 16, 2018).

30) On July 19, 2018, Deryk Anderson, DO, saw Employee for her right wrist. There was, "No specific trauma that she can recall." (Anderson report, July 19, 2018).

31) On July 23, 2018, PA-C Moore saw Employee and billed this visit to Denali Care. He diagnosed right wrist pain, cervicalgia and back pain. His report reiterated Employee's subjective opinions about her injury, but he did not offer a causation opinion. (Moore report, July 23, 2018).

32) On July 23, 2018, PA-C Moore also completed another work-release form. He released Employee to light-duty work on the first page of his report and to sedentary work on the second page. (Moore Work Release Report, July 23, 2018).

33) On July 25, 2018, Employee returned to the urgent care clinic to refill Tramadol, a narcotic. She reported recurrent headaches since her work "neck injury." The clinic charted Employee had "chronic cervical arthritis" that flared up from recent weather. Her symptoms were "interfering with work." The diagnosis included cervical muscle spasms, without any causation opinion. (Urgent care clinic report, July 25, 2018).

34) On July 31, 2018, Employee told her therapist she was applying for new job at the state fair. (PT report, July 31, 2018).

35) On August 7, 2018, Employee told Curtis Mina, MD, she sustained a work injury in May and had low back and left leg radicular pain since May 7, 2018. Dr. Mina diagnosed lumbar disc

disease and a probable lumbar disc herniation with radiculopathy. On a separate report, Dr. Mina said the injury was work-related and was "new onset back pain & left leg pain from lifting furniture." He restricted Employee's work to lifting no more than 20 pounds and recommended a lumbar, magnetic resonance imaging (MRI). (Mina report, August 7, 2018).

36) On August 10, 2018, a lumbar MRI revealed diffuse disc bulges at various lumbar levels with probable contact of the left L5 nerve root with the left foramen. (MRI report, August 10, 2018).

37) On August 10, 2018, Employee called Dr. Mina's office requesting a work release note for Employer stating she could return to work with the only restriction "as tolerated." Employee told Dr. Mina she "feels she can work," and will comply with his restrictions. Later that day, Dr. Mina said, "That is fine. We can let her go back to work without restrictions. Ibuprofen is fine." (Mina report, August 10, 2018).

38) On August 14, 2018, Dr. Mina reviewed the MRI that showed "advanced degenerative disc disease at L5-S1," with at least moderate left foraminal stenosis. He suggested an epidural injection and would consider a lumbar fusion if necessary. Dr. Mina did not expressly provide a causation opinion. (Mina report, August 14, 2018).

39) On September 17, 2018, Employee told Sean Taylor, MD, she was lifting heavy furniture at work in December 2017 and awoke the next day with right hand pain. She also had neck pain and a history including arthritis in the hips and shoulders, and chronic low back pain and a right rotator cuff repair. Dr. Taylor performed upper extremity electromyography (EMG) and nerve conduction velocity (NCV) tests, and all were normal. He recommended Employee obtain a rheumatology evaluation. She was still taking Tramadol. (Taylor report, September 17, 2018).

40) On October 3, 2018, Employee told Dr. Mina she still had low-back pain, left-leg radicular pain and significant neck pain with left-arm radicular symptoms. She told Dr. Mina "all of her problems began" with a May 7, 2018 work injury. On this visit, Employee's neck pain was her primary concern, and it caused headaches, motion loss and radiating pain in her left shoulder and numbness in her left hand. New cervical x-rays showed degenerative changes through the cervical spine predominantly at the two lowest levels, for which he referred Employee to Alaska Spine Institute. Dr. Mina did not offer a causation opinion, but suggested Employee might benefit from a lumbar fusion for her low back symptoms. (Mina report, October 3, 2018).

41) On January 11, 2019, Michael McClaskey, DC, with the Back & Neck Center saw Employee for chiropractic treatment. She listed Sedgwick as the insurance company and there was a minimal history included with Dr. McClaskey's initial report; it included a "slipped" disc in her neck lifting heavy furniture on May 7, 2018. He listed "DDD" [degenerative disc disease] in his diagnoses. Dr. McClaskey offered no causation opinion. (McClaskey report, January 11, 2019).

42) On January 15, 2019, Dr. Mina looked at x-rays and found Employee's neck had degenerative changes mostly in the lower levels. (Mina report, January 15, 2019).

43) On January 30, 2019, Employee's cervical MRI showed, "Disc degeneration at several levels, particularly C3, C5, and C6" and other degenerative issues at the lower levels. (MRI report, January 30, 2019).

44) On February 5, 2019, Dr. Mina saw Employee who presented with progressive neck and left-upper-extremity pain. He reviewed the January 2019 cervical MRI and found moderate to advanced degenerative disc disease at several levels. Dr. Mina recommended neck surgery and though he mentioned in her "history" that she "sustained a work injury on 05/07/2018," he did not offer a causation opinion. (Mina report, February 5, 2019).

45) On February 28, 2019, Employee sought TTD and PPI benefits, a penalty for late-paid compensation and interest related to her neck, lower back and right-hand symptoms after repeatedly lifting heavy furniture at work for Employer. She stated she had been unable to work since July 2018. (Claim for Workers' Compensation Benefits, February 28, 2019).

46) On March 9, 2019, orthopedic surgeon Todd Fellars, MD, examined Employee for an employer's medical evaluation (EME). She told him she did not have a "specific date of injury." Employee could not remember when she was injured but stated it was due to repetitive, difficult work. Employee provided a lengthy history setting forth her contentions about how her work with Employer cumulatively created her various symptoms. She further explained how she filed a "human rights complaint" against Employer whom she contends required her to lift things even though she was told not to lift. Employee denied any motor vehicle accidents, sports injuries or fractures. Dr. Fellars noted numerous inconsistencies in Employee's pain reports during examination. He diagnosed C5-6 cervical spondylosis unrelated to work; cervicalgia with headaches unrelated to work; thoracic spine pain; L5 lumbar spondylosis and secondary left-sided L5 radiculopathy and right wrist pain. Dr. Fellars stated lumbar pain was more consistent with her getting out of her car and stretching while at lunch, which Dr. Fellars determined was

not work-related. He found numerous inconsistencies in Employee's symptom onset and history. Dr. Fellars opined Employee's radiculopathy was due to genetically-related degenerative disc disease and was not caused by work. He concluded her cervical spine pain and intermittent upper extremity pain was also due to degenerative disc disease and her need to treat it was not work-related. Dr. Fellars opined the substantial cause of Employee's need for treatment and disability is her preexisting degenerative disc disease, based on her pre-injury medical records. Moreover, he opined Employee was medically stable from the alleged May 7, 2018 work incident and had no ratable PPI rating under the AMA *Guides*, 6th Edition, for any work-related condition. (Fellars EME report, March 9, 2019).

47) On March 18, 2019, Employer denied Employee's claim for TTD and PPI benefits and interest related to her neck, low back and hands. It contended Employee failed to attend a properly noticed EME and failed to report an injury to her hands timely under AS 23.30.100. Employer contended her work was not the substantial cause of an injury or disability, which it contended stemmed from a preexisting condition, multi-level disc degeneration. It further contended no penalty or interest were owed because it had paid or controverted all benefits timely, and Employer had offered Employee full-time light-duty employment, but she resigned and applied for unemployment compensation. (Controversion Notice, March 18, 2019).

48) On March 19, 2019, Dr. Mina examined Employee who said she had put her neck surgery "on hold." Employee admitted her chiropractic treatment had "not provided long-term relief." Dr. Mina reviewed her January 2019 MRI study and found "advanced degenerative disc disease with near-complete collapse" at one level. (Mina report, March 19, 2019).

49) On March 26, 2019, at the request of a vocational reemployment specialist, Dr. Mina predicted Employee would have a permanent partial impairment rating greater than zero as result of her May 7, 2018 work injury. He further stated Employee would probably not have permanent physical capacities to work as a Furniture Salesperson but could work as a Hand Packager, Cashier-Checker and General Clerk, jobs she held in the 10 years prior to her May 7, 2018 incident. (Mina letter and forms, March 26, 2019).

50) On April 1, 2019, Employer denied all benefits after March 27, 2019, related to her neck and mid- and low-back, relying on Dr. Fellars' EME report. (Controversion Notice, March 27, 2019).

51) On April 1, 2019, Jon Hinman, MD, with Algone Pain Clinic, saw Employee on referral from Dr. Mina. Employee dated her left-sided shoulder, right arm and head pain onset as "May 7, 2017." Dr. Hinman diagnosed cervical degenerative disc disease, neuropathic cervical spondyloarthropathy and cervical foraminal stenosis. He continued her on Tramadol and other medicines and recommended a cervical facet joint medial branch nerve block. He did not offer a causation opinion. (Hinman report, April 1, 2019).

52) On April 10, 2019, Employer's adjuster asked Dr. Mina to review Dr. Fellars' March 9, 2019 EME report. He did, and stated he agreed with the opinions therein. (Letter, April 10, 2019).

53) On April 23, 2019, Dr. Mina completed a report for Employee to obtain interim public assistance and said she had "no restrictions at this point." (Preliminary Examination for Interim Assistance, April 23, 2019).

54) On April 30, 2019, Employee ended her chiropractic treatment with Dr. McClaskey. (McClaskey report, April 30, 2019).

55) On June 28, 2019, the Division notified Employee she was found not eligible for reemployment benefits based on Dr. Mina's March 26, 2019 prediction that she would have permanent physical capacities to perform the physical demands of jobs she held in the 10 years prior to her injury date. (Division letter, June 28, 2019).

56) On July 9, 2019, Employee claimed PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion, medical costs totaling $1,485, a penalty for late-paid compensation and interest related to injuries to her neck, lower back, right hand, constant headaches and blurry vision. She reiterated her previous claim that she had not received any money from the adjuster since her work injury and Employer was denying her medical bills after, "The corrupt Human Right Commission sided with Fred Meyer." Employee further stated she wanted "an independent medical review" and wanted to "point out that [she] was not injured before F. Myer -- [she has] a permanent impairment from lifting heavy furniture for over a year." Attached to the claim was a July 2, 2019 Patient Statement for $1,485 from Back & Neck Center, in Wasilla, Alaska. (Claim for Workers' Compensation Benefits, July 9, 2019).

57) On July 22, 2019, Employer timely denied Employee's claims for TTD, PPI and medical benefits, a compensation rate adjustment, penalty, interest and an unfair or frivolous controversion, related to her neck, low-back and hands, based on Dr. Fellars' EME report, with which her treating physician Dr. Mina had agreed. (Controversion Notice, July 22, 2019).

