ALASKA WORKERS' COMPENSATION BOARD

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

RICHARD CARON, Employee, Claimant, v. SILVER BAY SEAFOODS, LLC, Employer, and EVEREST NATIONAL INSURANCE, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 202311656 AWCB Decision No. 25-0029 Filed with AWCB Anchorage, Alaska on April 29, 2025

Richard Caron (Employee)'s September 9, 2024, November 4, 2024, and November 5, 2024 petitions were heard on April 1, 2025 in Anchorage, Alaska, a date selected on February 18, 2025. A November 26, 2024 hearing request gave rise to this hearing. Employee appeared, testified and represented himself. Attorney Jeffrey Holloway appeared and represented Silver Bay Seafoods, LLC, and Everest National Insurance (Employer). Witnesses included Lisa Pridmore, Patricia Strang, and Erin Havard testifying for Employer. The record closed at the hearing's conclusion on April 1, 2025.

ISSUES

Employee contends his compromise and release (C&R) settlement agreement should be modified from a structured annuity to a lump sum. Employee argues the annuity is insufficient to cover future surgery costs and, therefore, is not in his best interest.

Employer contends Employee negotiated, reviewed, and signed his C&R and it should not be set aside or modified. Employer contends the C&R is in Employee's best interest because the surgeries Employee contends the annuity is not sufficient to cover are for his preexisting conditions and are unrelated to his work injury.

1) Should the parties' C&R be set aside?

Employee contends Employer violated his privacy during medical exams by having a third-party case manager present and should be investigated.

Employer contends the Alaska Workers' Compensation Board lacks jurisdiction to adjudicate Employee's contention and his petition should be denied.

2) Should Employee's petition for an investigation into privacy violations be denied?

Employee contends Employer should be compelled to provide emails, memoranda, letters, and all communications that directed his benefit payments to be controverted.

Employer contends Employee never filed a discovery request, instead Employee fashioned his petition to compel as a discovery request. Employer argues it cannot be compelled to provide discovery when Employee never formally requested discovery from Employer.

3) Should Employee's November 5, 2024 petition to compel be denied?

FINDINGS OF FACT

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

1) On August 25, 2023, Employee reported injuries to his lower back and right leg when a container of frozen salmon fell and knocked him down. (First Report of Injury, August 25, 2023).

2) On September 8, 2023, Employee signed an Authorization for Release of Information for International Medical Group (IMG) throughout the duration of his workers' compensation case due to Employee residing in Thailand and requiring assistance in obtaining care. (Authorization for Release of Information, Agency File, March 7, 2025).

3) On March 4, 2024, Employer's orthopedic surgeon Blake Nonweiler, M.D., diagnosed Employee with a pre-existing complex cyst and solid mass of the inferior pole of the kidney, L4-5 and L5-S1 lumbar stenosis also pre-existing, obesity, and a work-related lumbar strain that was medically stable on the date of the exam. Dr. Nonweiler found past treatment for Employee's work injury to be reasonable and medically necessary. Irrespective of causation, Dr. Nonweiler opined treatment for Employee's diagnoses could consist of three rounds of steroid injections, if insufficient to relieve pain Employee would be a candidate for lumbar surgery. However, when questioned as to the most significant factor for continuing treatment Dr. Nonweiler stated Employee's preexisting conditions would require treatment as his work related lumbar strain was medically stable. He found no further treatment for the work injury was required. (Nonweiler report, March 4, 2024).

4) On May 16, 2024, Employer sent Employee a complete settlement offer to close Employee's workers' compensation case. (Email from Becca Sheldon to Caron, May 16, 2024).

5) On May 16, 2024, Employee responded to Employer's email with questions regarding how an annuity would work. (Email from Caron to Holloway, May 16, 2024).

6) On May 16, 2024, Employee informed Employer through email that he felt a lump sum in lieu of an annuity given his circumstances was a better option. (Email from Caron to Holloway, May 16, 2024).

7) On May 17, 2024, after verbally agreeing to Employer's settlement offer, Employee requested Employer modify the distribution of settlement funds for a larger initial payment. Employer declined. (Email from Caron to Holloway, May 17, 2024).

8) On May 18, 2024, Employer responded to Employee's request to alter the settlement funds. Employer informed Employee he could not change the amount for medical benefits due to federal laws and regulations regarding Medicare. (Email from Holloway to Caron, May 18, 2024).

