ALASKA WORKERS' COMPENSATION BOARD

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

JOHNNY ANDREW, Employee, Claimant, v. SILVER BAY SEAFOODS, LLC, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	FINAL DECISION AND ORDER ON RECONSIDERATION AWCB Case No. 201810619 AWCB Decision No. 25-0013 Filed with AWCB Anchorage, Alaska on February 27, 2025

Johnny Andrew's (Employee's) October 29, 2024 petition for modification was heard on February 25, 2025, in Anchorage, Alaska, a date selected on January 9, 2025. A January 9, 2025 stipulation gave rise to this hearing. Employee appeared, represented himself and testified. Attorney Jeffrey Holloway appeared and represented Silver Bay Seafoods, LLC and its insurer (Employer). All parties appeared by Zoom. After the designated chair's inquiry at hearing, Employee clarified that he was actually seeking modification of *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0060 (October 30, 2023) (*Andrew V*), and not *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0068 (November 21, 2023) (*Andrew VI*) as stated in the January 9, 2025 prehearing conference summary. Employer had no objection to the panel addressing *Andrew V* rather than *Andrew VI*. The record closed at the hearing's conclusion on February 25, 2025.

ISSUE

Employee contends he did not fail to comply with the May 8, 2023 order affirming the designee's discovery order requiring him to sit for a deposition. He contends neither Holloway nor his office ever contacted him "regarding date or time for a deposition." Employee further contends that same order directed Employer to "consult" with him for a mutually convenient date and time for his deposition before noticing it, and contends Employer "never provided any proof of compliance" with this requirement. In short, he contends Employer violated the May 8, 2023 order. Nevertheless, Employee testified he "planned on" attending the deposition, but contends he failed to attend because he had COVID-19, which was not severe enough to require a doctor's visit. He implies this is why he had had no proof to support him having COVID-19. As for his failure to sign, date and return various releases, Employee contends he did so, timely. Employee seeks an order modifying *Andrew V*, so his past claims are not dismissed.

Employer contends Employee failed to provide supporting evidence for his modification petition. Further, it contends Employee's arguments and filings related to his petition are irrelevant and do not address the bases for *Andrew V* dismissing his claims. Employer seeks an order denying the October 29, 2024 petition and ordering Employee to cease filing "unfounded, harassing, duplicative, annoying and unintelligible petitions" because his claims have been dismissed, and because he is wasting Employer's money. It also seeks an order canceling a March 11, 2025 prehearing conference.

Should *Andrew V* be modified?

FINDINGS OF FACT

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

1) On November 10, 2022, Employee revoked his prior written permission to release employment records. (Revocation of Permission of Employment Records Release, November 10, 2022).

2) On November 10, 2022, the parties attended a prehearing conference where Employer's representative explained the importance of Employee's then-scheduled December 1, 2022 deposition. The Board's designee noted, "Employee [stated] clearly that he would not attend the deposition." (Prehearing Conference Summary, November 10, 2022).

3) On January 26, 2023, the parties attended a prehearing conference where the designee directed Employee to sign and deliver an employment records release. The designee denied Employee's petition for a protective order against giving his deposition and granted Employer's petition to compel his attendance. (Prehearing Conference Summary, January 26, 2023).

4) On May 4, 2023, Employer served by certified mail on Employee a letter at his address of record, with five discovery releases. These included releases for medical and employment records, protected health information, Social Security records and a general consent release. One document had a post-dated expiration date; the other four did not. Employer's letter advised Employee that he had to sign and return the releases within 14 days; or he could also file a petition for a protective order within 14 days. (Letter, May 4, 2023).

5) Employee did not file a petition for a protective order timely on the releases Employer served on him on May 4, 2023. (Agency file).