58) On November 4, 2019, Employer deposed Employee who testified: She had lived on Dellwood Street for seven or eight years and that was also where she received her mail. Since March 2019, Employee had been working almost daily for DoorDash; there were no physical requirements. She also did deliveries for Postmates, which is like DoorDash, but drivers pick up and deliver items other than food. Employee did several stints with other "affiliate" marketing companies to a lesser degree than DoorDash. In May 2012, Employee's "rotator cuff was shattered" in an altercation with her younger brother. Employee testified she did not have a work injury before May 7, 2018. She had a head injury in a truck rollover accident in the 70s when a toolbox hit her in the head. Employee said she had no neck- or mid-back injury or treatment prior to her work injury with Employer. However, Employee said she saw "Dr. Moore" for low-back and other pain issues prior to her work injury. She had also seen chiropractor "Lucas" around 2005 for her hips that were out of alignment. Prior to the work injury, she had imaging and MRIs "from top to bottom." As for prior slips and falls before her work injury, Employee said:

> Well, you know, I've lived here my entire life. And I always forget, you know, the first frost or whatever before I got hurt. You get up and you are running late or whatever, and you hit the door and feet go out from under you, head hits the stoop, and next thing you know you are out, down for the count.

Employee did not seek medical care for this slip-and-fall incident because she, "gave up on seeking medical care a long time ago." She broke her right leg every summer for the first six years of her life in Alaska. Employee denied any injuries to either wrist or any treatment for elbows, hands or wrists before the work injury. She recalled another motor vehicle accident in 2004 but stated she was not injured; Employee could recall no other motor vehicle accidents. Employee initially denied any litigation involving personal injuries. With prompting, she recalled when she was injured in the altercation with her brother she filed a lien for $200,000 in medical bills, lost wages and pain and suffering. Employee could not recall anything about how or why the lien was filed and said she did nothing further with it. (Deposition of Amanda K. Lynn, November 4, 2019).

59) Addressing her alleged May 7, 2018 work injury with Employer, Employee stated:

> I had spent the morning lifting furniture. . . . And they are called the Forest Living Edge or whatever, and they weigh about 200, 250 pounds piece. And I

> had five of them that I had to put away by myself. And I had spent the morning struggling with that stuff. Couldn't get anyone to help me.
>
> Finally Glenda comes and tells me that I need to go on lunch because there was something happening that day. I can't remember what it was. So I'm, like, fine. I go on lunch. I go home and I lay down on the floor because my back is screaming. I come back from lunch. I'm walking across the parking lot, and something, I don't know, snapped, bent, broke.
>
> All of a sudden there was pain shooting down my neck, down the whole left side of my body. . . .

She never had a work injury that she did not report, because, she said, that would be "illegal." Employee could not recall the time of day this occurred or if there were any witnesses. She said the pain started in her neck, and all she did was "get out of [her] car." Employee said she went straight to "Glenda" her supervisor and told her what happened, but Glenda did not complete an injury report to her knowledge. She later spoke to somebody in Human Resources, "The Nazi, Schultz." According to Employee, on May 11, 2018, Schultz told her that her "claim" had been denied and she should file for medical leave; she did so, and Employer fired her that week. Employee could not recall getting any physical restrictions from work from any physicians because, she did not ask, and it never came up. However, she filed a human rights complaint against Employer; they rehired her and she worked full-time "all the way until September," 2018, but Employee said Employer never accommodated her no-lift orders. Employee made the decision to stop working with Employer in September 2018. She said Medicaid paid for all her alleged work-related medical bills in the beginning. (Deposition of Amanda K. Lynn, November 4, 2019).

60) In November 2019, Employee's symptoms included her entire left side from her eye to her hip. (Deposition of Amanda K. Lynn, November 4, 2019).

61) On April 6, 2020, Employee claimed PTD, PPI and medical benefits, an unfair or frivolous controversion, a penalty for late-paid compensation and interest related to her headaches and limp, on a form dated April 3, 2020. (Claim for Workers' Compensation Benefits, April 3, 2020).

62) On April 6, 2020, Employee requested a second independent medical evaluation (SIME). (Petition, April 6, 2020).

63) On April 16, 2020, Employer timely denied Employee's claim for PTD, PPI and medical benefits, penalty, interest, an SIME, §041(k) benefits and an unfair or frivolous controversion related to her neck, low-back and hands. It based its denial on Employee's failure to report work-related headaches and wrist injuries timely under AS 23.30.100, and the lack of medical evidence to support these claims. Employer also relied on Dr. Fellars' report, with which attending physician Dr. Mina had agreed. (Controversion Notice, April 16, 2020).

64) On April 24, 2020, Employer served Employee by certified mail, return receipt requested with a letter enclosing discovery releases, including three medical records releases, three pharmacy releases, an employment records release, a Social Security Records Release, a Social Security Earnings Information Release, an insurance records release, a State of Alaska Medicaid Authorization for Release of Information and a Division of Workers' Compensation Request for Release of Information. The letter expressly warned Employee about sanctions, including claim dismissal, if she refused to sign, date and return the releases timely. (Letter, April 24, 2020).

65) On May 4, 2020, Employee signed for the April 24, 2020 letter and enclosed releases at her Dellwood Drive address. (USPS return receipt, May 4, 2020).

66) Employee failed to sign and return the releases or petition for a protective order. (Agency file).

67) On July 10, 2020, Employer denied all benefits for Employee's neck, low-back and hands for her failure to sign and return releases sent to her on April 24, 2020, or to request a protective order. (Controversion Notice, July 10, 2020).

68) On November 12, 2020, Employer served Employee by certified mail, return receipt requested with a letter enclosing discovery releases, including three medical records releases, three pharmacy releases, an employment records release, a Social Security Records Release, a Social Security Earnings Information Release, an insurance records release, a State of Alaska Medicaid Authorization for Release of Information and a Division of Workers' Compensation Request for Release of Information. (Letter, November 12, 2020).

69) On November 14, 2020, Scott Lindquist signed for the November 12, 2020 letter with enclosed releases on Employee's behalf, at her Dellwood Drive address. (USPS return receipt, November 14, 2020).

70) Employee failed to sign and return the releases or petition for a protective order. (Agency file).

71) On December 3, 2020, Employer requested an order compelling Employee to sign discovery releases. (Petition, December 3, 2020).

72) On December 9, 2020, Employee claimed PPI benefits, an unfair or frivolous controversion, a penalty and, in effect, an SIME. She listed her Dellwood Drive address on her claim and added:

> I am asking for 3rd party medical evaluation. I am beyond angry at this point. Why this employee hating company is allowed to cause physical injury & deny medical coverage, promised to send paperwork & doesn't offer $5,000 & think that is fair. I am unable to work with Sedgwick, their attorney & wish for the Workman's Comp. Board to intervene & help me!! Not the scummy employer or their attorney. Do not call me with another phone conversation between me/you & the attorney. It is obvious to me that all that they want to do is play games & run time out. Please step in & make this scumbag company pay me!! (Claim for Workers' Compensation Benefits, December 9, 2020).

73) On December 21, 2020, Employee claimed PTD benefits, an unfair or frivolous controversion, a penalty for late-paid compensation, medical costs exceeding $6,000 and interest. Her injuries included her neck, left hip, leg and right hand. The fact Employer's insurer did not pay an attached bill from Back & Neck Center was, in Employee's opinion, "proof of the games this scummy insurance company is playing." The ledger included charges for services rendered from January 11, 2019, through April 30, 2019; Employer's adjuster Sedgwick paid many of the bills. Employee again requested a third-party medical examination and wanted every cent owed to her. (Claim for Workers' Compensation Benefits, December 21, 2020).

74) On December 23, 2020, Employer timely denied all benefits for Employee's neck, low-back and hands for her failure to sign and return releases sent to her on April 24, 2020, and November 12, 2020, or to request a protective order. (Controversion Notice, December 23, 2020).

75) On December 24, 2020, Employee was confused how to file discovery documentation; the designee explained it to her in detail. Employee also wanted to know how to obtain a ruling on her April 6, 2020 petition for an SIME. The designee told her to file a hearing request form when she was ready. Employer wanted a ruling on its December 3, 2020 petition to compel discovery releases; Employee contended they were overbroad, burdensome and that Employer already had all available discovery. The designee reviewed the releases and granted Employer's petition to compel; he gave Employee 10 days to sign and return the releases. (Prehearing Conference Summary, December 24, 2020).

76) On December 28, 2020, the Division served Employee with the December 24, 2020 prehearing conference summary at her Dellwood Drive address. (Prehearing Conference Summary Served, December 28, 2020).

77) Employee did not request reconsideration or appeal the discovery order. (Agency file).

78) On December 31, 2020, Employer again denied Employee's claims related to her neck, low-back, hands and headaches, for PPI and PTD benefits, an unfair or frivolous controversion, a penalty for late-paid compensation, interest and medical costs, relying on Dr. Fellars' EME report and Dr. Mina's April 23, 2019 form stating Employee had chronic stenosis and did not have any restrictions. (Controversion Notice, December 31, 2020; Answer, December 31, 2020).

79) On December 31, 2020, Paddock in conformance with the December 24, 2020 discovery order sent Employee new releases for her to sign and return. (Paddock letter, December 31, 2020).

80) On January 4, 2021, Paddock sent Employee a letter informally requesting discovery based on Employee's deposition testimony. It requested (1) all personal bank statements beginning May 7, 2018 to the then-present; (2) all pay records, 1099s, and W-2s, since May 7, 2018 including but not limited to those printed or electronic payments employee had received from DoorDash; Postmates; Uber; UberEats; Lyft; Field Agent; Gig Walk; Easy Shift; Vital Choice Seafood; Stack Social; and Safeway; (3) all formal or informal job applications, and confirmations of employment from the above-referenced employers, excluding Safeway which was added to the list at the hearing; (4) a list including the names, addresses and phone numbers of all employers for whom employee worked for May 7, 2018 through the then-present including her job title, job duties, dates employed and reasons she left employment; (5) and an answer to the question if she had applied for or received unemployment insurance benefits since May 7, 2018, including the dates for which she received it in the amount received each week. (Paddock letter, January 4, 2021).

81) On January 14, 2021, Employer requested dismissal of Employee's claims for again failing to sign and return the releases as ordered. Alternately, it sought a sanction forfeiting Employee's benefits during her noncompliance. (Petition; Memorandum in Support of Petition to Dismiss/Sanctions, January 14, 2021).