9) On May 21, 2024, Employer communicated its final offer to Employee for closure of his case. Employee was to receive $14,800 and a Medicare set-aside account that would be funded with seed money and an annuity, "per our prior correspondence." Employee was advised the documents would be ready "toward the middle of next week." (Email from Holloway to Caron, May 21, 2024, 2:49:00 p.m.).

10) On May 21, 2024, Employee responded to Employer's final offer. He said, "Okay. . . Quicker the better please." (Email from Caron to Holloway, May 21, 2024, 3:53:39 p.m.).

11) Employer agreed to fund an MSA account for Employee in exchange for his waiver of future medical benefits. The initial deposit seed money was $10,836, and Employee will receive annual payments of $3,790.50 for 15 years, for a total MSA amount of $67,693.05. Of this amount, $45,805.05 covers Employee's future medical treatment and $21,888 covers future prescription drugs. (Examworks ECS Compliance Solutions Report, April 22, 2024).

12) On May 31, 2024, Employee reviewed, initialed and signed a C&R, which stated in relevant part (portions omitted for brevity):

> **SETTLEMENT AGREEMENT**
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> . . . .
>
> To settle all claims and obligations under the Alaska Workers' Compensation Act (Alaska Statutes 23.30.001 through 23.30.400), the parties agree as follows:
>
> INTRODUCTION
>
> The employee, at age 62, injured his low back on August 25, 2023, when a large tote containing fish product fell on him, causing him to fall onto the ground.
>
> . . . An MRI of the low back performed that day revealed multilevel degenerative changes with associated stenoses at L4-5 and L5-S1. The employee was assessed with acute right-sided low back pain, incontinence of feces, left kidney mass, saddle anesthesia, and primary hypertension.
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> . . . .
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> The employee left Alaska and moved to Thailand.
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> . . . .
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> On November 7, 2023, the employee was prescribed additional medication due to reporting ongoing low back pain.
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> . . . .
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> In response to correspondence, Dr. Luangwatanapong reported on December 10, 2023, that the employee had spinal canal stenosis as depicted on the lumbar spine MRI. Dr. Luangwatanapong did not believe the employee could return to full duty, but he was capable of modified duty. The employee was noted to need further medical treatment in the form of medications and had a scheduled follow-up appointment for January 10, 2024.
>
> On December 20, 2023, Dr. Blake Nonweiler conducted an independent medical examination. He assessed the employee with complex cyst and solid mass of the inferior pole of the kidney, not work-related, mild-to-moderate spinal stenosis of L4-5 and L5-S1, not work-related, and a work-related lumbar strain with right leg radiculopathy. He opined that the employee's disability was substantially caused by the work injury and that the medical treatment recommended by Dr.

Luangwatanapong was medically necessary. He did believe that the employee's pre-existing L4-5 and L5-S1 spinal stenosis contributed to the employee's current lumbar spine condition.

. . . .

In response to correspondence, Dr. Yajkwavong reported on January 6, 2024, that the employee's degenerative changes are the major reason for his disability. An updated MRI of the lumbar spine was requested.

An MRI of the lumbar spine dated January 7, 2024, revealed lumbar spondylosis, dehydrated discs at L2-3 to L5-S1, mild L2-3 and L4-5 protruding discs with mild L3-4 and L5-S1 bulging discs. There were also posterior disc spurs and bilateral facet joint hypertrophy.

The employee's attending physician reported on January 8, 2024, that the MRI scan did not show any permanent damage from the work injury. The employee was noted to have degenerative changes to his lumbar spine. Pain medications were prescribed. The employee had reached MMI status.

Six sessions of physical therapy were prescribed by the attending physician on January 31, 2024. The employee was instructed to follow-up in two weeks.

. . . .

Dr. Nonweiler performed a follow-up IME on March 4, 2024, and assessed complex cyst and solid mass of the inferior pole of the kidney, L4-5 and L5-S1 lumbar stenosis with moderate neural foraminal narrowing and ligamentum flavum hypertrophy, pre-existing obesity and lumbar strain. Dr. Nonweiler attributed the strain to the subject work injury, which is now medically stable. It was Dr. Nonweiler's opinion that although the employee strained his low back at work, his ongoing symptoms are related to pre-existing lumbar stenosis that was exacerbated by the employee's obesity. According to Dr. Nonweiler, no further medical treatment was necessary from an industrial standpoint as of November 25, 2023. No impairment was attributed to the subject work injury by Dr. Nonweiler.

. . . .

