# ALASKA WORKERS' COMPENSATION BOARD

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

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| JAMES MARKEL,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>PETER PAN SEAFOOD COMPANY, LLC,<br><br>Employer,<br>and<br><br>TOKIO MARINE AMERICA INSURANCE COMPANY,<br><br>Insurer,<br>Defendants. | INTERLOCUTORY DECISION AND ORDER<br><br>AWCB Case No. 202215725<br><br>AWCB Decision No. 24-0005<br><br>Filed with AWCB Anchorage, Alaska on February 2, 2024 |

Peter Pan Seafood Company, LLC's, and Tokio Marine America Insurance Company's (Employer) August 29, 2023 petition to dismiss was heard on the written record in Anchorage, Alaska on January 24, 2024, a date selected on December 19, 2023. A November 8, 2023 hearing request gave rise to this hearing. James Markel (Employee) represented himself but did not file a hearing brief. Attorney Jeffrey Holloway represented Employer. The record closed at the hearing's conclusion on January 24, 2024.

## ISSUE

Employer contends Employee volitionally and repeatedly refused to cooperate with a discovery order resulting in considerable prejudice to Employer and delay in case progression. It contends

Employee failed to respond to its request for production and special interrogatories and to participate in prehearing conferences. Employer contends Employee's deliberate delay resulted in unnecessary costs and hindered its investigation of his claim. It contends dismissal is the only remedy available, as a suspension or forfeiture would have no impact. Employer requests dismissal of Employee's claim.

Employee did not file a hearing brief. It is presumed he opposes Employer's dismissal request.

**Should Employee's claim be dismissed for failing to comply with a discovery order?**

## FINDINGS OF FACT

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

1) On October 19, 2023, Employer reported Employee was injured on October 1, 2022, when a metal tray hit his neck causing a contusion while working in a box line department. (First Report of Occupational Injury or Illness, October 19, 2023).

2) On January 9, 2023, Employee sought temporary partial disability (TPD) and permanent partial impartment (PPI) benefits, medical and transportation costs, penalty for late paid compensation and interest for injuries he sustained to his neck and back when a metal tray weighing eight pounds hit his neck which also caused right arm numbness and bad migraines. (Claim for Workers' Compensation Benefits, January 9, 2023).

3) On February 6, 2023, Employer denied temporary total disability (TTD) benefits from January 17, 2024 forward, and TPD and PPI benefits, contending Employee's physician released him to full-time work on January 17, 2023, and he failed to produce any medical evidence demonstration the work injury caused a PPI rating. It also denied transportation costs as Employee failed to provide a log under 8 AAC 45.084, and denied penalty and interest because all benefits were paid or timely controverted. (Controversion Notice; Answer, February 6, 2023).

4) On February 7, 2023, Employer filed medical records. (Medical Summary, February 7, 2023).

5) On February 9, 2023, Employer served Employee with a letter and discovery releases by certified mail, return receipt requested. (Letter and releases, February 9, 2023).

6) On February 10, 2023, Employer served Employee with requests for production of documents, and special interrogatories, by first-class mail. One of the requests for production included a request for Employee to provide a colored photocopy of his "driver's license, passport, state ID or military ID." (Special Interrogatories, Set One and Request for Production of Documents, Set One, February 10, 2023)

7) On February 15, 2023, Employee sought permanent total disability (PTD) and PPI benefits, medical and transportation costs, penalty for late paid compensation and interest. He wrote, "I'm not same body C3-C4 disc still pain. cant lift 10-15 pounds. walk not normal. my physical is limited." (Workers' Compensation Claim, February 15, 2023).

8) On March 29, 2023, Employer filed medical records. (Medical Summary, March 29, 2023).

9) On April 3, 2023, Employer petitioned for an order compelling Employee's response to special interrogatories and requests for production of documents from February 10, 2023, and to sign and return releases served on February 9, 2023. (Petition, April 3, 2023).

10) On April 3, 2023, Employer controverted all benefits based upon Employee's failure to provide written authority to release medical and rehabilitation information related to the work injury and failure to request a protective order within 14 days. (Controversion Notice, April 3, 2023).