82) On January 16, 2021, Employee went to the emergency room on a stretcher from a motor vehicle accident and said she was driving a vehicle going 30 mph when she slid into a ditch and

"slowly hit a tree." She self-extricated "with assistance." Employee complained of a headache, acute and chronic neck pain and shoulder pain. (Emergency room reports, January 16, 2021).

83) On January 21, 2021, Employer stated Employee had not returned signed releases or appealed the December 24, 2020 discovery order. In response, Employee did not deny but inquired about her requests to the Division for her human rights and Employer's files. The designee advised that the Division did not have access to her human rights file and Paddock said she would be producing her Employer's file shortly. (Prehearing Conference Summary, January 21, 2021).

84) On March 11, 2021, Employee filed handwritten documents, treated as her hearing brief:

> Also what gives [Employer] the right to ask about my earnings? -- or any info on my SSI -- OR the right to deny treatment. Or not pay for treatment? I have not received ANY treatment at all because this low life company has refused to pay a bill that is owed. (Employee letter, March 11, 2021; emphasis in original).

Attached to this was an itemized statement from Back & Neck Center for chiropractic treatment, which showed Employer paid bills totaling $4,676.78 for treatment beginning January 11, 2019, and ending on April 30, 2019. (Insurance Ledger, undated). Also attached was a document Employee may have authored, though it is not clear. The piece includes various Internet links pertaining to Employer's parent company Kroger and states:

Krogers [sic] hates their employees

> This is just a few examples of how Krogers [sic] treats its employees[,] and I want you to notice that it is all over America not just Alaska[;] this company lets its management disrespect its employees, bracket and] cares more about its earnings, because management and the [B]oard of Directors deserve better than their employees.
> . . . .
> Kroger reports earnings up despite paying unfair wages and asking employees for money back for earned over time[.] (Article, undated).

Employee included another handwritten document in which she contended she was 50 years old when "this" occurred and had worked hard all her life. She contended her medical records prior to working for Employer demonstrate she was being seen for her shoulder, and not for her "lower back, neck, hand." Employee admitted knowing she had arthritis, but was not aware, until Dr. Mina told her, that a person could have it throughout their body. She contended

Employer would not let her change positions and had no right to "make" her take Social Security benefits at her age. Employee reiterated her contention that Employer had no right to her Social Security records and contended whoever "gave these disgusting employers the right to make employees take SSI earlier than they should, should be shot." She wanted Employer to pay her what she contended it owed her and implored the Board to, "Make it happen!!!" (Employee's handwritten note, undated; Emphasis in original). In a typewritten attachment, Employee said she enjoyed helping people at work but expressed her disdain especially for her direct manager, whom she described as "lackadaisical." She faulted the "hostility" between the night and day crews, which she contended all managers ignored. Employee expressed her objection to the "ridiculous hours" she was "made to work," yet said she asked for different hours so she could "get another job" when she was not working for Employer. According to Employee, Employer denied her requests. She contended Employer refused to provide help in lifting heavy furniture and stated the person who took over her job "died of a heart attack." Employee contended when she asked to move to a different department, Employer denied her request and told her if she became a problem, Employer "would get rid of [her]," and she contended "they did." She further contended "this vile company" never paid her "lead pay" to which she was entitled. Employee continued:

> When the Company [f]inally did get a HR person and a Department manager, [t]he HR person was in my opinion a Nazi, made my life miserable, and for everyone in the store. [E]ven though I was under [doctor's] orders not to lift anything, (more than once) I was repeatedly put back in the Furniture Department and told I would not be [a]ccommodated, but I would not be moved into another Department, my reward for all my hard work! And I was written up for helping an older customer put something in her cart. . . .

Employee faulted the unemployment hearing judge and the Human Rights Commission when she did not prevail before those tribunals on her claims, and did not expect the Board would "do anything differently." She credited her work with Employer for her lifelong headaches and inability to obtain a job that requires her to walk, stand, sit or work normal hours. Employee contended Employer was also responsible for her personality change and memory loss. She said she rejected the two surgeries Dr. Mina recommended, hoping "at some point the surgeries will be more advanced," but nonetheless faulted the adjuster for denying payment on her "pain management," which in previous reports Employee said she did not want. Employee suggested

the panel members go to their local Fred Meyer store and talk to the employees to find out "how unhappy the employees really are." (Lynn documents, undated).

85) On April 28, 2021, *Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 21-0037 (April 28, 2021) (*Lynn I*), denied Employer's January 14, 2021 petition to dismiss Employee's claims and ordered her to sign and return releases within 10 days. *Lynn I* noted Employee's benefits continued to be suspended "by operation of the law" until the releases were signed and returned. (*Lynn I*).

86) On May 4, 2021, Employee claimed PPI benefits, an unfair or frivolous controversion, a penalty for late-paid compensation and a compensation rate adjustment. (Claim for Workers' Compensation Benefits, May 4, 2021).

87) On May 4, 2021, Employee untimely petitioned for a protective order, and a continuance:

> I see no reason for the opposing party to have any more information on me than they already have! Information covers every pharmacy including ones that I do not use. My SSI information has absolutely nothing to do with my injury & it should not be made public.
>
> Sedgwick claims, Fred Myer[] thinks that they can intimidate me -- sorry not going to happen.
>
> I'm asking for these authorizations to be denied & let my medical records speak for themselves -- I have not sought treatment for over a year, because Sedgwick refused to pay for it any longer -- long before they asked for any release of information. . . .
>
> I ask that you dismiss the releases of information & judge the case on the medical facts. (Petition, May 4, 2021, and attachment).

88) On May 10, 2021, Employer opposed Employee's petition seeking a hearing continuance. It noted *Lynn I* found Employer's releases were reasonable and likely to lead to admissible evidence and instructed Employee to comply with the discovery request and explained why. Employer also noted *Lynn I* said her past benefits were suspended until releases were signed and returned and her continued refusal to comply with discovery orders could result in claim dismissal. Employer contended Employee did not return the releases within 10 days as the Board had ordered but instead filed a late petition for a protective order and a request for a hearing continuance. It asked the Board to deny her requests. (Employer's Answer to Employee's Petition, May 10, 2021).

89) On May 13, 2021, Employee signed and returned the wrong releases; she signed and dated numerous releases pre-printed for 2020, rather than the releases Employer had pre-printed for 2021 in its most recent request. (Lynn releases, May 13, 2020).

90) Employee, having signed numerous releases pre-printed with the wrong year in mid-May, knew or should have known she was signing the wrong releases. (Experience, judgment, and inferences drawn from the above).

91) Medical providers will not accept a past-dated release. (Experience, observations).

92) On May 14, 2021, Employer timely denied Employee's May 4, 2021 claim for PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion, a penalty and interest related to her neck, low-back, hands and headaches. It again relied on Dr. Fellars' EME report and its other defenses, including its incomplete discovery. (Answer to Employee's Workers' Compensation Claim, May 14, 2021).

93) On May 25, 2021, *Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 21-0044 (May 25, 2021) (*Lynn II*), denied Employee's May 4, 2021 petition for a continuance and protective order, which it treated as a petition to reconsider *Lynn I*. (*Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 21-0044 (May 25, 2021) (*Lynn II*).

94) On June 7, 2021, Employer sought an order dismissing Employee's claims for her failure to comply with *Lynn I*. (Petition, June 7, 2021).

95) On June 9, 2021, Employee completed a pain questionnaire at Dr. Mina's office, resulting in a 64 percent score, which equaled "crippled." (Oswestry Low Back Pain Disability Questionnaire, June 9, 2021).

96) On June 9, 2021, Dr. Mina saw Employee for the first time in two years and she denied "any injuries since her last visit." She reported tightness in her shoulders, popping, crackling and numbness in her neck, and daily headaches. Dr. Mina interpreted Employee's 2019 MRI as severe right and moderate left stenosis at C5-6 and C6-7 with advanced degenerative disc disease. He recommended neck surgery but offered no causation opinions. (Mina report, June 9, 2021).

97) On July 6, 2021, Dr. Mina examined Employee for a pre-operative physical for neck surgery. He offered no causation opinions, and billed Medicaid. (Mina report, July 6, 2021).

98) On September 9, 2021, Employee told Dr. Olson she had worsening neck and bilateral shoulder and hand pain that "got a lot worse recently when she was helping her brother move out

of her mom's house." She had been busy hauling and moving boxes, which aggravated her pain issues. Dr. Olson performed EMG and NCV studies that again were normal and showed no evidence of cervical radiculopathy. He opined "most of her pain is coming from degenerative joint and arthritic issues." In respect to the bill for services on this date, Dr. Olson stated, "Not related to Workers[']Compensation or Auto Policy." (Olson report, September 9, 2021).

99) On September 16, 2021, *Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 21-0086 (September 16, 2021) (*Lynn III*), refused to address Employer's June 7, 2021 petition for claim dismissal and found insufficient evidence to determine Employee's noncompliance, if any, with orders requiring her to sign and return releases. *Lynn III* determined a written record hearing was an inappropriate way to resolve a petition for claim dismissal and directed the parties to appear at a prehearing conference to arrange for an in-person hearing. (*Lynn III*).

100) On December 7, 2021, *Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 21-0115 (December 7, 2021) (*Lynn IV*), denied Employer's June 7, 2021 and July 29, 2021 petitions to dismiss Employee's claims. *Lynn IV* determined Employee never sought review from *Lynn I* and it remained in full force and effect. Employer contended it did not receive the new releases from Employee ordered in *Lynn I*; Employee insisted she signed and returned them to Employer. *Lynn IV* noted the magnitude of claim dismissal and provided Employee with another opportunity to comply with discovery orders. It ordered Employer to mail and email releases to Employee who was ordered to sign and return those releases to Employer by mail and email within 14 calendar days from the date she received them. *Lynn IV* also directed Employee to either request a hearing or seek an extension to request one within 90 calendar days from December 7, 2021. (*Lynn IV*).

101) On December 20, 2021, Employee filed, and stated she served on Employer and its insurer, an unsigned and undated hearing request on a December 17, 2021 claim. However, no one signed the service certificate, and the email does not show service on Employer, its insurer or Paddock. (Affidavit of Readiness for Hearing, undated).

102) On December 27, 2021, Employee filed a hearing request on a December 23, 2021 claim. She signed the service certificate but did not identify to whom she served it. The email does not show service on any party. (Affidavit of Readiness for Hearing, December 23, 2021).

103) On December 28, 2021, Employer requested an order compelling Employee to provide documents and discovery information from its informal January 4, 2020 discovery letter. (Petition, December 28, 2021).