6) On May 8, 2023, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0024 (May 8, 2023) (*Andrew III*), an interlocutory (non-final) decision heard on the written-record, reviewed Employee's appeal from the designee's January 26, 2023 discovery order. *Andrew III* reversed the designee on one point but otherwise affirmed his orders. It explained Employee had to provide releases so Employer could obtain records and defend against his claim. *Andrew III* affirmed the designee's order expressly requiring him to sign and return an employment release. The decision further stated, "Moreover, Employee is advised that his failure to sign a release after the Designee ordered him to do so may result in his inability to obtain an order awarding him compensation at a subsequent hearing." *Andrew III* expressly cited 8 AAC 45.095(c), which states:

> If after a prehearing an order to release information is issued and an employee refuses to sign a release, the board will, in its discretion, limit the issues at the hearing on the claim to the propriety of the employee's refusal. *If after the hearing the board finds that the employee's refusal to sign the requested release was unreasonable, the board will, in its discretion, refuse to order or award compensation until the employee has signed the release* (emphasis added).

7) *Andrew III* explained to Employee why his deposition is an important discovery tool and is statutorily authorized. It affirmed the designee's order requiring Employee to sit for his deposition. *Andrew III* also said, "Employer is directed to consult with Employee for a mutually convenient date and time for Employee's deposition before noticing it." (*Andrew III*).

8) On May 12, 2023, Employer mailed Employee various documents including a Notice of Deposition and a letter stating in relevant part:

> Pursuant to the AWCB Decision and Order, we have scheduled your deposition for June 30, 2023, at 1:30 PM to take place at Esquire Deposition Solutions -- Los Angeles [address redacted]. *Please advise our office, within five days of receipt of this correspondence, if that date is not acceptable*; please also provide the reason, if any, as to why it is not acceptable (emphasis added). . . . (Notice of Intent to Rely, September 14, 2023).

9) On May 18, 2023, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No. 23-0028 (May 18, 2023) (*Andrew IV*), an interlocutory decision heard on the written-record, denied Employee's two May 16, 2023 petitions seeking reconsideration of only *Andrew III*'s order regarding a legacy "Compensation Report" form. (*Andrew IV*).

10) On May 23, 2023, Employer petitioned to dismiss Employee's claims because he refused to sign "standard releases" sent to him on May 4, 2023. (Petition, May 23, 2023).

11) On June 1, 2023, Holloway attended a prehearing conference; Employee did not attend. The designee recorded that Holloway stated Employee's deposition was scheduled for June 30, 2023, and said Employee had not provided the signed record releases as directed in *Andrew III*. The Workers' Compensation Division (Division) served this summary on Employee on June 1, 2023, at his record address; there is no evidence the post office returned it to the Division. (Prehearing Conference Summary, June 1, 2023; agency file).

12) Employee provided no evidence that he disputed, prior to the February 25, 2025 hearing, Holloway's statement at the June 1, 2023 prehearing conference that Employee had failed to provide the signed record releases as the designee and the Board had ordered. (Agency file).

13) On June 5, 2023, Employee stated, "Employee is not required to sign expired authorization and release form." He did not raise any objection to the other releases Holloway had sent him on May 4, 2023, which the designee at the January 26, 2023 prehearing conference and *Andrew III* on May 8, 2023, had ordered him to sign and return. (Email, June 5, 2023).

14) On June 26, 2023, Employee emailed the Division and stated, "As of 06/26/2023 I Johnny Andrew revoke this document in this email," which referred to his September 17, 2022 employment records release form he had signed. (Email, June 26, 2023).

15) On June 26, 2023, Employee also emailed the Division and Holloway and stated, "Cancel deposition June 30, 2023," with no additional explanation. (Email, June 26, 2023; Hearing Brief of Silver Bay Seafoods, LLC, September 27, 2023, Exhibit 9).

16) On June 30, 2023, Employee did not attend his deposition. Employer subsequently filed and served the court reporter's June 30, 2023 "Certificate of Nonappearance of Johnny Andrew at His June 30, 2023 Deposition." The certificate also verified that Holloway had appeared. (Notice of Intent to Rely, September 14, 2023).