11) On June 6, 2023, Employee stated he never received the releases or interrogatories attached to Employer's April 3, 2023 petition to compel. Employer agreed to email Employee another copy and agreed to call Employee the next day to "go over them and explain why/what is needed from Employee to begin the discovery process." The Board designee reviewed the releases and found, "All the Releases reviewed appeared standard, relevant, and likely to lead to discoverable information. Also, the Releases were appropriately limited by body part (Head, Cervical Spine, Thoracic Spine, Low Back, and Right Arm) and date (10/10/2020 – forward)." He ordered Employee to sign, date and return unaltered releases to Employer "as soon as possible." The designee reviewed the interrogatories and requests for production and "found all to be standard, relevant, and likely to lead to discoverable information." He ordered Employee to answer the interrogatories and requests for production to the best of his ability and to state he does not have the answer or document requested if he does not have them, but the designee did not provide a deadline. Employee was informed of his right to request reconsideration and to appeal the discovery orders and told that sanctions may be imposed, including forfeiture of benefits and

dismissal of his claims if he refused to comply with the discovery orders. (Prehearing Conference Summary, June 7, 2023).

12) On June 8, 2023, the Division served Employee with the June 7, 2023 prehearing conference notice. (Prehearing Conference Summary Served, June 8, 2023).

13) On July 12, 2023, Employee attended an employer's medical evaluation (EME) by Scott Kitchel, MD; a sign language interpreter was used. A color photocopy of Employee's California Identification Card was included with the EME report. (Kitchel EME report, July 12, 2023).

14) On July 20, 2023, Employer denied TTD benefits from January 17, 2024, forward, TPD and reemployment benefits based upon Dr. Kitchel's EME report. It also denied transportation costs, as Employee failed to provide a transportation log, and penalty and interest, as all benefits had been paid or timely controverted. (Controversion Notice, July 20, 2023).

15) On August 29, 2023, Employer petitioned for an order dismissing Employee's claim for failing to comply with the June 7, 2023 prehearing conference order to return discovery to Employer, despite warnings of the consequences of noncooperation. (Petition, August 29, 2023).

16) On November 1, 2023, Employer noted Employee failed to provide signed releases and responses to the interrogatories and requests for production and it would likely file an affidavit or readiness for hearing (ARH) on its August 29, 2023 petition to dismiss. Employee declined to discuss his case, stating he was sick, and disconnected the call. (Prehearing Conference Summary, November 1, 2023).

17) On November 11, 2023, Employer filed an ARH seeking a hearing on the written record on its August 29, 2023 petition to dismiss. (ARH, November 11, 2023).

18) On December 19, 2023, Employee declined to discuss his case, stating he did not feel well, and disconnected the call. Employer requested a written record hearing be scheduled. The Board designee scheduled a written record hearing for January 24, 2024. The designee provided no explanation as to what a hearing brief is, nor did he explain or provide specific deadlines for filing evidence or a hearing brief; the summary stated, "The parties stipulated to serve and file legal memoranda and evidence in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120." (Prehearing Conference Summary, December 19, 2023).

19) Employee did not stipulate to anything at the December 19, 2023 conference because he disconnected from it. (Observations and inferences from the above).

20) On December 19, 2023, the Division served the parties with a hearing notice for an oral hearing on January 24, 2024. (Hearing Notice Served, December 19, 2023).

21) On January 17, 2024, Employer withdrew its April 3, 2023 controversion notice because Employee had provided signed releases on June 12, 2023. It contended Employee's benefits "remain denied" from February 24, 2023 through June 11, 2023, due to his failure to return signed releases. (Notice of Withdrawal of Controversion, January 17, 2024).

22) On January 24, 2024, Employee spoke with Division staff:

> EE called in expecting to be transferred for his hearing. I let EE know that his hearing was scheduled as a written record as the ER requested on the ARH that was filed on 11/8/23, if didn't want a written record then EE had 10 days to file an opposition on the ARH, and at the PHC on 12/19/23 he could objected to the ARH. And since he didn't do either the written record was scheduled. EE said that is not what he received in the mail the letter states that he has a hearing on 1/24/24 and to call in. I tried to explain to EE that the hearing notice was issued incorrectly, as a oral hearing instead of a written record. I tried to explain to EE about what written record means and how it works, but EE didn't understand and EE states he is trying to corporate with the hearing process. I asked EE to hold and see if I can get ahold of the other party and see what they think about this. I called ER ATT office spoke with Jeffrey Holloway and asked ER ATT if they would be willing to postpone the written record since hearing notice stated it was an oral hearing, ER ATT stated he prefers to continue with the hearing as it was a board mistake and feels they shouldn't be penalized for a board mistake. I let EE know that unfortunately the ER prefers that the written record proceeds today. I let EE know that if he doesn't agree with the decision that will come from the written record from today, then he would need to file a petition for reconsideration within 10 days of the decision. EE can call and talk with a tech and we can walk thru the process with him of what the next steps are for him to take in his case and what his rights and responsibilities are, EE states that he is deaf and English is not his first language and he doesn't understand what all the paperwork is and he prefers to have an interpreter on the line with him then reading emails as he doesn't understand the words. (ICERS, Phone Call Entry, January 24, 2024).