104) On January 19, 2022, Paddock appeared before the Board's designee, but Employee did not appear. Paddock advised she had not received the discovery releases as ordered in *Lynn IV*. The designee reviewed Employer's December 28, 2021 petition to compel discovery, granted it and ordered Employee to answer the interrogatories "as soon as possible." (Prehearing Conference Summary, January 19, 2022).

105) On January 21, 2022, Employer petitioned the Alaska Workers' Compensation Appeals Commission (Commission) to review *Lynn IV* (*Fred Meyer Stores, Inc. v. Lynn*., AWCAC Dec. No. 22-001 (March 18, 2022) (*Lynn V*). The Commission denied Employer's petition for review but commented on the Board's procedures and on *Lynn IV*. *Lynn V* took issue with *Lynn IV*'s failure to comment on certain evidence in the file. It noted *Lynn IV* implicitly found Employee's statement that she had signed and returned the appropriate releases to Employer credible even though *Lynn IV* did not make explicit credibility findings, and the panel failed to discuss evidence in the file diminishing Employee's credibility and strengthening Employer's position on the factual issues connected to the petitions to dismiss.

> Nonetheless, the burden on Fred Meyer to wait once again for Ms. Lynn to comply with a Board order to sign correct releases with a correct date is not so great as to warrant reversal of the Board decision. . . . If Ms. Lynn does not sign and return correct releases in the time frame ordered by the Board, her claim should be dismissed. She has had ample opportunity to sign requested and ordered releases and no further delays should be granted to her. She has a pattern of disregarding direct orders from the Board and the Board is within its rights to dismiss her claim if she does not properly sign the ordered releases. (*Lynn V*, at 18-19).

Moreover, *Lynn V* stated the Board had given Employee 90 days to file a hearing request or ask for more time to file one. "She is still required to follow this order by the Board. If she does not do so, the Board should dismiss her claim." (*Id*. at 21).

106) On March 22, 2022, Employer requested an order dismissing Employee's claim for her failure to comply with the designee's and the Board's December 24, 2020, April 28, 2021 and December 7, 2021 discovery orders. (Petition, March 22, 2022).

107) On April 12, 2022, the Board's designee at a prehearing conference granted Employer's request for a hearing on its March 22, 2022 petition to dismiss Employee's claims for her failure to provide discovery as previously ordered on numerous occasions. Employee did not initially appear for the conference, but called after it was over. She updated her telephone number and stated she had returned the discovery releases to Employer as ordered in *Lynn IV*. (Prehearing Conference Summary, April 12, 2022).

108) On April 15, 2022, Employee claimed PPI benefits, an unfair or frivolous controversion, a penalty for late-paid compensation and interest. She also said she had constant hip and neck pain, was not able to work or lift much and potential employers would not accommodate her. Employee contended Employer's petition to dismiss was "harassment at this point" and said she had given Employer's attorney all requested paperwork and her original injury report included her maiden name. She asked, "how far back is she trying to go?" Employee demanded a hearing. (Claim for Workers' Compensation Benefits, undated but filed on April 15, 2022).

109) On April 28, 2022, Employer timely denied Employee's claimed PPI benefits, unfair or frivolous controversion, penalty for late-paid compensation and interest. It again stated discovery had not been completed and raised statutory bars in law and equity. Employer relied on Dr. Fellars' EME report and renewed its previous defenses. (Answer to Employee's Workers Compensation Claim, April 28, 2022).

110) At hearing on May 24, 2022, Employee testified Employer had received all the records she had. She stated it was her understanding she got to determine what records Employer got to see because the records belong to her and emphasized her understanding that her medical and other records would be "public records" in "court," subject to review by anyone. Employee also stated her understanding that Employer could only receive records going back to August 2008, and did not need to know her prior name because she legally changed her name through marriage before that 10-year period began. She stated five family members had died during COVID-19 including her brother and this precluded her from seeing a physician. Employee admitted she did not read the five Board and Commission decisions sent to her and did not read the various prehearing conference summaries the Division served on her because she was taking care of her mother, did not have enough time to pursue her claims and had put them "on hold." She admitted she probably received Employer's January 4, 2021 letter requesting discovery, but it would be sitting "in a pile of mail" at her residence. Employee stated if she past-dated releases she returned to

Employer, it was done by accident and not intentionally. She also testified regarding Employer's January 4, 2021 letter, read to her at hearing and stated she had only worked post-injury for Safeway, Lyft, Uber and DoorDash. (Employee).

111) At the May 24, 2022 hearing, the designated chair took considerable time explaining to Employee the law regarding releases and other discovery and her obligation to provide discovery and the ultimate sanctions that could be applied in the event she did not, including claim dismissal. Employee testified she understood, admitted her prior notions were incorrect and said she would immediately come to Division offices in Anchorage to obtain the releases, provide discovery she could obtain that day, sign, date and provide her maiden name on all releases Employer wanted, and hand-deliver those releases to Paddock's office before it locked its doors to the public at 4:00 PM, on May 24, 2022. She also said she would obtain and provide remaining discovery to Paddock or advise her that she had no responsive production to the January 4, 2021 requests, by no later than Thursday, May 26, 2022, at 4:00 PM. (Record; Employee).

112) All the above prehearing conference summaries and decisions were served on Employee at her address of record in her agency file. Just prior to the May 2022 hearing, she had updated her address to a post office box. Whether Employee reads documents sent to her is totally under her control. (Agency file; experience).

113) Employee's agency file, including medical records and her deposition testimony, and some of her hearing testimony raised questions about her credibility, but her hearing statements that she would comply with the Board's May 24, 2022 oral order were credible at the time she made them. (Observations; judgment).

114) On May 27, 2022, *Lynn v. Fred Meyer Stores, Inc*., AWCB Dec. No. 22-0037 (May 27, 2022) (*Lynn VI*) denied Employer's March 22, 2022 petition to dismiss based on Employee's credible testimony that she had misunderstood the legal requirements in respect to releases and discovery and would immediately remedy her previous failures to comply with discovery orders, and the fact she had never read the prehearing conference summaries or Board decisions. *Lynn VI* relied in part on the Commission's decision in *Lynn V*, which implied Employee should get another chance to comply with the previous discovery orders. Further, *Lynn VI* stated:

> In the event Employee fails to comply with the May 24, 2022 oral orders as set forth in this decision, her prior claims will be dismissed, which has the same

> effect as a past benefit forfeiture. AS 23.30.108(b); *Vildosola*; *Rogers & Babler*. If Employee complies, the forfeiture of past benefits question including whether her past failures to sign and return releases and discovery was unreasonable and willful will be determined later. Given this result, issues about her receipt or nonreceipt of past releases, and questions about her mailing address are immaterial at this time. She will either comply with these orders or she will not. If she complies, Employee's case will move forward subject to Employer's defenses; if she does not, her claims will be dismissed. Therefore, Employee's claims will not be dismissed at this time. Employer's petition to dismiss will be denied with jurisdiction retained. (*Lynn VI* at 11).

115) On May 27, 2022, Employee filed a petition seeking reconsideration or modification of the May 24, 2022 oral discovery orders. She contended:

> I have unemployment mailing me a "statement" that gives a total amount paid to me during the last year -- also a 1099 for last year-- I am also working on bank statements -- I am unable to afford to pay for them. It will take the bank time to research them = hence the payment.
>
> I have bank statements online that I am able to turn in as soon as I figure out how to do it online!
>
> My mom's illness has had a setback and requires more care -- and added Dr. appointments. I just need time to be able to afford the statements which I will be able to afford after the first of the month.
>
> I appreciate your time in this matter. (Petition, May 27, 2022).

116) On June 7, 2022, Employer opposed Employee's May 27, 2022 petition, citing *Lynn V*'s language stating "no further delays should be granted to her." It requested a final order dismissing Employee's claims. (Answer to Employee's Petition for Reconsideration or Modification and Request for Final Decision to Dismiss Claim, June 7, 2022).

117) On June 10, 2022, Employee faxed to the Division an unemployment report showing zero money paid to her in calendar year 2022 through July 23, 2022; an uninsurance 1099 form stating Employee received $4,020 in unemployment compensation for calendar year 2021; bank statements from April 1, 2020, through May 31, 2022; and additional bank statements for a separate account from May 1, 2018, through May 1, 2020. The facsimile did not include proof that Employee served these documents on Paddock. (Employee facsimile, June 10, 2022).

118) On June 10, 2022, Division staff advised Employee to serve the material she had faxed to the Division on Paddock and to use a "Notice of Intent to Rely" form when she filed non-

medical documents in the future. (Agency File, Judicial, Communications, Email tabs, June 10, 2022).

119) On June 13, 2022, Employee confirmed she had emailed the June 10, 2022 documents to Paddock. (Agency File, Judicial, Communications, Email tabs, June 13, 2022).

120) On June 16, 2022, Paddock confirmed she received the signed releases and "a portion of the additional discovery documentation" ordered in *Lynn VI*. Employee stated she provided all the discovery she could but was still working to get records from two additional banking facilities. The designee advised the parties they could ask for a hearing on Employee's May 27, 2022 petition. The Division served the summary for this conference on Employee at her updated address of record. (Prehearing Conference Summary, June 16, 2022).

121) On June 22, 2022, Employee sent Employer a hearing request on her May 23, 2018 claim. (Affidavit of Readiness for Hearing, undated, but notarized on June 22, 2022).

122) On June 28, 2022, Employer opposed the undated Affidavit of Readiness for Hearing it received on June 22, 2022 from Employee. It contended Employee failed to produce documents within the time ordered in *Lynn VI* and so conceded at the June 16, 2022 prehearing conference. (Affidavit of Opposition, June 28, 2022; agency file).

123) There is no Affidavit of Readiness for Hearing from Employee filed in 2022 found in her agency file. (Agency file).

124) All controversion notices filed in this case included language advising Employee of her need to request a hearing within two years of the notices' dates or risk claim dismissal. (Controversion Notices).

125) All 15 Prehearing Conference Summaries the Division served on Employee in this case contained a detailed warning advising her of the need to request a hearing or request more time to ask for hearing within two years of the date Employer controverted her claims. (Prehearing Conference Summaries).

126) On July 20, 2022, Employer asked for a hearing on its March 22, 2022 petition to dismiss. (Affidavit of Readiness for Hearing, July 20, 2022).