17) On July 3, 2023, Employer petitioned for an order dismissing Employee's claims for his refusal to comply with Board orders concerning discovery, responding to its discovery requests, signing releases and attending his deposition. (Petition, July 3, 2023).

18) On July 12, 2023, the parties attended a prehearing conference, and the designee recorded the following discussions:

> Employer representative advised that Employee did not attend the 6/30/2023 Deposition and has not returned the necessary signed Discovery Releases as ordered by the AWCB. *Employee* advised that he is working to gather and file requested Tax Documentation and *stated that he has not returned the noted discovery releases as they have expired*. . . . (emphasis added).

At this prehearing conference Employee did not dispute Employer's allegations regarding discovery, other than noting one expired release, and gave no explanation for why he did not attend his June 30, 2023 deposition. (Prehearing Conference Summary, July 12, 2023).

19) On September 26, 2023, Employee filed what the Division considered his "brief" for the October 4, 2023 hearing. He contended Employer had served production requests and releases on him and he had "responded" on May 1, 2023. Employee contended that one medical record release had an expiration date that had passed. Consequently, Employee said he opposed claim dismissal based upon this fact; he did not comment on the other four releases that did not have expiration dates that had passed. He also, for the first time, stated he "became sick around 06/23/2023," purchased a COVID-19 test and tested positive. He said that on June 26, 2023, he emailed the Division and Employer to inform them that he "would be canceling the 06/30/2023 deposition so Employee would not spread COVID-19 to the public." Employee opposed claim dismissal based on his missed deposition, which he contended was a "health and safety" issue. Attached to his

pleading were emails that did not support Employee's statement in respect to his missed deposition. (Employee's Hearing Brief, September 26, 2023; observations).

20) In its September 27, 2023 hearing brief, Employer said Employee never responded to its May 12, 2023 letter notifying him of the suggested June 30, 2023 deposition and asking him to advise if that date was not agreeable. It further contended Employee never signed and returned the May 4, 2023 releases, and he had revoked a signed employment records release twice. (Hearing Brief of Silver Bay Seafoods, LLC, September 27, 2023).

21) On October 30, 2023, *Andrew V* in a final (appealable) decision heard on the written-record, found that though Employee gave a reasonable explanation for failure to sign and return one discovery release, he failed to explain why he failed or refused to sign several other releases with which he had no apparent objection, and why he twice revoked a previously authorized Employment Records release. As for Employee's reasons for not attending his second deposition, after failing to appear for the first, *Andrew V* found his explanation "not credible." Employee never mentioned having COVID-19 as a basis for not appearing at his second scheduled deposition until he mentioned COVID-19 in his hearing brief. He provided no medical evidence and offered no sworn statement supporting his COVID-19 allegation. Employee had, however, emailed the Division stating simply, "Cancel deposition June 30, 2023," with no additional explanation. *Andrew V* determined had he actually had COVID-19, Employee surely would have mentioned that in his email to the Division before the deposition date, but did not. It further found his failure to cooperate with discovery and obey two discovery orders were "unexplained" and "willful." After considering if a lesser sanction would convince Employee to cooperate in the discovery process, and finding it would not for the reasons stated, *Andrew V* found that Employee considered this litigation "a game," and he would not alter his behavior with a sanction less than dismissal. Accordingly, *Andrew V* dismissed "Employee's past claims for past benefits." (*Andrew V*).

22) On November 21, 2023, *Andrew VI*, on the written record and in a final decision, denied Employee's two November 9, 2023 and his November 15, 2023 petitions to reconsider *Andrew V*. *Andrew VI* found Employee was re-arguing his position and provided no new argument, statute, regulation or case law suggesting *Andrew V* had made a legal error in dismissing his claims. Moreover, *Andrew VI* noted that *Andrew V* explicitly said it did *not* dismiss his claims solely because he failed to sign a particular medical record release that was improperly dated. By contrast, *Andrew V* expressly dismissed his claims because he gave no reason for not signing the

other releases as ordered and because *Andrew V* did not consider his COVID-19 excuse credible since he provided no evidence he had COVID-19, gave no sworn affidavit supporting that statement, and his hearing brief argument about COVID-19 was contrary to the evidence. *Andrew VI* noted Employee's other arguments were irrelevant to his failure to cooperate with discovery. *Andrew VI* denied Employee's petitions to reconsider *Andrew V*. (*Andrew VI*).