DISPUTE

Bona fide disputes exist between the parties. It is the position of the employee that he is entitled to additional temporary total disability (TTD). The employee further claims that he is owed permanent impairment benefits and future medical benefits for his injury.

On the other hand, it is the position of the employer that the employee is not entitled to additional TTD benefits, to any permanent partial impairment benefits, or to future medical benefits for his injury. The employer's position is based on Dr. Nonweiler's March 4, 2024, IME finding of medical stability without the need for further medical treatment as of November 25, 2023, and without any impairment. No TTD benefits are owed after medical stability is reached. The employer's controversion was not unfair but based on medical evidence.

COMPROMISE AND RELEASE

1.

To resolve all disputes and claims among the parties with respect to all medical and related transportation benefits, compensation rate, compensation for disability (whether the same be temporary total, temporary partial, permanent partial impairment, or permanent total), penalties, interest, claims for unfair or frivolous controversion, reemployment benefits, AS 23.30.041(k) benefits, and AS 23.30.041(g) job dislocation benefits, the employer will agree to fund a Medicare set-aside allocation estimated at $67,693.05 as outlined below. In addition, the employer will also pay to the employee a lump sum of $14,800.00, which is classified as a waiver of disputed PPI benefits. Except as provided below, the employee agrees to accept this amount in full and final settlement and discharge of all obligations, payments, benefits, and compensation which might be presently due or might become due to the employee at any time in the future under the Alaska Workers' Compensation Act.

. . . .

The parties have considered the interests of Medicare and do not intend to shift responsibility for the employee's low back conditions to Medicare. The employee is not yet Medicare eligible but is a potential Medicare beneficiary, Class II, due to his age, as he will turn 65 years old within the next thirty months. A Medicare set-aside allocation was prepared, and it is expected that $67,693.05 will be needed to cover medical expenses for the employee's low back for the duration of his life span. The parties agree that the amount allocated herein as medical benefits is sufficient to cover the employee's anticipated future medical expenses for his low back condition. Under the review thresholds for submission and review established by the Centers for Medicare and Medicaid Services (CMS) in its July 11, 2005, and April 25, 2006, memoranda, this set-aside will not be submitted for approval to CMS.

The employer will agree to fund the Medicare set-aside via a combination of seed and annuity. The seed money of $10,836.00 will be paid within fourteen days of approval of this Agreement under AS 23.30.012(b). The Medicare set-aside will be self-administered, and the employee agrees to abide by the attached Terms and Conditions of Beneficiary-Administered Medicare Set-Aside Account. The

funding of this self-administered Medicare set-aside account shall close future medical and related transportation benefits in reference to the August 25, 2023, injury with the employer.

. . . .

The employer, as consideration for the employee's full waiver of any entitlement and disputes with respect to all medical and related transportation benefits under the Act in relation to the August 25, 2023, injury, agrees to fund the purchase of an annuity and issue seed money for purposes of a Medicare set-aside allocation, and the annuity will make annual payments beginning July 16, 2025, following approval of this Agreement under AS 23.30.012(b). The annuity will be purchased from New York Life Insurance Company, the annuity insurer, rated A+ by A.M. Best. As stated $10,836.00 in seed money will be paid within fourteen days of approval of this Agreement under AS 23.30.012(b). The annuity will then provide for future period payments for the employee as follows:

> Richard Caron (payee): $3,790.50 per year for 15 years IF LIVING beginning on July 16, 2025.

. . . .

7.

Upon approval of this Settlement Agreement by the Alaska Workers' Compensation Board and upon payment as specified under this Agreement, this Settlement Agreement shall be enforceable and shall forever discharge the liability of the employer to the employee and to his heirs, beneficiaries, executors and assigns, for all compensation and other benefits rising out of or in any way connected with the injuries, illnesses, symptoms, or conditions referred to in the Introduction which now be due or might become due in the future under the Alaska Workers' Compensation Act.

By signing this Settlement Agreement, the employee acknowledges his intent to release the employer from any and all liability under the Alaska Workers' Compensation Act for all claims, unless expressly included in this Agreement, arising out of or in any way connected with the injuries, illnesses, symptoms, or conditions referred to in the Introduction.