127) On July 27, 2022, over Employer's objection, the designee added issues from Employee's pending claims, as best as he could determine them from her statements at the prehearing conference, to the issues to be heard on September 21, 2022, which included Employer's March 22, 2022 petition to dismiss. He did not identify a particular claim by date. The designee

informed Employee the Division had not received Employee's June 22, 2022 hearing request though Employee stated she filed it correctly and Paddock confirmed she had received it. Employer objected to a hearing on the merits of Employee's claims because she had still not provided all discovery as previously ordered; Employee did not deny this. The parties stipulated to the hearing date. (Prehearing Conference Summary, July 27, 2022).

128) On July 28, 2022, the Division served the July 27, 2022 prehearing conference summary on Employee at her updated address of record. (Prehearing Conference Summary, July 27, 2022).

129) On August 2, 2022, the Division served a hearing notice for the September 21, 2022 hearing on Employee by certified mail, with a return receipt requested, at her updated address of record. (Hearing Notice, August 2, 2022).

130) On August 2, 2022, Employer sought an order bifurcating the issues set for the September 21, 2022 hearing to provide for administrative efficiency and comply with the legislature's intent. Employer contended if the Board dismissed Employee's claims for failure to comply with discovery orders, a hearing on the merits would not be necessary. (Petition, August 2, 2022).

131) On August 12, 2022, Employee signed the "green card" for the August 2, 2022 notice for the September 21, 2022 hearing. (United States Postal Service return receipt, August 12, 2022).

132) On September 1, 2022 the designee again identified issues for the September 21, 2022 hearing as: Employer's March 22, 2022 petition to dismiss; its August 2, 2022 petition to bifurcate issues; and Employee's claims for TTD, PTD and PPI benefits, an unfair or frivolous controversion, penalty and interest. He did not identify a particular claim by date. (Prehearing Conference Summary, September 1, 2022).

133) On September 8, 2022, Employee told Paddock she would not be able to attend Dr. Fellars' September 8, 2022 deposition. (Employee email, September 8, 2022).

134) On September 8, 2022, Dr. Fellars testified in conformance with his prior EME report. He added he had examined Employee prior to reviewing her records so he would not be tainted by other physicians' opinions. He found Employee's various injury reports to different providers differed in their medical records in less than 10-months post-injury; in his experience, people do not forget "how they were injured." He found Employee's examination "nonorganic" because simply touching her lightly caused significant pain, which is not possible given her known

medical conditions. When Dr. Fellars touched Employee's head applying "no force whatsoever," she reported neck pain, which should not have occurred. He also found "give-way" weakness in her upper extremities, which is also nonorganic because she demonstrated full functional strength before giving-way. Dr. Fellars found no evidence of cervical radiculopathy in either upper extremity, which was inconsistent with her prior complaints to other physicians. Much of Employee's examination was hampered by subjective pain complaints, which Dr. Fellars could not objectify. On her hand examination, Employee exhibited significant tenderness and would not perform part of the test, but she had no problem shaking hands with him, which duplicated the test maneuver. (Deposition of Todd A. Fellars, MD, September 8, 2022).

135) Dr. Fellars reviewed Employee's radiographic studies and found degenerative, arthritic findings and no evidence of an acute injury.

> So, again, it's looking at the totality of the evidence that I had at the -- at the time of this, but I -- I, again, would go back to something that I said earlier, and that it's I think important what she reported to me. And so an insidious onset of pain and then finding degenerative findings, this all suggests -- in the way that we understand disc degeneration -- all suggest that this has occurred due to life not due to work. . . .
>
> In her own words she reported she was stretching at lunch, and it happened. And then I don't want to get too much into details, but she reported it started in the thoracic spine and then went to the cervical and lumbar spine. That is also nonorganic. There is no pathology that I'm aware of as an orthopedic surgeon that would cause pain initially in the thoracic spine then radiate to the cervical and lumbar and then have degenerative findings there.
>
> If anything, I guess I would expect acute findings, but there were no acute findings. They were all degenerative long-standing, so that gets back to that cervical spondylosis being a long-standing process. Based on current medical evidence and based on what was reported to me, it did not meet their criteria to be substantially caused by work. . . .

The same was true of Employee's lumbar spine and right wrist symptoms. There was no objective evidence supporting her diffuse pain complaints in Dr. Fellars' opinion. In his view, this was not a "straw that broke the camel's back" situation given her verbal reports to him, and her medical records and diagnostic imaging. Dr. Fellars would not recommend surgery because Employee had no clear objective basis for her symptoms and surgery might make her situation worse. He said any work restrictions were not substantially caused by her work. Dr. Fellars

opined Employee was medically stable from any work injury by September 2018. He noted she stopped going to PT on August 29, 2018, after the therapist said he could still improve her situation. Dr. Fellars opined Employee's pain was not so severe that she felt she needed the therapist's help. He did not approve continued chiropractic care because it was "passive," rather than "active." Dr. Fellars noted Employee apparently did not treat between May 2019 and her motor vehicle accident in January 2021. He said she reported to Dr. Mina on June 9, 2021, that she had no additional injuries since her last visit with Dr. Mina two years earlier. In Dr. Fellars' view, this was inconsistent with arriving at the emergency room via ambulance in January 2019, and complaining of cervical pain following a motor vehicle accident. Moreover, Dr. Fellars noted her symptoms were worse following the motor vehicle accident than they were when he examined her. Lastly, he stated additional medical records since his EME did not change his opinions, but strengthened them overall. (Deposition of Todd A. Fellars, MD, September 8, 2022).

136) On September 14, 2022, Employer reiterated arguments from prehearing conferences and hearings and noted Employee's continuing failures to provide releases and other discovery contrary to various Board orders. It contended Dr. Fellars' deposition testimony stated Employee's preexisting and unrelated degenerative conditions driven by "genetics" were the substantial cause of her disability and need for medical treatment and she was not permanently and totally disabled. (Employer's Brief for 9/21/22 Hearing, September 14, 2022).

137) On September 21, 2022, Employee did not appear for the hearing. The designated chair called her telephone number of record and left a message asking her to call back; after waiting about 15 minutes and hearing nothing from Employee, the panel moved forward with the hearing at Employer's request. The panel found Division staff had called Employee on September 20, 2022, and advised her of the approximate start time for her hearing. It further found Employee signed a return receipt "green card" on August 12, 2022, giving her notice of the hearing. Finding Employee had been given notice and was not present, the panel proceeded to hear the issues on their merits. (Record).

138) Employer contends the Board should deny Employee's claims for (A) willful noncompliance with discovery orders under AS 23.30.108; (B) under AS 23.30.110(c) for failure to request a hearing timely; and (C) on grounds Employee's employment with Employer is not the substantial cause of her disability or need for medical treatment. As to contention (A),

Employer contends Employee repeatedly and willfully defied Board orders to sign releases and provide other discovery. It relies primarily on *Lynn V* and *VI*. As for contention (B), Employer contends Employee failed to timely request a hearing or ask for more time to request one following its controversions of her various claims. Even after Employee was given 90 days to timely request a hearing, Employer contends she filed two hearing requests listing claim dates that do not exist, and never remedied her error. Addressing contention (C), Employer contends Employee produced no medical opinions stating her employment is the substantial cause of any disability or need for treatment. Moreover, it contends Employee relies on her own statements of what happened and misled her medical providers by telling them all her problems began with her work injury. Employer relies on Employee's medical records documenting degenerative changes and chronic neck and back pain that predated the work injury. It also relies on Dr. Fellars' opinion, with which Drs. Mina and Olson agreed, to support its causation position. (Employer's Brief for 9/21/22 Hearing, September 14, 2022).

139) Employee's actions in this case, her comments in various filings and her failure to participate in the hearing illustrate her deep-seated disdain for Employer. (Experience, judgment and inferences drawn from the above).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . ;
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
>
> (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.

In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court said:

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

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the Court addressed this same issue and said:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation (footnote omitted). We have not considered the extent of the board's duty to advise claimants. . . .
> . . . .
>
> The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants (footnote omitted).
>
> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

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 23.30.100. Notice of injury or death**. (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the employer.
> . . . .
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> > (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
> > (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
> > (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

> **AS 23.30.107. Release of Information.** (a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. The request must include notice of the employee's right to file a petition for a protective order with the division and must be served by certified mail to the employee's address on the notice of injury or by hand delivery to the employee. . . .

The Court encourages "liberal and wide-ranging discovery under the Rules of Civil Procedure." *Schwab v. Hooper Electric*, AWCB Dec. No. 87-0322 (December 11, 1987). *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999), provided guidance in discovery matters by defining the term "relative" as set forth in AS 23.30.107(a) as follows:

> Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action. . . . The information sought need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> . . . Information which would be inadmissible at trial, may nonetheless be discoverable if it is reasonably calculated to lead to admissible evidence. Under our relaxed rules of evidence, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad.
>
> To be admissible at hearing, evidence must be 'relevant.' However, we find a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing. (Citation omitted).

Employers must be able to thoroughly investigate workers' compensation claims to verify information provided by the claimant, properly administer claims, effectively litigate disputed claims, and detect any possible fraud. Medical and other releases are important means of doing so. *Cooper v. Boatel, Inc.*, AWCB Dec. No. 87-0108 (May 4, 1987). Employers have a constitutional right to defend against claims. *Rambo v. VECO, Inc.*, AWCB Dec. No. 14-0107 (August 5, 2014). Employers also have a statutory duty to adjust workers' compensation claims promptly, fairly and equitably. *Granus*.

> **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 the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. . . .

Where a party unreasonably refuses to provide information, AS 23.30.108(c) grants the Board "broad discretionary authority" to make orders assuring parties obtain relevant evidence necessary to litigate or resolve their claims. *Bathony v. State of Alaska DEC*, AWCB Dec. No. 98-0053 (March 18, 1998). Claim dismissal is provided for under AS 23.30.108(c) and AS 23.30.135 where an employee willfully obstructs discovery, although this sanction "is disfavored in all but the most egregious circumstances." *McKenzie v. Assets, Inc.,* AWCB Dec. No. 08-0109 (June 11, 2008). Willfulness is defined as "the conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Hughes v. Bobich,* 875 P.2d 749, 752 (Alaska 1994). Repeated noncompliance with Board orders is willful. *Brown v. Gakona Volunteer Fire Dep't,* AWCB Dec. No. 15-0143, (October 24, 2015). An employee willfully failed to comply with discovery where she "failed or refused to provide the releases [she was previously ordered to sign], without any legal justification or compelling excuse. . . ." *Vildosola v. Sitka Sound Seafoods*, AWCB Dec. No. 11-0005 (January 20, 2011).

