ALASKA WORKERS' COMPENSATION BOARD

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

JAMES MARKEL, Employee, Claimant, v. PETER PAN SEAFOOD COMPANY, LLC, Employer, and TOKIO MARINE AMERICA INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202215725 AWCB Decision No. 24-0040 Filed with AWCB Anchorage, Alaska on June 8, 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 June 25, 2024, a date selected on June 10, 2024. A May 16, 2024 affidavit of counsel gave rise to this hearing. James Markel (Employee) represents himself but did not file a hearing brief. Attorney Jeffrey Holloway represents Employer. The record closed at the hearing's conclusion on June 25, 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 claim dismissal is the only remedy available, as a suspension or forfeiture of benefits would have no impact. Employer requests dismissal of Employee's claims.

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

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

FINDINGS OF FACT

A preponderance of the evidences 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. (*Peter Pan Seafood Company*, LLC, AWCB Dec. No. 24-0005 (February 2, 2024) (*Markel I*)).

2) On January 9, 2023, Employee sought temporary partial disability (TPD) and permanent partial impairment (PPI) benefits, medical and transportation costs, a 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. (*Id.*).

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 demonstrating 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 a penalty and interest because all benefits were paid or timely controverted. (*Id.*).

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

5) 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." (*Id.*).

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

7) 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. (*Id.*).

8) 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. (*Id.*).

9) 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. (*Id.*).

10) On June 8, 2023, the Workers' Compensation Division (Division) served Employee with the June 7, 2023 prehearing conference notice. (*Id.*).

11) 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. (*Id.*).

12) On July 20, 2023, Employer denied TTD benefits from January 17, 2024, forward, and 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 a penalty and interest, as all benefits had been paid or timely controverted. (*Id.*).

13) 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. (*Id.*).

14) 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 of 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. (*Id.*).

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

16) 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. (*Id.*).

17) 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 [sic] 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 [sic]? 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 [cooperate] 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).

18) Employee did not file a brief or similar document to support his position, which is unknown, but was presumed to be in opposition to having his claims dismissed. (*Id.*).

19) On February 2, 2024, *Markel I* issued, ordering (1) Employer to file with the Division and serve Employee by email with a copy of 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 the decision and order; and (2) Employee to provide his answers to the interrogatories within 30 days from the date Employer emails them and 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. Employee was 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. Jurisdiction over the issue was retained in the event Employee willfully refused or failed to comply with the decision and order. *Markel I*. Employee and Employer were served by email and certified mail, return receipt requested. (ICERS, D&O Issued and Served Entry, February 2, 2024).

20) On February 5, 2024, Employee contacted the Division and spoke with a workers compensation officer:

> EE called with questions with what the D&O was meaning, I explained to EE what the order was on page 13, and that EE needs to make sure that he is responding to the interrogatories within 30 days of receiving them, EE asked how he is going to get them. I told him I was not sure and asked him to hold on a minute and I called Mr. Holloway's office and spoke with Becca she advised me to give EE her email to have him email her to set up a time to call and they will be able to talk about best way to get them to EE. I gave EE Becca's email BSheldon@bhcslaw.com, I reiterated to EE to make sure that he complies with the D&O and gets the paperwork back to the ER ATT as order, and to let us know if he has any question. (ICERS, Phone Call entry, February 5, 2024).

21) On March 6, 2024, Employer filed an affidavit stating, "Pursuant to the Decision and Order No. 24-0005 (February 2, 2024), the employer submits this affidavit and can confirm that the employee has not answered the [employer's] interrogatories and requests for production. (Affidavit of Counsel, March 6, 2024).

22) On March 11, 2024, an unknown "agent" signed the certified mail, return receipt mailed to Employee; the signature is illegible. (Certified Return Receipt, March 11, 2024).

23) There was no evidence Employer served Employee by email, or by any other means, or filed with the Division a copy of its interrogatories and 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 *Markel I*. (Agency file).

24) On April 4, 2024, *Markel v. Peter Pan Seafood Company*, LLC, AWCB Dec. No. 24-0022 (April 4, 2024) (*Markel II*) issued, finding Employer failed to comply with *Markel I* because it failed to produce any evidence it served Employee with the interrogatories and informal requests for production as ordered and Division staff failed to properly advise Employee *Markel I* ordered Employer to serve him by email within five days when he called asking how he was to receive them. *Markel II* informed Employee he could call the Division to speak with a Workers' Compensation Technician for assistance with reading the interrogatories and informal request for production and the decision and order. It ordered (1) Employer to file with the Division and serve Employee by email with a copy of 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 the decision and order; and (2) Employee to provide his answers to the interrogatories within 30 days from the date Employer emails them and 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. Employee was 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. Jurisdiction over the issue was retained in the event Employee willfully refused or failed to comply with the decision and order. (*Markel II*). Employee and Employer were served by email and certified mail, return receipt requested. (ICERS, D&O Issued and Served Entry, April 4, 2024).

25) On April 8, 2024, Employer reserved Employee with the special interrogatories and requests for production by first-class mail and by email. (Certificate of Service, April 18, 2024).

26) On May 16, 2024, Employer filed an affidavit stating ". . . employee has not answered the employee's interrogatories and requests for production, which were served on him for at least the fifth time on April 8, 2024." (Affidavit of Counsel, May 16, 2024).

27) On May 21, 2024, the Division served Employee with notice of a June 4, 2024 written record hearing. Employee's prior address of record was placed on the certified mail return receipt card and the envelope was addressed to his address of record. (Hearing Notice Written Record Served and Envelope with Certified Mail, May 21, 2024).

28) On June 10, 2024, the June 4, 2024 hearing was continued due to the Division's failure to properly address the certified mail. (Letter, June 10, 2024). The Division served Employee with notice of a June 24, 2024 written record hearing to his address of record by certified mail. (Hearing Notice Written Record Served and Envelope with Certified Mail, June 10, 2024).

29) Employee did not contact the Division after *Markel II* issued for assistance with the interrogatories and production requests. (Agency record).

PRINCIPLES OF LAW

> **AS 23.30.001. Legislative intent.** It is the intent of the legislature that
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> (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.

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. . . .

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.

ANALYSIS

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

If a party refuses to comply with a designee's order concerning discovery, sanctions may be imposed in addition to "forfeiture of benefits, including dismissing the party's claim, petition or defense." AS 23.30.108(c). Employer wants an order dismissing Employee's claim due to his failure to provide discovery. AS 23.30.108(c). 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*. It has been established when a party has been warned of the potential dismissal of his claim and has violated multiple discovery orders. *Erpelding*; *Sullivan*. Once noncompliance has been demonstrated, the noncomplying party bears the burden of proving the failure to comply was not willful. *Hughes*.

Employee was ordered to provide answers to Employer's interrogatories and documents sought in Employer's production requests three times, the first at a prehearing conference held on June 6, 2023 and again in *Markel I* and *Markel II*. Employee has not provided any answers or responses to Employer's interrogatories or requests for production. Employer has demonstrated noncompliance. *Hughes*. Employee was advised with each of the three discovery orders that he may be sanctioned if he refuses to comply with a discovery order and sanctions may include forfeiture of benefits during the time he refuses to comply with the order, or dismissal of his claim. Therefore, Employee has violated multiple discovery orders and the Division properly advised Employee about possible sanctions, including case dismissal, in the event he refused to comply with discovery orders.. *Bohlmann*; *Erpelding*; *Sullivan*. Employee provided no argument or reasoning behind his failure to comply with discovery orders; he failed to prove his failure to comply with the discovery orders was not willful. *Hughes*.

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. AS 23.30.001(1), (4); AS 23.30.135(a). Employee's refusal to provide discovery has hindered the quick, fair, predictable, and impartial resolution to his claims. His claims cannot be heard until discovery is completed. Employee's refusal to provide the subject discovery prejudiced Employer because it spent money seeking discovery for over a year with no results. AS 23.30.001(1), (4); AS 23.30.135(a). It incurred unnecessary and wasted attorney fees. The record provides no reason for Employee's failure to comply with the multiple discovery orders; there is no evidence showing he made an effort to comply with the multiple discovery orders. He was provided the opportunity to seek assistance from a Workers' Compensation Technician using an interpreter after *Markel II* issued on April 4, 2024, over two months ago. There is no evidence he sought any assistance, and there is no evidence his failure is based on mere delay, inability or good faith resistance. *McKenzie*. Employee is not entitled to special allowances based on *pro se* status when he has made no effort to comply with the multiple discovery orders. *DeNardo*.

Benefits were already suspended as a matter of law due to Employee's failure to comply with the discovery orders and it has made no impact on Employee's noncompliance. AS 23.30.108(b). He has already been repeatedly advised of his rights and responsibilities as an injured worker and has been continually warned of potential sanctions, including claim dismissal, for failing to comply and it has made no impact on Employee's noncompliance. Lesser sanctions than dismissal are insufficient to protect Employer's rights as a lesser sanction would not adequately protect Employer from Employee's continuing discovery violation and from Employer incurring more legal costs and maintaining an open case file. *Sandstrom*. Employee's claims should be dismissed for failure to comply with multiple discovery orders; Employer's petition to dismiss Employee's February 15, 2023 claim will be granted.

CONCLUSION OF LAW

Employee's claim should be dismissed for failing to comply with a discovery order.

ORDER

1) Employer's August 29, 2023 petition to dismiss is granted.
2) Employee's January 9 and February 15, 2023 claims are dismissed.

Dated in Anchorage, Alaska on June 8, 2024.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Marc Stemp, 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 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 certified U.S. Mail, postage prepaid, on June 8, 2024.

/s/
Rochelle Comer, Office Assistant II