23) Employee did not file a brief or similar document to support his position, which is unknown, but presumed to be in opposition to having his claims dismissed. (Agency file; experience).

## 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. . . .
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
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> . . . .
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> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The Board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **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.
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> (b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
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> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a

> discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

Employers have a constitutional right to defend against claims. *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999). A thorough investigation allows employers to verify information provided by the opposing party, effectively litigate disputed issues and detect fraud. *Id*. Information inadmissible at a civil trial may be discoverable in a workers' compensation case if it is reasonably calculated to lead to relevant facts. *Id*. The law has also long favored giving a party his "day in court." *Sandstrom & Sons, Inc. v. State of Alaska,* 843 P.2d 645 at 647 (Alaska 1992). Unless otherwise provided for by statute, workers' compensation cases will be decided on their merits. AS 23.30.001(2). Dismissal should only be imposed in "extreme circumstances," and even then, only if a party's failure to comply with discovery has been willful and when lesser sanctions are insufficient to protect the adverse party's rights. *Sandstrom* at 647. The extreme sanction of dismissal requires a reasonable exploration of alternative sanctions. *Id.* at 648-49.

However, AS 23.30.108(c) provides a statutory basis for dismissal as a sanction for noncompliance with discovery, and the Board has long exercised its authority to dismiss claims when it found the employee's noncompliance to have been willful. *O'Quinn v. Alaska Mechanical, Inc.,* AWCB Dec. No. 06-0121 (May 15, 2006); *Erpelding v. R & M Consultants, Inc.,* AWCB Dec. No. 05-0252 (October 3, 2005), reversed by 3AN-05-12979CI (Alaska Superior Ct., April 26, 2007) (for failing to explore sanctions lesser than dismissal); *Sullivan v. Casa Valdez Restaurant,* AWCB Dec. No. 98-0296 (November 30, 1998); *Maine v. Hoffman/Vranckaert, J.V.,* AWCB Dec. No. 97-0241 (November 28, 1997); *McCarroll v. Catholic Community Services,* AWCB Dec. No. 97-0001 (January 6, 1997). "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). Once noncompliance has been demonstrated, the noncomplying party bears the burden of proving the failure to comply was not willful. *Id*. at 753.

"Willfulness" has been established when a party has been warned of the potential dismissal of his claim and has violated multiple discovery orders. *Erpelding*. It has also been established when a party has been warned of the potential dismissal of her claim and has refused to participate in proceedings and discovery multiple times. *Sullivan*. Offering unsatisfactory excuses to "substantial and continuing violations" of a discovery order demonstrates willfulness. *Hughes* at
753. Dismissal was appropriate when a party violated two orders to compel, and lesser sanctions had been tried. *DeNardo v. ABC Inc. RV Motorhomes*, 51 P.3d 919, 921-22 (Alaska 2002). However, dismissal was improper when a party had not violated a prior discovery order and no previous sanctions had been imposed. *Hughes* at 754. A party who made no effort to comply with discovery orders is not entitled to special allowances based on *pro se* status. *DeNardo* at 924.

*McKenzie v. Assets, Inc*., AWCAC Dec. No. 109 (May 14, 2009), said the Board must consider "relevant factors that the courts use" in similar circumstances, including the nature of the employee's discovery violation, prejudice to the employer, and whether a lesser sanction would protect the employer and deter other discovery violations. *McKenzie* defined "willfulness" in disobeying discovery orders as the "conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Id*. *McKenzie* further found the Board had rendered adequate factual findings and did a "reasonable exploration of possible and meaningful alternatives to dismissal." *Id*. By contrast, a "conclusory rejection" of other sanctions less than dismissal "does not suffice as a reasonable exploration of meaningful alternatives." *Id*.

> **AS 23.30.135. Procedure before the board**. (a) In making an investigation or inquiry or conducting a hearing, the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. . . .

In *Brown v. Carr-Gottstein*, AWCB Dec. No. 88-0117 (May 6, 1988), a party objected to formal "requests for production." *Brown* took "a dim view of efforts to graft the Rules of Civil Procedure onto our proceedings." *Brown* further noted:

> AS 23.30.115 does not mention requests for production. They are, therefore, another 'means of discovery' available at our discretion on the petition of a party. 8 AAC 45.054(b). In the past we have refused to order discovery by formal means in 'the absence of evidence that informal means of obtaining relevant evidence have been tried and failed. . . .

*Brown* refused to order a party to respond to formal "requests for production" unless and until the requesting party first attempted informal requests for the information and failed.