The sanction of dismissal of an employee's claim cannot be upheld absent a reasonable exploration of "possible and meaningful alternatives to dismissal." *Hughes*, 875 P.2d at 753. A conclusory rejection of sanctions other than dismissal of the case does not suffice. *DeNardo v.*

ABC Inc. RV Motorhomes, 51 P.3d 919, 926 (Alaska 2002). Since a workers' compensation claim dismissal is "analogous to a dismissal of a civil action under Civil Rule 37(b)(3), the factors set forth in that subsection when deciding petitions to dismiss have occasionally been applied." *Mahon v. Newman*, AWCB Dec. No 13-0160 (December 5, 2013). Giving a party his day in court has long been favored. *Sandstrom & Sons, Inc. v. State of Alaska,* 843 P.2d 645, 647 (Alaska 1992).

> **AS 23.30.110. Procedure on claims**. . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . . 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.

Kim v. Alyeska Seafoods, Inc., 197 P.3d 193 (Alaska 2008) said a formal affidavit requesting a hearing was not required because AS 23.30.110(c) was directory rather than mandatory. Therefore, *Kim* held "substantial compliance is acceptable absent significant prejudice to the other party." By contrast, in *Pruitt v. Providence Extended Care*, 207 P.3d 891 (Alaska 2013), a prehearing conference summary advised the employee that she had to file an affidavit requesting a hearing within AS 23.30.110(c)'s time limits. The summary was served on the employee in 2006, but she failed to file a hearing request within two years of the insurer's controversion. Her employer filed a petition to dismiss, which the Board granted. On appeal, the Court reviewed its prior decisions addressing §110(c) and affirmed case dismissal because the employee had failed to file anything within the allotted time and provided no legal basis to excuse her untimely request.

> **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 testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009). When doctors' opinions disagree, the Board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Dec. No. 087 (August 25, 2008).

> **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 of 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. . . .

> **AS 23.30.155. Payment of compensation**. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .
> . . . .
>
> (d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. . . .

> (e) If any installment of compensation payable without an award is not paid within seven days after becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. . . .
> . . . .
>
> (o) The director shall promptly notify the division of insurance if the board determines that the employee's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.
>
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate . . . in effect on the date the compensation is due. . . .

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Id*. Evidence the employer possessed "at the time of controversion" is the relevant evidence to review. *Id*. *Vue v. Walmart Associates, Inc*., 475 P.3d 270, 289-90 (Alaska 2020) held though it is proper for a reviewing body to consider evidence an employer had when it filed a controversion, "an insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence or face a possible penalty or referral to the Division of Insurance." *Vue* requires a review to see if a controversion remains appropriate as a matter of law.

> **AS 23.30.180. Permanent total disability**. (a) In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. . . .
>
> **AS 23.30.185. Compensation for temporary total disability**. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

Disability benefits may be denied if the Board finds that the injured worker chose not to work through voluntary conduct unconnected with her injury. *Vetter v. Alaska Workmen's Compensation Board*, 524 P.2d 264 (Alaska 1974).

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides**. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . . The compensation is payable in a single lump sum. . . .

Stonebridge Hospitality Associates, LLC v. Settje, AWCAC Dec. No. 153 (June 14, 2011), held when a PPI claim is ripe for adjudication, and not merely hypothetical, the claimant is required to obtain a rating and present it at hearing if she wants a PPI benefits award. It also applied 8 AAC 45.050(e) to hold that the employee's subsequent claim for medical benefits related back to her original claim form that requested no benefits, which the Commission determined was barred by AS 23.30.110(c), resulting in the second claim also being barred under the same statute.

> **AS 23.30.200. Temporary partial disability**. (a) In case of temporary partial disability resulting in decreased of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability. . . .

> **AS 23.30.395. Definitions**. In this chapter,
> . . . .
>
> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time. . . .

> **8 AAC 45.050. Pleadings**. . . .
>
> (e) Amendments. A pleading may be amended at any time before award upon such terms as the board or its designee directs. If the amendment arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading, the amendment relates back to the date of the original pleading. . . .

8 AAC 45.070. Hearings. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority, (1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the claim or petition; (2) dismiss the claim or petition without prejudice; or (3) adjourn, postpone, or continue the hearing. . . .

Alaska Rules of Civil Procedure. Rule 37. Failure to Make Disclosures or Cooperate in Discovery: Sanctions.
. . .

(b) Failure to Comply With Order. . . .

(2) Sanctions by Court in which Action is Pending. If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regarding to the failure as are just, and among others the following:
. . . .

(c) An order . . . dismissing the action or proceeding any part thereof . . .

ANALYSIS

1) Was the oral order to proceed with the hearing in Employee's absence correct?

On July 27, 2022, Employee stipulated to a September 21, 2022 hearing on specific issues raised in her claims and on Employer's March 22, 2022 petition to dismiss. The designee set the hearing on Employee's claims over Employer's objection. The Division served the prehearing conference summary setting forth the issues for hearing and the hearing date on Employee at her address of record. On August 2, 2022, the Division served a hearing notice for the September 21, 2022 hearing on Employee at her address of record, and by email. On August 12, 2022, Employee signed the "green card" postal receipt for the hearing notice. On September 1, 2022, Employee again stipulated to the September 21, 2022 hearing date and the designee added Employer's petition to bifurcate as another issue for that hearing. The Division served this prehearing conference summary notifying her of the September 21, 2022 hearing and the issues to be heard on Employee at her address of record as well.

Employee had actual notice of her September 21, 2022 hearing by first-class mail, certified mail and email, all in accordance with due process. AS 23.30.110(c). She failed to appear at the hearing at the appointed hour and the panel gave her 15 minutes beyond the designated start time. To date, Employee has had no further contact with the Division since September 21, 2022. The oral order to proceed with the hearing in Employee's absence was in accordance with AS 23.30.110(c) and 8 AAC 45.070(f) and was correct.

2)Should Employer's petition to bifurcate be denied?

Employer petitioned for an order bifurcating its petition to dismiss on discovery grounds from the other issues in this case. It contended since Employee's claims should be dismissed for her failure to respond to discovery, it made economic sense to reserve the other issues for hearing only in the event her claims were not dismissed for failure to provide discovery. While Employer's request makes sense, this case has languished for years. It makes more sense to hear and resolve the issues at one hearing, which Employee has demanded since April 15, 2022, in her claim. Therefore, Employer's petition to bifurcate will be denied. AS 23.30.001(1); AS 23.30.135(a).

3)Should Employee's claims be dismissed for failing to provide discovery, as ordered?

Employer seeks an order dismissing Employee's claims for her refusal to comply with orders requiring her to sign and return releases and provide discovery. AS 23.30.107(a); AS 23.30.108(c); *Bathony*; *Schwab*; *Cooper.* Employee did not appear at the hearing and her surprising absence remains inexplicable from the agency file.

A petition to dismiss requires balancing the strong preference for an injured worker's "day in court" against an employer's need to investigate and defend against claims. AS 23.30.108(c); *Sandstrom*. Dismissal should only be imposed in extreme circumstances and even then, only if an employee's failure to comply with discovery has been willful and lesser sanctions are insufficient to protect the employer's rights. *Richard*; *Hughes*; *DeNardo*; *McKenna*.

Employer has been trying to obtain discovery from Employee since April 24, 2020. There is no doubt Employee's failure to sign and return releases and otherwise provide discovery has hindered Employer's constitutional right to defend against her claims. *Rambo*; *Granus*; Alaska R. Civ. P. 37(b)(3). The Division expressly advised Employee of the possible consequences of her continued failure to provide releases and discovery in 15 prehearing conference summaries and in all relevant decisions and orders. *Richard*; *Bohlmann*. At the May 2022 hearing, Employee candidly admitted she had read none of them. Whether Employee reads material the Division sends her regarding her case is totally within her control; it is her duty to read prehearing conference summaries and decisions and orders to learn about her rights and responsibilities set forth therein and the consequences of failing to follow associated orders. *Richard*; *Rogers & Babler*.

On pages 18-19, the Commission in *Lynn V* stated Employee had ample opportunity to sign the ordered releases and "no further delays should be granted to her." In the same paragraph *Lynn V* suggested "if she does not properly sign the ordered releases," implying a future event, then "her claim should be dismissed." The Commission's comments suggested Employee be given another opportunity to provide discovery.

Lynn VI gave her an opportunity to comply with discovery orders. Notwithstanding her previous misconceived notions about her rights vis-à-vis Employer's rights, at hearing Employee credibly stated she would complete, sign and appropriately date all the ordered releases and would provide all discovery requested in Employer's January 4, 2021 letter. AS 23.30.122; *Smith*. She was given until 4:00 PM on May 24, 2022, to present the completed releases to Paddock's office and was given until 4:00 PM on May 26, 2022, to present to Paddock the requested discovery. Employee was told if she failed to comply with the oral orders directing her to sign and return releases and discovery as directed, all claims she filed as of May 24, 2022 will be dismissed. AS 23.30.108(b); *Richard*; *Bohlmann*. Employee provided the signed releases by May 24, 2022; she admitted on June 16, 2022 she did not return all discovery even after the deadline had long passed.

Lynn VI stated whether her past failure to sign and return releases and discovery was unreasonable and willful remained to be determined at a future hearing, as would the statute of limitations issue. *McKenzie*; *Brown*; *Vildosola*; *Mahon*. The record in totality shows Employee's past refusals to timely comply with orders to sign releases and provide discovery were willful. For example, the releases Employee said she signed "accidentally" that contained the wrong year were pre-printed with the wrong year. Instead of using the releases pre-printed with the correct year, Employee did the old releases pre-printed with the prior year and signed and returned those. It is unlikely Employee did not notice the releases she was completing were a year old because she did not have to add the year -- it was pre-printed. She has repeatedly expressed her disdain for Employer, which she described as "vile," a "scum bag" and "scummy." Giving Employer and its insurer grief was, in Employee's mind, her way to get back at them for their perceived offenses against her. She willfully and intentionally used the wrong releases. AS 23.30.122; *Smith*; *Hughes*.

Ultimately, however, although Employee did sign and return the releases after years of litigation, she has still not fully complied with Employer's discovery requests. Employee contended she did not have adequate funds with which to pay for bank statements and needed additional time to obtain some discovery. She stated she would be able to comply after "the first of the month," meaning by June 1, 2022. Though she provided some bank statements on June 10, 2022, at the June 16, 2022 and July 27, 2022 prehearing conferences, Employee admitted she had not provided all discovery ordered in *Lynn VI*. Prior *Lynn* decisions have given Employee ample opportunities to comply with numerous discovery orders. *Richard*; *Bohlmann*. To date, since the July 27, 2022 prehearing conference she has had nearly 90 days during which she could have obtained, filed and served missing discovery. Her agency file does not disclose she has done so; she has filed nothing. Employee's continued refusal to comply fully with discovery orders is willful and demonstrates her conscious intent to impede discovery. *Hughes*. She continues trying to punish Employer for what she perceives as its prior bad acts in respect to her. AS 23.30.122; *Smith*.