23) There is no evidence in Employee's agency file that he petitioned for higher review of any interlocutory decision or appealed any final decision in this case. (Agency file).

24) On October 29, 2024, Employee filed and served on Holloway a petition seeking modification under AS 23.30.130 of "November 9, 2023 and November 15, 2023." He attached approximately 18 pages that addressed numerous issues. (Petition, October 29, 2024).

25) On December 3, 2024, in a claim dated December 2, 2024, Employee requested various benefits, but focused on a compensation rate adjustment claim. (Claim for Workers' Compensation Benefits, December 2, 2024).

26) The Division automatically schedules a prehearing conference when a self-represented litigant files a claim or petition. The Division scheduled a March 11, 2025 prehearing conference in this case. (Experience; observations; agency file).

27) On January 9, 2025, the parties appeared at a prehearing conference before a Board designee. The parties stipulated to a February 25, 2025 hearing limited to, "Employee's 10/29/2024 petition to modify D & O #23-0068." (Prehearing Conference Summary, January 9, 2025). "D & O #23-0068" is *Andrew VI*. (Observations).

28) On January 31, 2025, Employee filed a letter "in Response to November 21, 2023 reconsider denied," along with another copy of his October 29, 2024 petition and attachments. The Division considered the letter his hearing brief for the February 25, 2025 hearing. In his letter, Employee contended errors were made regarding the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, Fifth and Sixth Editions (*Guides*). He accused Employer of wrongdoing by having its physician use the wrong *Guides* edition. Regarding discovery, Employee contended he did not violate the May 8, 2023 discovery order, and stated:

> Employer is directed to consult with Employee for a mutually convenient date and time for Employee's deposition before noticing it. (See attachment copy of May 8, 2023, order). Employer never provided any proof of compliance with the May 8, 2023, order[.] Employee has never spoken with Mr. Holloway or anyone from his

> office regarding date or time for a deposition[.] No email or letters[.] In fact Mr. Holloway violated the May 8, 2023, order (editing added for clarity).

Employee also mentioned settlement offers and raised other issues not directly addressing his modification petition. (Letter, January 31, 2025).

29) On February 14, 2025, Employer contended that Employee failed to produce any evidence showing a change in condition or a factual mistake in any Board decision and order. It contended a "mere allegation is insufficient without supporting evidence." Employer understood the issue to be, "Shall the Board modify its Decision and Order dated October 30, 2023, that dismisses all of the employee's claims for workers' compensation benefits?" It argued that prior decisions dismissed Employee's claims or denied reconsideration because he violated discovery orders. Moreover, Employer stated Employee had not alleged any changes or factual errors. It contended Employee's recent filings were not relevant to his claims being dismissed for failure to cooperate with discovery. Nevertheless, Employer filed evidence that it contended debunked his current allegations on each point. It denied that it concealed, suppressed or withheld any material fact from Employee or the Board. Employer contended Employee's petitions and statements "lack any coherency and misconstrue laws and regulations." It denied all allegations. Consequently, Employer sought an order denying Employee's petition, and directing him to cease filing "all unfounded, harassing, duplicative, unknowing, and unintelligible petitions since his claims are dismissed." It also sought an order canceling the March 11, 2025 prehearing conference. (Hearing Brief of Silver Bay Seafoods, LLC, February 14, 2025).

30) At hearing on February 25, 2025, at the designated chair's inquiry, Employee clarified his petition and said he was trying to modify *Andrew V* not *Andrew VI* as stated in the January 9, 2025 prehearing conference summary. Employer had no objection to the panel addressing Employee's request to modify *Andrew V*. (Record).

31) At hearing Employee testified that someone from Holloway's office told him his June 30, 2023 deposition was in two or "a few" days, implying that this was the extent of his notice. Otherwise, he testified there were no "prior arrangements," and Holloway just wanted a reason to dismiss his claim and "was not even there" at the deposition. Employee testified that the Board's May 8, 2023 decision required Employer to "get with him" and come up with an agreeable deposition date. In any event, he "was planning on going" to his deposition but he got "real sick." Employee further explained that in California it takes two weeks to get an appointment, so he

decided to "tough it out" when he allegedly developed COVID-19 days prior to his deposition date. He testified that he sent a letter or email to the Division and to Holloway canceling the deposition. When pressed about why he never mentioned that he had COVID-19 until months later when he prepared his hearing brief, Employee said his medical information was "personal," and felt he did not have to share it. Employee emphasized that Holloway "never contacted him" to get a date to agree on the deposition. (Record).

32) Employee's hearing testimony addressed many complaints he had with the process, which were not relevant to his petition to modify *Andrew V*. These included the adjuster "closing" his case; an impairment rating done by the wrong *Guides* edition; a State of Alaska "Policies & Procedures" manual that Employee felt applied to all workers' compensation cases; the lack of the Attorney General's participation in his case, which he blamed on Employer failing to file appropriate information in the Electronic Data Interchange (EDI) system; Employer's alleged "incomplete" filings with the Division; a Board designee writing a letter to a physician, which Employee contended was improper; settlement offers; his lack of a "fair hearing"; and lastly a general lack of "due process" based on all the above. Employee specifically testified, for the first time in this case, that he had signed and emailed to Holloway four of the five informational releases he was ordered to sign and deliver. (Record).

33) Employee opined that Holloway's letter about the deposition did not meet the Board's order that Employer "consult" with him about an appropriate deposition date. On the deposition question, Employee conceded he could have told the Division and Holloway that he was sick, but "it was private" information that he did not wish to share. Employee also testified that no one ever told him that he could lose benefits if he failed to return the informational releases and attend his deposition. He testified that he had been trying to get his case before the Board "for years," but Holloway always delayed it. To Employee, this case was "not about the money," but rather, he wanted to expose everything Employer was allegedly doing to claimants. (Record).

34) Employer contended Employee's position was "baloney" and "nonsense." It noted this case has been going on for seven years and causing it to incur attorney fees and costs. Employer contended Employee never returned the May 4, 2024 releases and produced no evidence that he signed or returned them. It said its May 12, 2023 letter was an invitation to Employee to advise Holloway if the June 30, 2023 date was not a good day for him; Employee did not respond. Subsequently, the parties attended a June 1, 2023 prehearing conference during which they talked

about the deposition date, and Employee voiced no objection. Likewise, Employer noted that at a July 12, 2023 prehearing conference Employee again said nothing about having had COVID-19 and never mentioned any explanation for his "cryptic" email stating "cancel deposition." Employer contended Employee provided no evidence to support his request to modify *Andrew V*. It likened Employee's repeated petitions to a "tortuous claim" akin to the movie "Groundhog Day." Employer seeks an order denying the modification petition, stopping Employee's frivolous filings and canceling the March 11, 2025 prehearing conference. (Record).

PRINCIPLES OF LAW

The Board may base its decision on direct testimony, other tangible evidence and its "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 (Alaska 1987).

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party . . . because of a mistake in its determination of a fact, the board may, . . . before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. . . .

Interior Paint Company v. Rodgers, 522 P.2d 164, 168 (Alaska 1974) set forth standards for the Board's modification under §130. *Rodgers* stated, "We find that an examination of all previous evidence is not mandatory whenever there is an allegation of mistake in determination of a fact under AS 23.30.130(a)." *Rodgers* warned of potential abuse and said:

> The concept of "mistake" requires careful interpretation. It is clear that an allegation of mistake should not be allowed to become a back-door route to retrying a case because one party thinks he can make a better showing on the second attempt.