> **8 AAC 45.054. Discovery**. (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .
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> (b) Upon the petition of a party, the board will, in its discretion, order other means of discovery. . . .

> **8 AAC 45.065. Prehearings.** (a) . . . At the prehearing, the board or designee will exercise discretion in making determinations on
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> (10) discovery requests; . . . .

*Richard v. Fireman's Fund Insurance Co*., 384 P.2d 445, 449 (Alaska, 1963) held the Board owes a duty to fully advise a claimant of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right. *Bohlmann v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska, 2009), held the Board had a duty to inform a self-represented claimant how to preserve his claim under AS 23.30.110(c), and to correct the employer's lawyer's incorrect prehearing conference statement that AS 23.30.110(c) had already run on his claim. *Bohlmann* said *Richards* may be applied to excuse noncompliance with AS 23.30.110(c) when the Board failed to adequately inform a claimant of the two-year time limitation.

> **Alaska Rule of Civil Procedure 33. Interrogatories to Parties.**
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> (b) **Answers and Objections.**
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> (3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or,

> in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

> **Alaska Rule of Civil Procedure 34. Production of Documents, Electronically Stored Information, and Things, and Entry Upon Land for Inspection and Other Purposes.**
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> . . . .
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> (b) **Procedure.** . . . The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29.

## ANALYSIS

**Should Employee's claim be dismissed for failing to comply with a discovery order?**

Employer seeks an order dismissing Employee's claim due to his failure to provide responses to interrogatories and to provide documents. AS 23.30.108(c). Employee filed a claim against Employer. Employer has the constitutional right to defend against his claim, including a thorough investigation. *Granus*. On February 9, 2023, Employer mailed Employee by certified mail, return request requested a letter with releases and on February 10, 2023, Employer mailed to Employee by first-class mail the requests for production and special interrogatories. At a prehearing conference on June 7, 2023, Employee stated he did not receive the letter with the releases or the special interrogatories and request for production. The designee ordered Employee to sign and return the releases "as soon as possible" and to answer the interrogatories and request for production "to the best of his ability and to state he does not have the answer or document requested if he does not have them." 8 AAC 45.065(a)(10). On June 12, 2023, Employee provided Employer with signed releases. Employee complied with the discovery order regarding the releases; he has not to date responded to the special interrogatories and requests for production.

Dismissal should only be imposed if a party's failure to comply with discovery has been willful. *Sandstrom*. "Willfulness" is the "conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Hughes*. Employer must first demonstrate Employee's noncompliance with a discovery order before Employee must prove his failure to comply was

not willful. *Id*. Employee signed and returned the releases on June 12, 2023, less than 10 days after the June 7, 2023 discovery order. He complied with the designee's discovery order concerning the releases. AS 23.30.115(a) provides that testimony of a witness may be taken by interrogatories according to the Civil Procedure Rules. While AS 23.30.115(a) does not authorize formal requests for production, Civil Procedure Rule 33(b)(3) and 34(b) provide a party 30 days to answer interrogatories and requests for production unless a longer or shorter time is provided by "the court," in this case the designee. Employee has yet to respond to the special interrogatories and requests for production. However, the designee failed to direct Employee to provide responses to the special interrogatories and request for production by a specific date and did not inform him of the 30-days provided in the Civil Procedure Rules. *Richard*; *Bohlmann*. Employer has not demonstrated Employee's failure to respond was noncompliant as the designee failed to direct Employee to do so by a specific date.

Employer contends it was prejudiced because it incurred unnecessary costs and Employee hindered its investigation of his claim. However, Employer received the signed releases on June 12, 2023, it was able to obtain medical evidence, and Employee attended an EME in July 2023 and provided his current valid identification card, one of the documents sought in Employer's requests for production, and a colored copy was provided in the EME report. Employee tried to comply with discovery. *DeNardo*. On January 17, 2024, Employer withdrew its controversion based upon Employee's failure to return signed releases, over six months after Employee signed and returned the releases as he was ordered, and after it represented at the November 1, 2023 prehearing conference that Employee failed to provide signed releases. Although it is concerning that Employee has not provided the remaining ordered discovery for over sixth months, this is not an extreme case where an injured worker refused to comply with several discovery orders and the employer had been unable to conduct discovery; Employer's assertion of prejudice is exaggerated. *Sandstrom*; *McKenzie*.

Employee has not violated multiple discovery orders, as has been required in other cases dismissing claims. *Erpelding*; *Sullivan*; *DeNardo*. Claim dismissal is only appropriate in cases where lesser sanctions are insufficient to protect the adverse party's rights. *Sandstrom*. Here, it cannot be concluded that lesser sanctions are insufficient to protect Employer's rights, because

lesser sanctions have yet to be tried. *Hughes*; *DeNardo*. Additionally, the law requires this panel to interpret the Act and conduct its investigations, inquiries and hearings quickly, fairly, predictably, and impartially and to provide due process, so all parties' rights may be best ascertained, at a reasonable cost to Employer. Employee is unrepresented, deaf, requires a sign language interpreter and English is his second language. The Division failed to advise Employee how to preserve his claim when the designee failed to provide a discovery deadline or time frame to respond and failed to explain in the December 19, 2023 prehearing conference summary what a hearing brief is and to direct Employee to file a hearing brief or evidence by a specific date. *Richard*; *Bohlmann*. Citing a regulation, without explaining the deadline in the regulation, is insufficient notice to Employee, a *pro se* claimant, of the hearing brief and evidence deadlines. *Id*. Then, the Division improperly served Employee with notice of an oral hearing and failed to advise Employee how to request a hearing continuance when he called to participate in the hearing on January 24, 2024, and sought to provide oral argument and testimony. *Id*. Sanctioning Employee after failing to properly advise him how to preserve his rights is inconsistent with the law's requirement to interpret the Act fairly, predictably and impartially and to provide due process for both parties. AS 23.30.001(1), (4); AS 23.30.135(a).

With exception of depositions and interrogatories, discovery must be informal, unless otherwise ordered. Only if an employee refuses to respond to informal production requests may an employer seek "other means of discovery," to include a Request for Production or an order to compel the employee's compliance with discovery requests. AS 23.360.005(h); AS 23.30.115; 8 AAC 45.054(b); *Brown*; *Rogers & Babler*. Employer failed to provide any evidence showing it attempted informal production and that Employee failed to respond. The June 7, 2023 prehearing conference summary stated Employer agreed to email Employee another copy of the releases, special interrogatories and requests for production and to call Employee the next day to "go over them and explain why/what is needed from Employee to begin the discovery process." Employer produced no evidence showing it emailed and went over the releases, special interrogatories and requests for production with Employee using a sign language interpreter. The designee failed to inform Employee that he could call the Division for assistance reading the releases, special interrogatories and requests for production. *Richard*; *Bohlmann*. Therefore,

based upon the reasoning above, Employee's claim will not be dismissed for failing to comply with a discovery order and Employer's petition to dismiss will be denied. *McKenzie*.

While Employer has no statutory right to use a formal Request for Production as an initial discovery tool since the Act limits initial discovery to interrogatories and depositions, it is entitled to the information it seeks. AS 23.30.115(a). Employee did not appeal the discovery order in the June 7, 2023 prehearing conference summary so it is final, even if it is wrong. 8 AAC 45.065(h). Employee will be ordered to respond to Employer's special interrogatories and to Employer's informal requests for production, except for a colored photocopy of his "driver's license, passport, state ID or military ID," within 30 days of this decision's issuance. He is advised he may be sanctioned if he refuses to comply with this discovery order and sanctions may include forfeiture of benefits during the time he refuses to comply with the order, or dismissal of his claim. *Bohlmann*; AS 23.30.108(c). Employee is also informed he may call the Division's office at 907-269-4980 to speak with a Workers' Compensation Technician for assistance with reading the special interrogatories and informal requests for production, and this decision and order.

## CONCLUSION OF LAW

Employee's claim should not be dismissed for failing to comply with a discovery order.

## ORDER

1) Employer's August 29, 2023 petition is denied.
2) Employer is ordered to file with the Division and serve Employee by email its interrogatories and a list of informal production requests, except for a colored photocopy of his "driver's license, passport, state ID or military ID," within five days of receiving this decision and order.
3) Employee is ordered to provide his answers to the interrogatories within 30 days from the date Employer emails them.
4) Employee is ordered to provide the documents sought in Employer's informal production requests within 30 days from the date Employer emails them and advise Employer in writing if he does not possess the documents.

5) Jurisdiction over this issue is retained in the event Employee willfully refuses or fails to comply with this decision and order.

6) Office staff is directed to mail and email this decision to Employee and Holloway.

Dated in Anchorage, Alaska on February 2, 2024.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Anthony Ladd, Member

/s/
Mark Sayampanathan, Member

PETITION FOR REVIEW

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

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of James Markel, employee / claimant v. Peter Pan Seafood Company LLC, employer; Tokio Marine America Insurance Company, insurer / defendants; Case No. 202215725; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by email and certified U.S. Mail, postage prepaid, on February 2, 2024.

/s/

Pamela Hardy, Workers' Compensation Technician