The parties recognize that the employee's injuries and disabilities are or may be continuing and progressive in nature and extent of the injuries and resulting disabilities may not be fully known at this time. Nevertheless, the employee, relying on his own judgment and not any representation made by the employer or by the employer's agents, has decided that it is in his best interest to settle all claims under the Alaska Workers' Compensation Act in accordance with the terms of this Agreement, including claims arising out of or in any way connected with any known or as yet undiscovered injuries, disabilities, or damages associated with the

> injuries, illnesses, symptoms, or conditions referred to in the Introduction. To this end, the parties mutually waive any right they may have to set aside this Settlement Agreement, based upon any mistake of law or upon any changed condition or circumstance. Further, the parties agree that the payments made and the claims released under this Agreement shall be final and binding, regardless of any change in the law or change in the interpretation of the law governing the parties' rights and responsibilities under the Alaska Workers' Compensation Act.
>
> The employee understands he has the right to take his case to hearing before the Alaska Workers' Compensation Board, but waives that right under this Agreement.
>
> . . . .
>
> ENTIRE AGREEMENT
>
> This Settlement Agreement contains the entire agreement among the parties and constitutes the full and complete settlement of all claims, whether actual or potential, described above. This Settlement Agreement is not contingent on any undisclosed Agreement and an undisclosed Agreement is not contingent on this agreed Settlement per 8 AAC 45.160. The parties have not made an undisclosed agreement that modifies this agreed settlement. It is specifically agreed that the Compromise and Release Summary (AWCB Form #07-6117) filed with this Settlement Agreement constitutes neither a part of this Settlement Agreement nor an aid in construction of this Settlement Agreement . . . .
>
> CAUTION: **READ BEFORE SIGNING**
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> . . . .
>
> I, Richard Caron, Depose and say:
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> I am the employee named in this Settlement Agreement. I have read this agreement carefully and understand its contents. I have signed this Agreement freely and voluntarily. I attest, under oath, that this Agreement is in my best interest. I verify that I am at least 18 years of age, am competent to sign this document, and am not represented by legal counsel.
>
> _____(Signed)_____
> Richard Caron

Employee's signature appears on pages 10 and 11, dated on May 31, 2024. Employee's initials appear on the bottom right-hand corner of each page of the agreement. Employee entered no hand-written corrections, interlineations, or alterations to the C&R. It meets all requirements for such documents as set forth in 8 AAC 45.160. Because Employee was not represented by an

attorney, and waiving future medical benefits, the C&R required board approval. (Compromise and Release Agreement, May 31, 2024; experience, judgment and inferences drawn from the above).

13) On June 4, 2024, the parties filed the fully executed C&R with the Board. (Agency file).

14) On June 10, 2024, the C&R was approved by the Alaska Workers' Compensation Board. (Agency file).

15) On July 16, 2024, Employee asked Employer why he was given a Medicare set-aside. He believed his treatment costs would exceed the allotted money he had agreed to in his C&R to waive future medical benefits. Employee asked Employer if he needed to hire an attorney to void the agreement. (Email from Caron to Holloway, July 16, 2024).

16) On July 31, 2024, Employee requested information on how to close his annuity payment in his settlement agreement and instead receive a lump sum. (Agency file, Communications Tab, July 31, 2024).

17) On September 8, 2024, Employee filed a petition for reconsideration of his settlement agreement as it was not in his best interest. (Petition, September 8, 2024).

18) On September 30, 2024, Employer answered Employee's petition. Employer noted settlement agreements under AS 23.30.012(b) cannot be "reconsidered" or "modified." Employer noted that even if reconsideration was available the deadline to file for reconsideration is 15 days which would have been June 25, 2024. Employer contended Employee's petition should be denied and dismissed with prejudice. (Answer to 9/8/24 Petition, September 30, 2024).

19) On September 30, 2024, Employee emailed Employer and the Division requesting the board review the actions of Employer leading to Employee being misled into signing his settlement agreement. He expounded the annuity he was provided will not cover his medical bills and since he lives in Thailand and is not eligible for Medicare the total amount of the annuity should be converted to a lump sum. (Agency file, Communications Tab, September 30, 2024).

20) On November 4, 2024, Employee filed a petition for modification, an investigation into privacy violations, and review of the settlement agreement amounts to account for surgical procedures. Employee attached Dr. Nonweiler's March 4, 2024 EME report that says treatment for Employee's preexisting conditions could include lumbar surgery. (Petition, November 4, 2024).

21) On November 5, 2024, Employee filed a petition to compel discovery from multiple individuals who had control over his ability to get treatment. Employee requested all records, emails, memos, and letters pertaining to denial of payment for his treatment. (Petition, November 5, 2024).