Rodgers further held the Board "must only give due consideration to any argument and evidence presented with a petition for modification."

Lindhag v. State, Department of Natural Resources, 123 P.3d 948, 956-57 (Alaska 2005) held the Board has discretionary authority under §130 to rehear and modify a case based on "newly discovered evidence." Citing 8 AAC 45.150, *Lindhag* said its "key language" required that any

new evidence "could not have been discoverable prior to the hearing through due diligence." It added that a panel cannot deliberate on evidence not presented at the initial hearing.

In *Griffiths v. Andy's Body & Frame, Inc*., 165 P.3d 619 (Alaska 2007) the Board had dismissed a self-represented litigant's modification petition because he failed to include the affidavit required in 8 AAC 45.150. *Griffiths* vacated and remanded the decision stating that it was error to hold a *pro se* litigant to the affidavit requirement when a layperson would reasonably understand that all he had to do was file newly obtained evidence with the Board.

> **8 AAC 45.150. Rehearings and modification of board orders**. . . .
>
> (b) A party may request a rehearing or modification of a board order by filing a petition for a rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.
> . . . .
>
> (d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail
>
> (1) the facts upon which the original award was based;
> (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
> (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
>
> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.
>
> (f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

ANALYSIS

Should *Andrew V* be modified?

On October 29, 2024, Employee timely filed a petition for modification under §130(b). *Griffiths*. At hearing, he clarified that *Andrew V*, issued October 30, 2023, was the decision he sought to

modify, notwithstanding a prehearing conference summary listing *Andrew VI*. Employer had no objection to this clarification, and in fact briefed with its understanding that *Andrew V* was the decision at issue. Employee further clarified that his petition was based on his contention that *Andrew V* made factual errors under §130(d), and was not based on a change in condition.

He argued three bases for his petition: *Andrew V* (1) erroneously found that he inexcusably failed to attend his deposition; (2) erroneously found he did not return signed discovery releases to Holloway; and (3) did not give him a fair hearing and violated his right to due process for various reasons having to do with the adjuster "closing" his case; the adjuster using a physician who used the wrong *Guides* edition to rate his permanent impairment; Employer's failure to comply with the State's "TPA Policy & Procedures Manual"; this failure improperly took the Attorney General's office out of the case; Employer's failure to file complete records through EDI; and a prehearing conference designee sending a physician an authorized letter.

The law places the "burden of proof" for Employee's petition on him under §130 and 8 AAC 45.150(b) and (d). The latter required him to specifically set out in detail (1) the facts upon which the original award or denial was based; (2) the facts Employee alleged to be erroneous, with supporting evidence or by reference to "newly discovered evidence"; and (3) the effect that finding a mistake would have on the existing order. To be clear, although the regulation also required Employee to file an affidavit regarding any "newly discovered evidence," which some of his testimony seemed to imply, this decision ignored Employee's failure to file an affidavit because he is self-represented and because he offered equivalent testimony at hearing, subject to cross-examination. *Griffiths*. He took the opportunity to file and serve supporting documentary evidence with his petition and he had an opportunity at hearing to testify about his three points. This decision will address his main points separately:

(1) Andrew V correctly found Employee willfully failed to attend his deposition.

Andrew V fully addressed Employee's contentions regarding his two missed depositions. On November 10, 2022, the parties attended a prehearing conference. Holloway's associate explained the importance of Employee's scheduled December 1, 2022 deposition, and the designee recorded, "Employee [stated] clearly that he would not attend the deposition." He never provided an

explanation for willfully not attending the first deposition; he just flat refused to go. In his September 26, 2023 hearing brief for the *Andrew V* hearing, Employee said that on June 26, 2023, he emailed the Division and Employer to inform them that he "would be canceling the 06/30/2023 deposition so Employee would not spread COVID-19 to the public." It is true that on June 26, 2023, Employee sent emails to the Division and to Holloway stating, "Cancel deposition June 30, 2023," with no additional explanation. It is *not* true that he mentioned having COVID-19, or even mentioned he was sick. Employee's September 26, 2023 hearing brief statement was observably false when he made it. AS 23.30.122; *Smith*. The *Andrew V* panel found his written explanation was not made by affidavit and he failed to file medical evidence supporting his COVID-19 contention. Moreover, knowing Employer intended to seek claim dismissal for failure to cooperate in discovery, Employee never told the designee at the July 12, 2023 prehearing conference that he missed his second deposition because he had COVID-19. He never mentioned COVID-19 until his September 26, 2023 hearing brief for the *Andrew V* hearing. Given these facts, *Andrew V* found his second missed deposition explanation not credible. AS 23.30.122; *Smith*.

Unfortunately, his testimony at the February 25, 2025 hearing was even less credible. Employee testified that he had provided notice to the Division and Employer four days before the deposition that he could not make it because he had tested positive for COVID-19. In other words, Employee doubled down on his untrue statement, even after *Andrew V* established that his statement was demonstrably false. Employee testified that Holloway "never contacted him" to get a date to agree on the deposition. This too is false. AS 23.30.122; *Smith*. Holloway sent him a May 12, 2023 letter, more than six weeks prior to a proposed deposition date, inviting him to, "*Please advise [his] office, within five days of receipt of this correspondence, if that date is not acceptable*; please also provide the reason, if any, as to why it is not acceptable" (emphasis added). *Andrew V* did not dictate the manner in which Holloway was to reach out to Employee.

Moreover, Employee testified he "was planning on going" to his deposition but he got "real sick." This contradicts his hearing testimony implying he only had two or "a few" days' notice of his deposition. Nevertheless, he somehow knew there was a deposition scheduled to which he "was planning on going." Employee either received Holloway's May 12, 2023 letter, giving him more than six weeks' notice, along with the actual deposition notice attached, or he knew about the

deposition from receiving the June 1, 2023 prehearing conference summary, which also stated that his "deposition has been scheduled for 06/30/2023." At the February 25, 2025 hearing, Employee never said he responded to Holloway's letter; and he provided no evidence that he did. Since Employee never responded, the deposition went forward as suggested and he failed, again, to appear as demonstrated by the court reporter's certification, which also certified that Hollway appeared and wasted his time and his client's money again. Once more, Employee's account was not credible. AS 23.30.122; *Smith*. There is no evidence in Employee's agency file that his deposition has ever been taken; Employer has been trying to do it since December 1, 2022.

Employee further testified that in California it takes two weeks to get a medical appointment, so he decided to "tough it out" when he allegedly got COVID-19 just prior to his deposition. When pressed about why he never mentioned that he had COVID-19 until months later when he prepared his hearing brief for the *Andrew V* hearing, Employee said his medical information was "personal," and felt he did not have to share it. In other words, contrary to his prior written statement, on which he doubled down under oath at the February 25, 2025 hearing, Employee then admitted he did not include the COVID-19 allegation in his cryptic email four days before his deposition because he considered that information "personal," and "private." This is altogether inconsistent, nonsensical and not credible. AS 23.30.122; *Smith*. Employee failed to state why, if he did not want to admit to allegedly having COVID-19, which tens of millions of Americans contracted without social stigma, he did not just say he was "sick" and could not attend the deposition. Employee presented no "new" evidence or testimony at the February 25, 2025 hearing regarding his missed deposition that he could not have also first provided at the October 4, 2023 hearing giving rise to *Andrew V*. *Lindhag*: 8 AAC 45.150(e). He provided no grounds supporting modification of *Andrew V* based on the second missed deposition issue.

(2) Andrew V correctly found he failed to return signed releases to Holloway.

At the February 25, 2025 hearing, Employee generally reiterated his previous arguments regarding the discovery releases. He added one twist not raised before: Employee testified that he in fact returned signed releases to Holloway sometime after May 4, 2023; he was not specific. The applicable statute and regulation places the burden on Employee to prove that statement, to successfully modify *Andrew V*. Employee offered no evidence, other than his testimony, that he

ever returned the four discovery releases to Holloway. But given all the above analyses, Employee's testimony is not credible. AS 23.20.122; *Smith*. He did not present signed and dated releases or any evidence showing how and when he allegedly served these on Holloway. Moreover, he failed to demonstrate why he could not have filed and served copies of the signed releases that he allegedly emailed or otherwise served on Holloway, prior to the October 4, 2023 *Andrew V* hearing. *Lindhag*. Even had he presented proof of this at the February 25, 2025 hearing, this would not be "newly discovered evidence" because Employee would have had it all along. He does not have a right to re-try the case now. *Rodgers*. Employee provided no credible facts supporting modification of *Andrew V* based on the discovery release issue.

(3) Andrew V gave him a fair hearing and did not violate his right to due process.

Employee's last basis to modify *Andrew V* is at best difficult to understand and follow. His October 29, 2024 petition attached many documents, and he offered lengthy testimony and arguments at the February 25, 2025 hearing that addressed his work status, EDI filings, AMA *Guides* issues, the Attorney General's participation in this case and even some other complaints outside this panel's jurisdiction. The panel gave due consideration to each document he provided, and each argument Employee made at the February 25, 2025 hearing in respect to these issues. *Rodgers*; 8 AAC 45 150(f). At hearing, the chair tried to understand his arguments and invited Employee to explain them more fully; this effort was unsuccessful. The panel can find no relevance for these documents or Employee's related arguments vis-à-vis his petition to modify a decision that dismissed his past claims based on his well-documented, willful and unreasonable failure to cooperate with discovery as analyzed in *Andrew V*. Employee's ancillary documents and related arguments likewise provided no grounds supporting modification of *Andrew V* under §130. Given all the above analyses, Employee's October 29, 2024 petition for modification under §130 will be denied because he failed to demonstrate any relevant factual errors in *Andrew V*.

Employer also sought an order stopping Employee from filing additional pleadings, and canceling a March 11, 2025 prehearing conference. Parties have the right to seek redress; Employer provided no legal basis to stop Employee from filing pleadings. Its request will be denied at this time. The prehearing conference relates to Employee's December 2, 2024 claim. The Division has a custom and practice to schedule a prehearing conference whenever a self-represented litigant files a claim

or petition. *Rogers & Babler*. Employer provided no specific statute, regulation or decisional law providing authority for this decision to cancel a prehearing conference under these circumstances. Further, *Andrew V* dismissed Employee's *past* claims for benefits for failing to cooperate with discovery. Conceivably, should Employee change his mind and sign and deliver releases to Holloway and sit for a deposition, he may (or may not) be entitled to benefits going forward from the date Employee begins to cooperate with discovery. To be clear, this decision does not suggest that Employee is or will be entitled to any future benefits; only that *procedurally* he may be entitled to claim some should he cooperate fully with discovery. Given this analysis, Employer's request for an order canceling the March 11, 2025 prehearing conference will be denied.

CONCLUSION OF LAW

Andrew V will not be modified.

ORDER

1) Employee's October 29, 2024 petition to modify *Andrew V* is denied.
2) Employer's requests to stop Employee from filing pleadings, and for an order canceling the March 11, 2025 prehearing conference, are denied.

Dated in Anchorage, Alaska on February 27, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Randy Beltz, Member

/s/
Pamela Cline, 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 on Modification in the matter of Johnny Andrew, employee / claimant v. Silver Bay Seafoods, LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201810619; 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 February 27, 2025.

/s/
Lisa Clemens, Workers' Compensation Technician