Employee's past benefits were suspended under AS 23.30.108(a). She has repeatedly ignored orders to comply with discovery. *Hughes*. Employer has unnecessary and unreasonable

expended funds trying to pry from Employee discovery to which it has a legal right. AS 23.30.001(1); *Rambo*. The Commission in *Lynn V* determined Employee had ample opportunity to comply with discovery orders and fulfill her obligations under the Act. Most recently, Employee did not appear for her September 21, 2022 hearing. Given this record, there is no indication that giving her more time to comply or imposing lesser sanctions will make Employee's behavior change. Meanwhile, Employer retains an open case and an attorney. This record demonstrates that at this point no sanction lesser than dismissal would sufficiently protect Employer's rights. For all these reasons, Employer's March 22, 2022 petition to dismiss will be granted and all of Employee's claims will be dismissed. *Hughes*; *DeNardo*. Employee's serial amended claims all relate back to her initial claim, and dismissing these claims also results in her previously suspended benefits being forfeited for the reasons stated above. 8 AAC 45.050(e); AS 23.30.108(b), (c).

4) Should Employee's claims be dismissed for her failure to request a hearing, or more time to request one, timely?

Employee filed claims dated May 23, 2018, February 28, 2019, July 9, 2019, April 3, 2020, December 9, 2020, December 21, 2020, May 4, 2021 and April 15, 2022. For the most part, her claims were redundant and, following the first claim, sought benefits previously claimed but occasionally added a new benefit like PTD in her April 3, 2020 claim, for example. Employer controverted her claims on their merits on June 5, 2018, March 18, 2019, July 22, 2019, April 16, 2020, December 31, 2020 and May 14, 2021, respectively. It also controverted all benefits on April 1, 2019, based on Dr. Fellars' EME report, and on July 10, 2020 and December 23, 2020, based on Employee's failure to provide releases. Employee's agency file does not show Employer ever filed a separate controversion on Employee's April 15, 2022 claim on its merits. According to AS 23.30.110(c) and *Kim*, Employee had to either request a hearing or ask for more time to request one, timely. The following table illustrates when claims and controversions were filed, when a hearing request or a request for more time were due, adding three days for Employer's service by mail on Employee, and when any hearing requests were filed. There is no evidence Employee ever asked for more time to request a hearing so there is no column for that information:

Claim Filed on Claim Dated	Controversion Filed	Hearing Request Due	Hearing Request Filed on Claim Dated
5/23/18 on 5/23/18	6/5/18	6/8/20	
2/28/19 on 2/28/19	3/18/19	3/21/21	
7/9/19 on 7/9/19	7/22/19	7/25/21	
4/6/20 on 4/3/20	4/16/20	4/19/22	
12/9/20 on 12/9/20	12/23/20	12/26/22	
12/21/20 on 12/21/20	12/31/20	1/3/23	
5/4/21 on 5/4/21	5/14/21	5/17/23	
			12/20/21 on 12/17/21
			12/27/21 on 12/23/21
4/15/22 on 4/15/22			4/15/22 on all

It is evident from the above table that Employee never timely requested a hearing on her first four claims dated May 23, 2018, February 28, 2019, July 9, 2019 and April 3, 2020. Though Employee petitioned for an SIME, she never requested a hearing on her petition and no SIME process was ever agreed to or started. Therefore, there is no basis for extending the statutory deadline to consider an SIME process. There is no evidence in Employee's agency file that she ever informally requested a hearing timely on these first four claims or asked for more time to request one. There is no evidence of a legal impediment to her filing something to move her claims forward. *Kim*. Employee simply failed to file anything timely to pursue these first four claims. *Pruitt*. She had plenty of help from the Division about timely asking for a hearing -- 15 prehearing conference summaries, which she testified she never read. *Richard*; *Bohlmann*. Employee had plenty of notice from Employer -- at least seven controversions that all warned her to file a hearing request within two years. Consequently, given this record, Employee's May 23, 2018 claim for TPD benefits, unfair or frivolous controversion, attorney fees and costs, and penalty; her February 28, 2019 claim for TTD and PPI benefits, penalty and interest; her July 9, 2019 claim for TTD, PPI, and medical benefits, a compensation rate adjustment, penalty and interest; and her April 3, 2020 claim for PTD, PPI and medical benefits, unfair or frivolous controversion, penalty and interest will all be denied under AS 23.30.110(c). *Kim*; *Pruitt*.

Employee's claims do not provide a specific date for which she claims TPD, TTD or PTD benefits or a date she obtained a PPI rating that could entitle her to PPI benefits. Her later claims could have been for later periods of disability. Since she did not appear at hearing it was not possible to ask Employee questions to clarify this point. Her remaining four claims include

December 9, 2020, for PPI benefits, unfair or frivolous controversion and a penalty; December 21, 2020 for PTD and medical benefits, unfair or frivolous controversion, penalty and interest; May 4, 2021 for PPI benefits, a compensation rate adjustment, unfair or frivolous controversion, penalty and triple damages; and April 15, 2022 for PPI, unfair or frivolous controversion, penalty, interest and stated, "I'm asking for a hearing date. . . ." This statement on her April 15, 2022 claim could be construed as at least filing something to move her claims filed within two years of that date, forward. But Employee's remaining four claims amended her previous four claims, and each arose out of the conduct or occurrence set out in her original May 23, 2018 claim. Consequently, these amendments "relate back" to her May 23, 2018 claim. 8 AAC 45.050(e).

This decision has already dismissed Employee's claims for TPD, TTD, PPI, PTD and medical benefits, penalty, interest, a compensation rate adjustment, and an unfair or frivolous controversion finding under AS 23.30.110(c) from her May 23, 2018, February 28, 2019, July 9, 2019 and April 3, 2020 claims because she failed to comply with discovery orders. She reiterated her same claims for the same benefits and for the unfair or frivolous controversion finding in her December 9, 2020, December 21, 2020, May 4, 2021 and April 15, 2022 claims. In other words, on their face, they are the same claims made on different dates. Employee's December 21, 2020 claim for medical costs is for the same provider for which she requested medical costs in her July 9, 2019 claim, only they were higher by the time she filed her amended claim on December 21, 2020. Because her last four claims relate back to her original claims that have been dismissed under AS 23.30.108(c), these claims must similarly be denied under AS 23.30.110(c) according to Commission precedent. *Settje*. Therefore, Employer's request to deny all of Employee's claims under AS 23.30.110(c) will be granted. Alternately, Employee's claims will also be addressed on their merits.

5) Is Employee entitled to TTD benefits?

Employee contends she is entitled to unspecified TTD benefits, while Employer contends she is not. AS 23.30.185. This creates a factual dispute to which the presumption of compensability analysis applies. AS 23.30.120(a); *Meek*. Without considering credibility, Employee raises the presumption with her testimony that she was not able to work because of her work injury. *Tolbert*. Without regard to credibility, Employer rebuts the raised presumption with Dr. Fellars'

opinions stating Employee's disability if any did not arise out of or in the course of her employment with Employer. He attributed her disability if any and need for treatment to preexisting degenerative conditions in her spine as evidenced on radiographic and MRI studies. *Huit*. The presumption therefore drops out and Employee must prove all elements of her TTD benefit claim by a preponderance of the evidence. *Saxton*.

Most of Employee's physicians never gave a causation opinion and those that did simply recited Employee's statements that she was injured on May 7, 2018 at work. Those reports are given less weight because they do not specifically give a causation opinion based on the appropriate "the substantial factor" test, and because they relied heavily on Employee's reporting, which is not credible as discussed in detail below. AS 23.30.122; *Smith*; *Moore*. Dr. Mina originally supported her position to some degree but, after reviewing Dr. Fellars' EME report, Dr. Mina stated he agreed with it, including his finding that she was medically stable effective March 9, 2019, and thus thereafter not entitled to TTD benefits. AS 23.30.395(28). Employee failed to demonstrate that her work with Employer caused her to be temporarily totally disabled. Therefore, her claim for unspecified TTD benefits will be denied. *Saxton*.

6) Is Employee entitled to PTD benefits?

Employee contends she is entitled to PTD benefits under AS 23.30.180; Employer contends she is not. The presumption of compensability analysis applies to this factual dispute. *Meek*. However, there is no evidence in Employee's file that she is not capable of consistent, readily available employment suitable for her age, education, training, experience and physical limitations. Even Employee's deposition testimony shows she has been working at various employments since her work injury. She told her physician that she thought she could work. To cause the presumption to attach to a PTD claim, an employee must provide some evidence that her work rendered her permanently and totally unable to work. *Tolbert*. At minimum, she needed to at least present medical evidence stating she cannot work and affixing causation to her inability to work on Employer. There is no evidence adequate to demonstrate Employee is incapable of working or that her employment with Employer is the substantial cause of any inability to work. She cannot raise the presumption. Therefore, Employee must prove her PTD claim by a preponderance of the evidence. *Saxton*. There is no evidence supporting her PTD

claim. There is evidence she has been working and is capable of work, including several releases to return to full-time work and Dr. Mina's opinion that she can perform duties required in several jobs she held in the 10-years before her alleged work injury. Therefore, Employee's claim for PTD benefits will be denied.

7) Is Employee entitled to PPI benefits?

Employee contends she is entitled to unspecified PPI benefits; Employer contends she is not. This raises a factual dispute to which the presumption analysis must be applied. *Meek*. A PPI rating while common is based on medical determinations regarding both causation and PPI rating calculations from the AMA *Guides*. AS 23.30.190(a). In other words, it requires a medical opinion stating the work injury with Employer was the substantial cause of PPI rating, and a rating done by a physician in accordance with the proper guidelines. Employee cannot raise the presumption on her PPI benefit claim because she presented no PPI rating greater than zero percent. Dr. Mina once predicted she would have a PPI rating greater than zero, but he later agreed with Dr. Fellars that she had no work-related PPI rating. Employee requested PPI benefits six times in her various claims, so there is no doubt she knew this was a ripe issue and more than just a hypothetical request. Therefore, Employee bore the burden of producing a PPI rating, but did not. Consequently, her claim for PPI benefits will be denied. *Settje*.

8) Did Employer make an unfair or frivolous controversion?