22) On November 25, 2024, Employer filed an answer to Employee's November 4 and 5, 2024 petitions. Employer asserted Employee's settlement agreement cannot be reconsidered or modified. Employer contended Employee signed a C&R waiving any right he had for conduct occurring prior to the settlement agreement and his request for an investigation of alleged privacy violations should be denied. Employer also noted Employee never served it with a discovery request and contended it, therefore, cannot be compelled to provide discovery. (Answer to 11/4/24 and 11/5/24 Petitions, November 25, 2024).

23) On November 26, 2024, Employee requested an oral hearing for one hour. (Affidavit of Readiness for Hearing (ARH), November 26, 2024).

24) On December 6, 2024, Employer opposed Employee's ARH (Affidavit of Opposition per 8 AAC 45.070(c), December 6, 2024).

25) On January 9, 2024, an April 1, 2025 hearing was scheduled for 8 hours. Three issues for hearing were identified: (1) Employee's September 9, 2024 petition for reconsideration of the June 10, 2024 C&R, (2) Employee's November 4, 2024 petition to modify medical benefits and investigate privacy violations, and (3) Employee's November 5, 2024 petition to compel discovery. (Prehearing Conference Summary, January 9, 2024).

26) Employee contends his privacy rights were violated when an agent hired by Employer attended medical appointments with him while he was treating for his work injury in Thailand. He requests the actions by the Employer be investigated. Employee also contends that the settlement agreement he signed is not in his best interest. Employee argues the amount of money he is currently receiving is too low to cover the cost of potential future surgeries. He requests his C&R be set aside or amended to provide a lump sum payment instead of an annuity. (Employee's Hearing Brief, March 26, 2025).

27) Employer contends there is no basis to set aside Employee's C&R. Employer argues Employee pursued a lump sum settlement during negotiations, Employer declined, and now after signing the agreement, Employee is asking to have the settlement amount modified. Therefore, there is no fraud, deceit or coercion on Employer's part to justify such an action by the Board.

Further, Employee's request for an investigation into his privacy being violated is outside the Division's scope and should be denied. Lastly, Employee's petition to compel discovery should be denied on two grounds: (1) the discovery pertains to his request for the Division to investigate whether Employee's privacy was violated, a power not imbued on the Division, and (2) Employee never served Employer with discovery requests and thus Employer cannot be compelled to respond. (Employer's Hearing Brief, March 26, 2025).

28) At hearing Lisa Pridemore testified for Employer. Pridemore is a nurse case manager for International Medical Group (IMG). She coordinates care in situations where an injured worker resides out of the United States and is receiving care under a workers' compensation claim. She said care in other countries is different than the United States and she coordinates with field agents to verify medical reports are provided during care. She also assures treatment or medications covered under an injured workers' claim are pre-paid. She said Employee had been treating in Thailand for four months when he expressed concern about a field agent being present at his appointments. She explained doctors in other countries are often not familiar with the workers' compensation system and need to be prompted to fill out documents required by the insurance adjusting company to maintain visibility on an injured workers' care. The field agents typically communicate in the language of the country where they reside to better assist with language barriers that occur when a worker is seeking treatment outside his country of origin. (Pridemore hearing testimony, April 1, 2025).

29) Patricia Strang testified for Employer. She works as Senior Medicare Compliance Counsel for Examworks Compliance Solutions. Strang is a registered nurse and licensed attorney. She has testified as an expert witness in federal trials. She reviews settlement agreements to ensure Medicare's interests are protected when parties settle a case. She explained, under the Medicare Secondary Payer Act, if there are funds allocated under a settlement for a work injury, Medicare will not pay for care until the settlement funds have been exhausted. To accomplish this, Examworks crafts annuities and sometimes lump sums to cover future medical costs for injured workers when resolving their workers' compensation cases. Once those funds have been fully expended, then Medicare may step in to cover medical expenses. Strang testified she reviewed the report issued for Employee's Medicare Set Aside (MSA) and found the treatment costs allocated in the MSA were commensurate with Employee's treating physicians' opinions. Strang noted when crafting the MSA the vendor responsible only considers treating physician opinions; the

vendor does not rely on Employer's physicians (EME) opinions. In Strang's opinion, the MSA crafted for Employee was appropriate given the medical records relating to his work injury. (Strang Hearing testimony, April 1, 2025).

30) Erin Havard testified for Employer. Havard is a claims team lead for Sedgwick CMS. Havard has worked for Sedgwick since 2017, and has adjusted claims for over twenty years. He said where Medicare is implicated Sedgwick sends cases to a third-party vendor such as Examworks to assure compliance with Center for Medicare Services rules. Examworks completes an evaluation and crafts an MSA that is returned to Sedgwick. He explained within the last ten years he has seen more cases with crafted annuities to protect Medicare's interests due to the complex nature of Medicare compliance in workers' compensation cases. Havard clarified when adjusters receive a report from third-party vendors, they accept the vendors' proposed MSA amount. He noted to protect Medicare's interests the amount Examworks or other vendors arrive at when they submit their MSA is specifically calculated to provide a precise amount of money for future medical care and Employers do not attempt to reduce that amount after the fact. Havard testified Employer paid New York Life Insurance for the annuity in Employee's case upon approval of Employee's settlement agreement, the funds have been allocated, and Employer has no mechanism to retract the funds. (Havard Hearing testimony, April 1, 2025).

31) Employee testified at hearing. Employee stipulated he signed the settlement agreement. He read and reviewed the agreement prior to signing. However, Employee contends after signing the agreement he believes the annuity funds would be insufficient to cover the cost of future surgery. Since he believes the funds are insufficient to cover surgery the agreement is not in his best interest and the annuity should be modified to a single lump sum. Employee testified he had no outstanding medical bills and Employer had paid all bills that were owed. Employee alleges the Employer violated his privacy by having a third-party present during his examinations. Employee did not address his petition to compel discovery. (Record).

32) Employer argued no basis exists for Employee's C&R to be set aside. It contends Employee has failed to prove by clear and convincing evidence the agreement is not in his best interest, or he was the subject to fraud, misrepresentation, coercion, or duress. Employer contends Employee's claim his privacy was violated and his request for an investigation is outside the scope of the Division and should be denied. Employer also argues Employee never served discovery requests on it, therefore, Employee's petition to compel discovery should be denied. (Record).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
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> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
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> (3) this chapter may not be construed by the courts in favor of a party;
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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 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).

In *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 35-37 (Alaska 2007) (*AKPIRG*), the Court stated, "The legislature may constitutionally delegate some adjudicative power to an executive agency, but it may not delegate judicial power." "Neither the Appeals Commission nor the Board has jurisdiction to hear any action outside of a workers' compensation claim."

In *Richard v. Fireman's Fund Ins. Co.*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court instructed the board of its duty with respect to an unrepresented claimant:

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

> **AS 23.30.012. Agreements in regard to claims.** (a) At any time . . . after 30 days subsequent to the date of the injury, the employer and the employee . . . have the right to reach an agreement in regard to a claim for injury . . . under this chapter,

> but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130 . . . and is enforceable as a compensation order.
>
> (b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. . . .

Common law contract formation standards apply to workers' compensation settlement agreements to the extent the Act does not override them. The proof required for setting aside a C&R is "clear and convincing evidence." *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079 (Alaska 2008). "Clear and convincing evidence" is defined as "evidence that is greater than a preponderance, but less than proof beyond a reasonable doubt." It is evidence "which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Buster v. Gale*, 866 P.2d 837, 844 (Alaska 1994). The board can set aside a settlement agreement based on fraud; to avoid a contract based on misrepresentation, the moving party must show: 1) a misrepresentation; 2) which was fraudulent or material; 3) which induced the party to enter the contract, and; 4) upon which the party was justified in relying. *Seybert*, 182 P.3d at 1095. The board cannot set aside a settlement contract based on factual mistakes. *Id.* at 1094.

No fiduciary relationship exists between a workers' compensation claimant and Employer's workers' compensation insurer because the Act created an adversarial system, such that claimants' and insurers' interests are in conflict. *Id.* at 1095. While regulations impose some duties on a workers' compensation insurer vis-a-vis a claimant, they do not impose a fiduciary relationship; regulations do not impose duties of loyalty and the disavowal of self-interest that are hallmarks of a fiduciary's role; an insurance contract between an insurer and employer does not create a fiduciary relationship between a claimant and an insurer. *Id.* at 1091. In evaluating a claimant's assertion that a C&R should be set aside because of misrepresentation, the board is required to consider whether there was an intentional misrepresentation or a material representation on the employer's part. *Id*. at 1094.

8 AAC 45.160. Agreed settlements. . . .

(b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117.