Employee in six of her eight claims requested a finding that Employer made an unfair or frivolous controversion. Her pleadings to some extent implied the basis for her request -- she was unhappy with how Employer and the adjuster treated her from her perspective -- but never specifically stated what she believes Employer, or its adjuster stated in their controversions that was unfair or frivolous. Dissatisfaction with employment circumstances, or bad feelings towards a supervisor are not part of the test for an unfair or frivolous controversion. Since she did not appear at hearing, Employee did not clarify her position on this issue.

Employer had to either pay or controvert claimed benefits. AS 23.30.155(a), (d). For a controversion notice to be filed in good faith, Employer must possess sufficient evidence in

support of its controversions that, "if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Harp*. Evidence Employer possessed "at the time of controversion" is the relevant evidence to review. *Id*.

Employer's controversion filed on June 5, 2018, denied TPD and TTD benefits because it contended Employee did not see a physician until May 14, 2018, which is true, and thus there was no work restriction prior to that date for which it could legally owe disability benefits. It further contended her physician released Employee to light-duty work effective May 14, 2018, which is also true, and it had light-duty work available within her physical restrictions at her regular hours and pay rate. This contention is supported by the medical record releasing her to light-duty work and Employer's letter stating it would accommodate her. Employer contended Employee applied for unemployment benefits, stating she had voluntarily resigned. It considered this action Employee's refusal to accept accommodated work and, on that basis, denied her right to TPD or TTD benefits. Based solely on this evidence, if Employee failed to produce evidence in opposition to it, she would not have been entitled to benefits. She could not receive disability benefits without a doctor's restriction from work. Employee could not receive disability benefits as a matter of law if she declined to return to work within her limitations or left work for other reasons. *Vetter*. Therefore, the controversion filed on June 5, 2018 was not in bad faith, unfair or frivolous. *Harp*.

Employer's March 18, 2019 controversion denied TTD and PPI benefits, penalties and interest. It contended she failed to attend a properly noticed EME, which if true would result in her benefits being suspended or forfeited under AS 23.30.095(e). Employer also contended any claimed injury to Employee's hands were time-barred for failure to give notice under AS 23.30.100. If this were true, it would be a legal bar for her to recover benefits for hand injuries. Employer also contended Employee's work was not the substantial cause of her disability or need for medical treatment because x-ray reports showed severe degeneration at several spinal levels. The medical records support this contention and if Employee did not present evidence to rebut it, it too would be a valid defense. Employer reiterated its contention that it offered Employee full-timeline-duty work, but she voluntarily resigned and applied for unemployment

benefits, which has already discussed, would be a valid defense. *Vetter*. Lastly, Employer contended it owed no penalty or interest because any benefits owed were paid timely or controverted. Again, these are all valid defenses requiring evidence in opposition, and there is no basis for an unfair or frivolous controversion finding. *Harp*.

Employer's March 27, 2019 controversion filed on April 1, 2019, was based on Dr. Fellars' EME report. In it, Dr. Fellars opined Employee's work was not the substantial cause of the need for treatment or any disability. He offered an alternate explanation, which was Employee's preexisting and severe degenerative spinal condition. *Huit*. Dr. Fellars' also said in his report that Employee was medically stable, could return to work and had no work-related PPI effective March 27, 2019. An EME report so stating requires evidence in opposition and is a valid basis to controvert benefits. There is no basis for an unfair or frivolous controversion finding. *Harp*.

Employer's July 22, 2019, April 16, 2020, December 31, 2020 and May 14, 2021 controversions relied on Dr. Fellars' EME report and Employee's attending physician Dr. Mina's expressed agreement with it as grounds to controvert. Its July 10, 2020, and December 23, 2020 controversions denied all benefits based on Employee's conceded failure to sign and return releases or to file for protective orders. These are all valid bases on which Employer could controvert Employee's claims and, if she did not introduce evidence in opposition to the controversions, a panel would find her not entitled to benefits. *Harp*. Employee presented no evidence suggesting Employer should have reassessed its controversions. *Vue*. Based on this analysis, Employee's requests for an order finding Employer or its adjuster made unfair or frivolous controversions will be denied and there will be no referral made under AS 23.30.155(o).

9) Is Employee entitled to a penalty?

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *Harp*. Though it is unclear, Employee's penalty request may be based on AS 23.30.155(e). This decision found no basis supporting Employee's unspecified request for a penalty and many grounds to deny it. First, this decision denied all her claims based on her repeated failure to comply fully with discovery orders timely. It also denied her claims based on her failure to

request a hearing timely on her first four claims, and it denied her subsequent claims because they relate back to those claims. Lastly, this decision denied all her claims raised as issues for this hearing on their merits. Therefore, no benefits were owed and there is nothing upon which to assess a penalty even if one was otherwise warranted. *Harp*; *Vue*. Employee's numerous requests for penalty will be denied.

10) Is Employee entitled to interest?

Interest is only owed on benefits that are unpaid when due. AS 23.30.155(p). This decision has not identified any benefits owed to Employee that were unpaid when due. Therefore, her request for interest on unspecified benefits will be denied.

The above analyses considered numerous inconsistencies in Employee's reporting to her physicians and in her other statements. However, to be clear, when applying the presumption analysis where applicable, credibility was not considered in the first two steps. *Tolbert*; *Huit*. Examples of Employee's credibility problems include her telling Dr. Mina that "all of her problems began" on May 7, 2018, which was patently not true. Her medical records document severe degenerative conditions and chronic pain in her neck and back since 2003, which predated her employment with Employer. On February 22, 2018, Employee told PAC-Moore she slipped getting out of her car at home and fell injuring her right wrist and upper extremity. She was diagnosed with rheumatoid arthritis in early 2018, and wore a sling for her right arm for two weeks in March 2018. Employee told Dr. Olson on March 8, 2018 that she had chronic right-sided neck and shoulder pain and low-back pain since 2012, when her brother picked her up overhead and threw her onto the ground, shattering her right rotator cuff and shoulder. She was attending PT for her right upper extremity in March 2018, well before her alleged work injury.

On May 14, 2018, Employee told Employer she injured her lower back on May 7, 2018, when she stretched in the parking lot and felt a pop. On that same date, she told Dr. Barnes she injured her back on May 7, 2018, lifting heavy furniture. Employee later added her right wrist and upper extremity as part of her claim even though PA-C Moore repeatedly stated the right wrist pain was not related to her work. On June 23, 2018, she told an urgent care clinic she was stocking and lifting heavy furniture boxes and furniture on May 7, 2018, then was stretching in the

parking lot and felt a painful popping in her neck, which is inconsistent with her other reports. She told this provider that Employer filed no workers' compensation paperwork, which was not true, as Employer filed an injury report on May 14, 2018. Employee told this urgent care provider she had no prior history of injury or similar problem, which as illustrated from the above factual findings, is also false.

On June 28, 2018, Employee told her physical therapist she had no previous back injuries, neglecting to tell them about her brother lifting her overhead and throwing her to the ground in 2012 and her chronic low-back pain prior to that. On July 16, 2018, Employee returned to the urgent care clinic and stated her right wrist began hurting while gripping things at work, and did not mention slipping and falling while getting out of her car at home and injuring her right wrist and upper extremity in February 2018. She convinced Dr. Mina in August 2018 that her low back and left leg pain began May 7, 2018, rather than far earlier as she reported to her other physicians. On September 17, 2018, Employee told Dr. Taylor she hurt her back lifting heavy furniture at work in December 2017. But she also testified in her deposition that she never had a work injury that she did not report. On March 9, 2019, Employee told Dr. Fellars she did not have a "specific date of injury," or at least could not remember when the injury occurred. He noted numerous inconsistencies during her physical examination, including non-physiological reactions to tests that could not cause pain. In her deposition, Employee said she returned to work from lunch and as she walked across the parking lot something in her back "snapped, bent, broke." These are all inconsistent reports.

In her July 9, 2019 claim, Employee alleged that Employer had paid no medical bills. She subsequently filed an itemized statement showing the adjuster paid numerous bills to her chiropractor. In her deposition, Employee stated on May 7, 2018, all she did was get out of her car and the pain began. Employee used her Dellwood Drive address repeatedly and then contended she never received mail there, which was also not true.

On January 16, 2021, Employee took an ambulance ride to the emergency room and stated she was driving a vehicle at 30 mph when she slid into a ditch and "slowly hit a tree." She complained of headaches, and acute and chronic neck and shoulder pain. Nevertheless, less than

six months later, on June 9, 2021, Employee saw Dr. Mina for the first time in two years and denied "any injuries since her last visit." This too was false. In short, these examples illustrate that Employee in general is not credible. Consequently, her physician reporting and her deposition testimony will be given little weight. AS 23.30.122; *Smith*.

CONCLUSIONS OF LAW

1) The oral order to proceed with the hearing in Employee's absence was correct.
2) Employer's petition to bifurcate will be denied.
3) Employee's claims will be dismissed for failing to provide discovery, as ordered.
4) Employee's claims will be dismissed for her failure to request a hearing, or more time to request one, timely.
5) Employee is not entitled to TTD benefits.
6) Employee is not entitled to PTD benefits.
7) Employee is not entitled to PPI benefits.
8) Employer did not make an unfair or frivolous controversion.
9) Employee is not entitled to a penalty.
10) Employee is not entitled to interest.

ORDER

1) Employer's petition to bifurcate is denied.
2) Employer's March 22, 2022 petition to dismiss is granted.
3) Employee's May 23, 2018, February 28, 2019, July 9, 2019, April 3, 2020, September 9, 2020, December 21, 2020, May 4, 2021 and April 15, 2022 claims are dismissed under AS 23.30.108(c).
4) Employee's May 23, 2018, February 28, 2019, July 9, 2019, April 3, 2020, September 9, 2020, December 21, 2020, May 4, 2021 and April 15, 2022 claims are denied under AS 23.30.110(c).
5) Employee's claims for TTD benefits are denied.
6) Employee's claims for PTD benefits are denied.
7) Employee's claims for PPI benefits are denied.

8) Employee's requests for a finding that Employer or its adjuster made an unfair or frivolous controversion are denied.

9) Employee's claims for a penalty are denied.

10) Employee's claims for interest are denied.

Dated in Anchorage, Alaska on October 21, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Michael Dennis, Member

/s/
Bronson Frye, 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 boards 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 Amanda Lynn, employee / claimant v. Fred Meyer Stores, Inc., employer; The Kroger Co., insurer / 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 October 21, 2022.

/s/
Rachel Story, Office Assistant