(c) Every agreed settlement must conform strictly to the requirements of AS 23.30.012 and, in addition, must

(1) be accompanied by all medical reports in the parties' possession, except that, if a medical summary has been filed, only those medical reports not listed on the summary must accompany the agreed-upon settlement;

(2) include a written statement showing the employee's age and occupation on the date of injury, whether and when the employee has returned to work, and the nature of employment;

(3) report full information concerning the employee's wages or earning capacity;

(4) state in detail the parties' respective claims;

(5) state the attorney's fee arrangement between the employee or his beneficiaries and the attorney, including the total amount of fees to be paid;

(6) itemize in detail all compensation previously paid on the claim with specific dates, types, amounts, rates, and periods covered by all past payments;

(7) include a written statement from all parties and their representative that

(A) the agreed settlement contains the entire agreement among the parties;
(B) [t]he parties have not made an undisclosed agreement that modifies the agreed settlement;
(C) the agreed settlement is not contingent on any undisclosed agreement; and
(D) an undisclosed agreement is not contingent on the agreed settlement; and

(8) contain other information the board may from time to time require. . . .

ANALYSIS

1) Should the June 10, 2024 C&R be set aside?

A workers' compensation C&R is a contract subject to interpretation like any other contract. *Seybert*. Common law contract formation standards apply to workers' compensation settlement agreement formation and rescission to the extent these standards are not overridden by statute. *Id*. A C&R may be set aside for fraud, misrepresentation, coercion or duress. *Id*. A C&R may not be set aside due to a unilateral mistake of fact. *Id*. A party seeking to set aside a C&R for fraud or misrepresentation must show by "clear and convincing evidence": (1) a misrepresentation occurred; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. *Id*. A party seeking to set aside a C&R for coercion or duress must show by "clear and convincing evidence": (1) a party involuntarily accepted the terms of another, (2) circumstances permitted no other alternative, and (3) such circumstances were the result of coercive acts by the opposing party. *Id*. On May 16, 2024 Employee and Employer entered settlement negotiations. Employee requested additional information on how the proposed annuity to resolve future medical benefits would work, and Employer explained Employee would receive a lump sum seed money initially, and then annual payments over 15 years to cover future medical care. Employee accepted the terms as proposed by Employer. However, Employee shortly after requested a strict lump sum payment in lieu of an annuity, Employer rejected the counteroffer, and Employee agreed to the original terms. Employee had nearly two weeks after negotiating with Employer to reconsider his decision to sign the C&R on May 31, 2024.

According to the June 10, 2024 C&R's terms, Employee unambiguously waived all benefits, knowing his injury may be continuing and progressive, and understanding the extent of his injuries and disability may not have been fully known at the time he signed the agreement. He initialed each page in the lower right-hand corner; on page 10, Employee stated under oath that he had read the C&R, was capable of understanding it, knew it released certain benefits, accurately stated the facts, and was binding on him. He specifically agreed he entered into the agreement "relying on his own judgment and not any representation made by the employer or by the employer's agents, has decided that it is in his best interest to settle all claims under the Alaska Workers' Compensation Act in accordance with the terms of this Agreement." Employee affirmed under

oath that he signed the C&R "freely and voluntarily" because he thought it was in his "best interest."

Because Employee was waiving future medical benefits and was not represented by an attorney, his C&R required Board approval. AS 23.30.012(a), (b); 8 AAC 45.160. He had a right to settle his case, and he did. AS 23.30.012(a). Employee wanted to continue medical care for his lower back and wanted to proceed with settlement, "the quicker the better." There is no evidence that Employer pressured Employee to sign the agreement. Employer continued to reiterate it would not settle Employee's waiver of future medical benefits with a lump sum of money, but was willing to settle them for the proposed MSA amount with an annuity. The contemporaneous evidence and Employee's hearing testimony demonstrate he made a deliberate choice between settling his case and continuing litigation. AS 23.30.012(a); *Seybert*; *Rogers & Babler*. Consequently, there is no legal basis for setting aside the C&R and on that basis his request will be denied.

Alternatively, Employee contends the annuity funds he will receive are insufficient to cover future surgery costs. Employee contends work is the substantial cause of his need for surgery and bases this contention on Dr. Nonweiler's March 4, 2024 EME report that opined Employee could be a candidate for surgical intervention if steroid injections failed to alleviate his pain. However, Dr. Nonweiler's opinion regarding surgery was "irrespective of causation." He diagnosed Employee with multiple pre-existing conditions in his back including a complex cyst and solid mass of the inferior pole of the kidney, lumbar stenosis, and obesity. The only diagnosis give for Employee's work injury was lumbar strain. Dr. Nonweiler found Employee's lumbar strain was medically stable and noted with his pre-existing conditions he may need surgery in the future; however, work was not the substantial cause of the need for surgery. Dr. Nonweiler did not indicate that future surgery was necessary for Employee's lumbar strain, which in his opinion resolved after twelve weeks from the date of injury. Further, Patricia Strang credibly testified at hearing, that when Examworks prepares an annuity they do not consider Employer's physicians' reports. Employee's annuity was crafted based upon the medical reports of his own treating physicians. Employee's argument the agreement is not in his best interest because it does not cover potential future surgery is misplaced and does not warrant setting aside the C&R.

Finally, if Employee was not aware of or misjudged the full extent of his future disabilities and impairment when he signed the C&R or was unaware he could not later change his mind about how settlement funds would be paid, he made a mistake of fact. Employee was fully aware of the agreement's terms, which included precisely how the funds for his waiver of future medical benefits would be paid. Employee offered to receive a lesser amount in a lump sum than the MSA amount recommended by the vendor. He was informed Employer was required to protect Medicare's interest by funding the MSA with an annuity. The C&R and MSA account allocation spelled out these terms with specificity and Employee expressly accepted these terms. A C&R may not be set aside because Employee made a mistake in his determination of a material fact. AS 23.30.012(a); *Seybert*. Employee signed the proposed agreement, and admitted thereto at hearing. In the document he stated he read and understood it and was signing freely and voluntarily. Employee received and deposited the first settlement check. No basis exists in fact or law to set aside the C&R in this case. *Buster*. His petition to modify his agreement to a lump sum contingent on setting aside his C&R will be denied.

The preexisting nature of Employee's cyst and solid mass of the inferior pole of the kidney and lumbar stenosis, Dr. Nonweiler's opinion Employee's potential need for surgery, and Employee's obesity were considered in analyzing whether the C&R was in Employee's best interest. *Rogers & Babler*. Employee waived all future benefits in the C&R. He is entitled to no additional benefits because all benefits were expressly waived in the settlement agreement.

2) Should Employee's November 4, 2024 petition for an investigation into privacy violations be denied?

The Division and this hearing panel do not have jurisdiction to hear any action outside of a workers' compensation claim or petition. *AKPIRG*. In his November 4, 2024 petition, Employee requested, "Investagation [sic] into privacy violations. Employer speculates this is a request for the Division to investigate and penalize Employer for alleged privacy violations. Employer notes Employee signed a waiver to allow a third-party representative to attend examinations with him to assist in prepayment of treatment and obtain medical providers' reports to allow benefits to be paid. Employee argues a third-party representative violated his privacy because the person was present during his medical examinations. If Employee is asserting a violation of his rights under

Health Insurance Portability and Accountability Act (HIPAA), he can file a complaint with the Office of Civil Rights. *Richard*; *Rogers & Babler*. Employee's November 4, 2024 petition for an investigation into privacy violations is denied.

3) Should Employee's November 5, 2024 petition to compel be denied?

Employee's June 10, 2024 resolved "all disputes and claims among the parties." Employee's November 5, 2024 petition to compel discovery from Employer functions as an avenue to re-open litigation on his claim. Employee waived his right to continue to litigate this matter when he reviewed and signed his C&R. Since this decision denied Employee's request to set aside his C&R, it remains valid and Employee's waiver of his right to pursue additional legal action against Employer also remains in place. *Seybert*. For these reasons, Employee's November 5, 2024 petition to compel discovery is denied. *Id*.

CONCLUSIONS OF LAW

1) The parties' C&R will not be set aside.
2) Employee's petition for an investigation into privacy violations should be denied.
3) Employee's petition to compel should be denied.

ORDER

1) Employee's September 8, 2024 petition to set aside the parties' June 10, 2024 C&R is denied.
2) Employee's November 4, 2024 petition for a privacy investigation is denied.
3) Employee's November 5, 2024 petition to compel discovery is denied.

Dated in Anchorage, Alaska on April 29, 2025

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Pam 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 in the matter of RICHARD CARON, employee / claimant v. SILVER BAY SEAFOODS, LLC, employer; EVEREST NATIONAL INSURANCE, insurer / defendants; Case No. 202311656; 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 April 29, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician