# ALASKA WORKERS' COMPENSATION BOARD

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

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| JOHNNY NIE,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>PETER PAN SEAFOOD CO., LLC,<br><br>Employer,<br>and<br><br>TOKIO MARINE AMERICA INSURANCE CO.,<br><br>Insurer,<br>Defendants. | INTERLOCUTORY DECISION AND ORDER<br><br>AWCB Case No. 202301076<br><br>AWCB Decision No. 25-0030<br><br>Filed with AWCB Anchorage, Alaska on April 30, 2025 |

Johnny Nie's (Employee's) February 24, 2025 petition appealing a discovery order and seeking a Workers' Compensation Officer's (WCO or designee) disqualification from his case was heard on April 30, 2025, on the written record, in Anchorage, Alaska, a date selected on March 20, 2025. A March 20, 2025 stipulation gave rise to this hearing. Non-attorney Employee represents himself. Attorney Jeffrey Holloway represents Peter Pan Seafood Co., LLC and its insurer (Employer). The record closed at the hearing's conclusion on April 30, 2025.

## ISSUES

Employee contends that designee WCO Harvey Pullen abused his discretion when he issued his February 18, 2025 prehearing conference discovery order. He contends designee Pullen did not consider or include in his discovery order everything Employee argued or cited. Employee further

contends the designee's word choice and punctuation "deceptively" and stealthily" presented him in a poor light. He asserts his right to record "all public officials" in their official duties. Employee opposes Employer's assertion that because he filed an Affidavit of Readiness for Hearing (ARH) that he has no right to further discovery. He adds that his 17 discovery "questions" would be admissible over objection in a civil action. Employee asserts that unless his affidavit is rebutted, it stands as "Truth." He contends that because Employee discovered Employer's and their adjuster's alleged "fraud, misrepresentation, and deceit," WCO Pullen should have required Employer to respond to Employee's discovery requests. Employee argues that his requests are relevant and reasonably calculated to lead to admissible evidence. Lastly, Employee objects to Employer allegedly hiring a private investigator to surveil him.

Employer contends that Employee's 17 discovery requests are "nonsense." It asserts that the law provides for interrogatories, but those are not what Employee used. Employer contends that Employee had to seek permission to serve requests for production if documents are what he was seeking. Since Holloway and other attorneys in his firm working on Employee's case are not witnesses, government employees or public servants, Employer contends that Employee's requests for information regarding Holloway and his associate Matias Paez are irrelevant. It further contends that in October 2024, Employee filed an ARH, which it argues prevents him from seeking more discovery. Employer contends Employee's requests are also "irrelevant, vague, ambiguous, and harassing" and force it to incur unnecessary litigation costs. Lastly, Employer contends it is impossible to ascertain what Employee actually seeks through his discovery.

1) **Shall the designee's February 18, 2025 discovery request be affirmed?**

Given all the above, Employee contends designee Pullen deprived him of his rights under federal law and committed a felony crime against him. Employee requests that designee Pullen be disqualified and a new designee WCO be assigned to his case.

Employer did not directly address this issue.

2) **Shall designee Pullen remain the prehearing officer in this case?**

## FINDINGS OF FACT

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

1) Employee claims that on October 30, 2022, he was working on the Black Cod gutting line and was "bent over" for almost seven hours. He reportedly used his left hand to reduce strain on his back during the last hour, and heard a "pop/tear" sound coming from his left wrist. Employee said he reported the injury to "Eva" the next day and asked to go home "because something was wrong with [his] left wrist and [his] grandmother had passed away over a month" earlier. On the trip home, Employee said he had difficulty using his left hand to carry luggage and his pain increased. By the time he got home, Employee said the pain was unbearable and by the third day post-injury, he could not grip with his left hand. He "started to panic" when the pain continued through November and December, but it receded in late December 2022. Employee said he returned to work for Employer for another season because he needed the money, and his pain increased once he began working. He ultimately had surgery. ("Nature of Injury," attached to Employee's Claim for Workers' Compensation Benefits, November 2, 2023).

2) On November 7, 2023, in a claim dated November 2, 2023, he requested temporary total disability (TTD) and permanent total disability (PTD) benefits; a compensation rate adjustment; an unfair or frivolous controversion finding; a penalty; interest; and "Other." "Other" was a claim under AS 23.30.250 for Employer's, its agents' and representatives' allegedly "fraudulent or misleading acts." (Claim for Workers' Compensation Benefits, November 2, 2023).

3) On November 24, 2023, Employee "Amended" his claim, although he sought the same benefits as requested on November 2, 2023. In an attachment, Employee explained and clarified that his injury date "needs to be corrected," stated he had signed medical record releases and sent them to the adjuster, but he had revoked the signed releases via a "letter of revocation." He did so because he alleged the adjuster sent him a "fraudulent" medical record release with an incorrect "January 20, 2023" injury date. Employee said even the original medical record release he signed while still at work had an incorrect "November 30, 2022" injury date. Thus, Employee said the adjuster had "filed false and misleading information" on his claim. He also stated that he had instructed the insurer that a Nurse Case Manager (NCM) should no longer attend his medical appointments, but one still showed up "uninvited" thereafter. Given these allegations, he contended that Employer and its agents either did, or failed to do, the following:

> Unlawfully and recklessly performing on my case while its controverted, deceptively compelling, and coercing me to go see IME, which I'm not obligated to fulfill while controverted. Engaged in deceptive leasing practices, made a false and misleading submission. Coerced me to file fraudulent date of injury.
>
> Breached the limitations of Medical Release by producing information that is outside of the limits designated in the release, insurer was engaging in unauthorized oral communication and ex parte written information with provider disclosing nature of our examination, care, and treatment.
>
> Transportation wasn't provided for surgery. My right to benefits for the months of November and December. AS Sec. 23.30.255 Penalty for failure to pay compensation, guilty of Class C Felony. Failed to secure the payment of compensation as required by AS Sec. 23.30.075. Breached limitations of medical release per AS Sec. 23.30.108, violating HIPPA.
>
> Penalties for fraudulent or misleading acts; damages in civil action AS Sec. 23.30.250. Insurer made false or misleading submission affecting payment, knowingly engaged in deceptive leasing practices for the purpose of evading full payment of workers[']compensation.
>
> Coerced me to file a fraudulent compensation claim, is guilty of theft by deception as defined in AS Sec. 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.
>
> Cost of Living Adjustment, Acceleration of Benefits, Fraud/Misrepresentation, Safety Violation, Correction.
>
> Insurer knowingly, and with intent damaged, deceived, and defrauded me, insurer is civilly liable, for I have been adversely affected by their conduct and damaged unfavorably, to be made whole I request $300,000, which is a reasonable amount to balance the ledger. I hereby declare everything to be true and correct with conclusive evidence. I file this claim in good faith. (Amended Claim for Workers' Compensation Benefits, November 24, 2023).

4) On December 4, 2023, Holloway, entered an appearance for "the law firm of Babcock Holloway Caldwell & Stires," on Employer's and its insurer's behalf in this case. Holloway signed the entry as "Attorneys for Employer and Its Workers' Compensation Insurance Carrier/Adjuster." According to Holloway's letterhead, attorney Matias Paez is an associate attorney in Holloway's firm, and is licensed to practice law in California. (Entry of Appearance, December 4, 2023; Holloway letterhead in agency file).

5) On October 1 and 4, 2024, Employee filed and served ARHs requesting a hearing on his November 24, 2023 claim. The Workers' Compensation Division (Division) forms that Employee

used state in relevant part, "Do not submit this form unless you are fully prepared for a hearing." They further state, "Having first been duly sworn, I state that I have completed necessary discovery, obtained necessary evidence, and am fully prepared for a hearing on the issue set forth" in the claim. A notary witnessed Employee's signatures. (ARHs, October 1 and 4, 2024).

6) On October 9, 2024, Employer opposed Employee's October 1 and 4, 2024 ARHs on grounds this case should not be heard because: (a) Discovery is not complete; (b) Depositions may be needed; (c) An IME was ordered by the Board and has been scheduled; and (d) The ARH should be stricken as it is not filed in good faith. (Affidavit of Opposition, October 9, 2024).

7) On October 14, 2024, in a document dated October 13, 2024, Employee filed and served a lengthy letter addressed to Holloway and his associate Paez, which Employer and the Division treated as a discovery request:

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**THE ISRAELITE DIVINE AND NATIONAL MOVEMENT OF THE WORLD**

*Northwest Amexem / Northwest Africa / North America*.

## Affidavit of Fact
## Request for Proof of Claim

Ancient Israelite Laws of Merchants / Commerce codified by the Corporate UNITED STATES OF AMERICA and under the UNINFORMED [sic] COMMERCIAL CODES

AWCB 202301076 October 13, 2024

Babcock Holloway Caldwell & Stires
**Jeffrey D. Holloway & Matias Paez**
600 W. Broadway, Suite 200
San Diego, California 92101

Greetings from the Scattered Israelite Nation,

On behalf of all the Israelites on the land of our forefathers, the Continental United States North America I affirm for the record the following: All those who profess verbally or in writing to be Israelite American National Aboriginal Indigenous Natural Divine Beings Manifested in Human Flesh to the Americas, In Propria Persona Sui Juris, arising under the Zodiac Constitution, United States Republic Constitution, and Treaty of Peace and Friendship of 1787 and are protected by International Law.

Once Proclaimed, all Israelite American Nationals will affirm their Appellation, their National Standing, Divine Being manifested in human flesh, the only Authorized Representative of TRANSMITTING UTILITY/TRADENAME/CAP NAME, their Appellation, or any derivative thereof.

All Israelite American Nationals, are held harmless against all claims, legal actions, orders, warrants, judgments, demands, liabilities, losses, depositions, summonses, lawsuits, costs, fines, levies, penalties, damages, interests, and expenses whatsoever, both absolute and contingent, as are now due, and as might become due, now existing, and as might hereafter arise, and as might be suffered by, imposed on, and incurred for any and every reason, purpose, and cause whatsoever.

The following are ACCEPTED FOR VALUE:

- United States Republic Constitution Article VI
- United States Republic Constitution Article II, Section 1 (Oath of Office for the President)
- United States Republic Code Title 5 Section 3331, Oath of Office (public servants)
- Statutes At Large March 4, 1789 Oath for United States federal and state officers (public servants)
- United States Republic Code Title 28 Section 453, Oath of justices and Judges (public servants)
- United States Republic Code Title 10 Section 502, Oath of Armed Forces Personnel (public servants)

All Israelite American National Divine Beings manifested in human flesh, accept for value all the above listed “Oaths” and “Oaths of Office” of all public servants of the Corporate UNITED STATES OF AMERICA, all its ENCLAVES, TERRITORIES, CORPORATIONS REGISTERED IN ANY FORTS, MAGAZINES, ARSENALS, DOCKYARDS, and other needful buildings. All CORPORATIONS registered in the Corporate UNITED STAES [sic] OF AMERICA and any of its ENCLAVES, et el., and all subcorporations registered thereof.

If there are other Oaths that any public servants takes, both foreign and/or domestic that may not be contained. In the above I hereby command that all public servants

are first and foremost bound by the United States Republic Constitution Article VI where it states the following for the protection of the People at large:

And the judges in every state shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several states, shall Be bound by oath or affirmation, to support this Constitution. . . .

1. Provide PROOF OF CLAIM or your "Oath of Office" and your bond as a public servant up to date and in good standing.
2. Provide PROOF OF CLAIM that by your words and deeds as a public servant you are adhering to your Oath binding you to your obligation to the People, in that you will protect, preserve, and secure the Rights (birth) of the People in harmony with Article VI of the United States Republic Constitution.
3. Provide PROOF OF CLAIM that as a public servant, obligated to protect the Rights (birth) of the People. You have the authority delegated to impose and/or apply "statues" on/to the People.
4. Provide PROOF OF CLAIM that the name appearing on any charging instrument, in capital letters: is not a corporate fiction denoting an inanimate object.
5. Provide PROOF OF CLAIM that the People to whom you, a public servant is obligated, can contract with the public servant in exchange for any Rights (birth) and produce the lawful contract in support of the sale/negotiation/exchange of the Rights (birth).
6. Provide PROOF OF CLAIM that you have Jurisdiction over any Israelite American National Aboriginal Indigenous Natural Divine Being Manifested in Human Flesh to the Americas (Northwest Amexem – North America – North Gate).
7. Provide PROOF OF CLAIM that you are licensed to practice law in the STATE OF ALASKA.
8. Provide PROOF OF CLAIM that the undersigned had a 'meeting of the mind(s)' with Sedgwick on 2/17/23 when they changed the undersigned's **Date of Injury** from **10/30/22** to **1/20/2023** pursuant to the Workers['] Compensation Claim in respect to full disclosure and that said Claim contained or contains no elements of fraud by Sedgwick under **AS Sec. 23.30.250.**
9. [Original is blank].
10. Provide PROOF OF CLAIM that MATIAS PAEZ, who practiced and is licensed under Alaska State Law to depose the undersigned during his March 12, 2024, at 8:00 a.m. (Pacific Daylight Time) deposition.
11. Provide PROOF OF CLAIM that MATIAS PAEZ who practiced and is licensed under Alaska State Law to represent Employer during undersigned's 5/30/2024 Prehearing.
12. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not violate their Client's Bill Of Rights when the undersigned instructed the NCM that on 4/25/2023 that he no longer requires Nurse Case Managers at his

appointments and on 9/12/2023 a random NCM did not appear uninvited to his appointment with Dr. Fait under **AS Sec. 23.30.60** [sic].
13. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not commit fraud on the Worker's Comp Injury Claim in respect to the undersigned below in any capacity.
14. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not file a false and misleading submission, while coercing the undersigned to file fraudulent date of injury affecting payment, and engaged in deceptive leasing practices for the purpose of evading full payment of workers[']compensation under **AS Sec. 23.30.250**.
15. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not breach the limitations of Medical Release signed on 01/20/2023 by undersigned, by producing information that is outside of the limits designated in the release, and Sedgwick did not engage in unauthorized oral communication, and ex parte written information with provider disclosing nature of his examination, care, and treatment under **AS Sec. 23.30.108.**
16. Provide PROOF OF CLAIM that there is no penalty nor interest for undersigned's right to benefits for the months of **November**, and **December** of **2022** under **AS Sec. 23.30.255.**
17. Provide PROOF OF CLAIM that the public servant bringing forth any answer to the claim can produce written documentation in affidavit form signed under "**Penalty of Perjury**" with all relevant or related evidence over this Israelite American National.

General acquiescence, or non-response by Babcock Holloway Caldwell and Stires to provide the above **'Proofs of Claim'** will constitute your agreement and formal acceptance. You will have by your non-response to state a claim upon which relief can be granted otherwise shall operate as general acquiescence relative to this presentment.

Due to the time sensitive nature of this private matter, under necessity, you are to respond with "**Proofs Of Claim**" to answer these Jurisdictional and Claim questions regarding this Israelite American National within **10** days of this registered mailing and/or Electronic Service, plus (**1**) day grace granted by return service by certified-priority-return-mail, to the undersigned's address if there is physical bodily contact the above answers be provided upon contact to the Israelite American National immediately and without the need for request in harmony with your obligation.

A non-response and /or failure to provide proof of claim signed under **"Penalty of Perjury"** will constitute agreement that any charges, or answers brought against any Israelite American National Divine Being manifested in human flesh, and/or as Authorized Representative, are unfounded and a result of treasonous activity and in violation of the Original Thirteenth Amendment as well as other violations at law.

> Should you fail or refuse by non-response to provide **'Proof of Claim'** within the time specified in this private matter, general acquiescence and acceptance will be taken on your part as formally exercised (performed) pursuant to your silence.
>
> Failure and/or refusal to bring forth such '**Proof of Claim**' will place all entities/persons/parties involved in dishonor, and thus constitute an admission of damage and injury to the Israelite American National per the Israelite American National Divine Being manifested in human flesh in the amount of **$3,000,000.00** (Three Million Dollars lawful money) per violation, enforcement of punishment for treason, forfeiture of all assets, expulsion from this continent to be initiated within twenty four hours of dishonor in harmony with the Original Thirteenth Amendment.
>
> **Notice to Agent is Notice to Principal and Notice to Principal is Notice to Agent**
>
> AFFIDAVIT
>
> Affiant, Israelite American National Aboriginal Indigenous Divine Being manifested in human flesh, declare under the Zodiac Constitution and the United States Republic Constitution that the above is true and correct to the best of my knowledge and honorable intent.
>
> This Affidavit is dated the Thirteenth Day of the Tenth Month in the Year of My Eloah YaHWeH Twenty Hundred Twenty Four. (2024 – October, 13)
>
> /s/
> Johnny, Authorized Representative,
> All Rights Reserved:
> U.C.C. 1-207 / 1-308; U.C.C. 1-103
> California, Territory
> Northwest Amexem

A notary witnessed Employee's signature on October 13, 2024. (Affidavit of Fact Request for Proof of Claim, October 13, 2024; all emphasis in original).

3) On October 23, 2024, the designee at a prehearing conference "elected to hold Employee's 10/1/2024 ARH in abeyance" to address Employee's discovery request. (Prehearing Conference Summary, October 23, 2024).

4) On October 24, 2024, Employer sought a protective order against Employee's October 13, 2024 discovery requests. (Petition, October 24, 2024).

5) On January 10, 2025, *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No. 25-0001 (January 10, 2025) (*Nie II*), admitted certain records as evidence over Employer's objection, and remanded

the parties' discovery dispute to the WCO to perform his proper analysis and render a discovery order. *Nie II* added applicable instructions. (*Nie II*).

6) On January 17, 2025, Employee "Amended" his prior claims again. To the benefits previously requested he added permanent partial impairment (PPI) benefits. (Amended Claim for Workers' Compensation Benefits, January 17, 2025).

7) On February 18, 2025, the parties appeared telephonically before Board designee WCO Pullen at a prehearing conference. The designee identified Employee's requested benefits and other relief as set forth in his January 17, 2025 claim: TTD; PTD; and PPI benefits; a compensation rate adjustment; an unfair or frivolous controversion finding; a penalty; interest; and "Other." In response to *Nie II*, the designee reviewed and ruled on Employer's October 24, 2024 petition for a protective order. As directed by *Nie II*, the designee set forth Employee's 17 discovery requests, considered Employee's arguments and Employer's objections, and "in summary form" analyzed Employee's requests under *Granus* and issued the following analyses and associated orders:

> 1. Provide PROOF OF CLAIM or your "Oath of Office" and your bond as a public servant up to date and in good standing.
>
> Employee argued that Mr. Holloway is a witness and an Officer of the Court who sent a Private Investigator after Employee. Under Title 5 USC 702 "my right of review" a person suffering legal wrong because of an agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof. I need to verify that Mr. Holloway's Oath of Office is in good standing. This information is admissible under Civil Action Title 5 USC 702 and Civil Action for the privation of rights Title 42 subsection 1983, 1985, and 1986. All of Employer's actions point to fraud under Civil Action. Mr. Holloway is a witness under 8 AAC 45.120.
>
> Employer representative argued that Employee's discovery requests (1-17) are nonsense. AS 23.30.115 allows parties to send interrogatories or requests for documents of which these are neither. Attorneys are not witnesses to a case and I am not a government employee or a public servant. None of this is relevant to Employee's Workers[']' Compensation Claims (WCC). Please refer to the Employer's Hearing Brief filed on 12/30/2024 for further argument.
>
> 2. Provide PROOF OF CLAIM that by your words and deeds as a public servant you are adhering to your Oath binding you to your obligation to the People, in that you will protect, preserve, and secure the Rights (birth) of the People in harmony with Article VI of the United States Republic Constitution.

Employee advised that the argument for discovery request #1 applies to discovery request #2.

Employer representative advised that the argument for discovery request #1 applies to discovery request #2.

3. Provide PROOF OF CLAIM that as a public servant, obligated to protect the Rights (birth) of the People[] [y]ou have the authority delegated to impose and/or apply "statues" [sic] on/to the People.

Employee advised that he is withdrawing discovery request #3.

4. Provide PROOF OF CLAIM that the name appearing on any charging instrument, in capital letters: is not a corporate fiction denoting an inanimate object.

Employee advised that he is withdrawing discovery request #4.

5. Provide PROOF OF CLAIM that the People to whom you, a public servant is obligated, can contract with the public servant in exchange for any Rights (birth) and produce the lawful contract in support of the sale/negotiation/exchange of the Rights (birth).

Employee advised that he is withdrawing discovery request #5.

6. Provide PROOF OF CLAIM that you have Jurisdiction over any Israelite American National Aboriginal Indigenous Natural Divine Being Manifested in Human Flesh to the Americas (Northwest Amexem -- North America -- North Gate).

Employee advised that he is withdrawing discovery request #6.

7. Provide PROOF OF CLAIM that you are licensed to practice law in the STATE OF ALASKA.

Employee advised that the argument for discovery request #1 applies to discovery request #7.

Employer representative advised that the argument for discovery request #1 applies to discovery request #7.

8. Provide PROOF OF CLAIM that the undersigned had a 'meeting of the mind(s)' with Sedgwick on 2/17/23 when they changed the undersigned's **Date of Injury** from **10/30/22** to **1/20/2023** pursuant to the Workers['] Compensation Claim in respect to full disclosure and that said Claim contained or contains no elements of fraud by Sedgwick under **AS Sec. 23.30.250.**

Employee argued that this discovery documentation will support a finding of fact in a Civil Action. Stating that "I was not in agreement with the change and this was fraud!"

Employer representative advised that the argument for discovery request #1 applies to discovery request #8.

9. [This line left blank in the original].

10. Provide PROOF OF CLAIM that MATIAS PAEZ, who practiced and is licensed under Alaska State Law to depose the undersigned during his March 12, 2024, at 8:00 a.m. (Pacific Daylight Time) deposition.

Employee argued that Mr. Paez was not licensed to practice law in Alaska and by representing Employer committed a misdemeanor.

Employer representative argued that a person does not have to be licensed to practice law in Alaska to represent parties before the Alaska Workers[']Compensation Board (AWCB) noting Barbara Williams as an example of the same.

Employee argued that Courts are not bound by Officers['] interpretations.

Employer representative argued that this discovery request is not relevant to any Workers[']Compensation Claim (WCC) or defense. Mr. Paez is not a government employee and is not employed by the Alaska Workers[']Compensation Board (AWCB) or the Alaska Bar Association.

11. Provide PROOF OF CLAIM that MATIAS PAEZ who practiced and is licensed under Alaska State Law to represent Employer during undersigned's 5/30/2024 Prehearing.

Employee advised that the argument for discovery request #10 applies to discovery request #11.

Employer representative advised that the argument for discovery request #10 applies to discovery request #11.

12. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not violate their Client's Bill Of Rights when the undersigned instructed the NCM that on 4/25/2023 that he no longer requires Nurse Case Managers at his appointments and on 9/12/2023 a random NCM did not appear uninvited to his appointment with Dr. Fait under **AS Sec. 23.30.60** [sic].

Employee argued that this discovery documentation will support a finding of fact in a Civil Action. Stating that Employer was "soliciting and accosting me!"

Employer representative argued that Employee's discovery request makes no sense, that AS 23.30.060 refers to Employer posting notice of Workers[']  Compensation Coverage in the workplace and referring to Employer's 12/30/2024 Hearing Brief.

13. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not commit fraud on the Worker's Comp Injury Claim in respect to the undersigned below in any capacity.

Employee argued that this discovery documentation will support a finding of fact in a Civil Action. Stating that Employer had committed fraud under AS 23.30.250.

Employer representative referred to Employer's 12/30/2024 Hearing Brief for argument.

14. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not file a false and misleading submission, while coercing the undersigned to file fraudulent date of injury affecting payment, and engaged in deceptive leasing practices for the purpose of evading full payment of workers[']  compensation under **AS Sec.23.30.250**.

Employee advised that the argument for discovery request #13 applies to discovery request #14.

Employer representative advised that the argument for discovery request #13 applies to discovery request #14.

15. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not breach the limitations of Medical Release signed on 01/20/2023 by undersigned, by producing information that is outside of the limits designated in the release, and Sedgwick did not engage in unauthorized oral communication, and ex parte written information with provider disclosing nature of his examination, care, and treatment under **AS Sec. 23.30.108.**

Employee advised that the argument for discovery request #13 applies to discovery request #15 noting that Employer breached the limits of the Medical Release.

Employer representative referred to Employer's 12/30/2024 Hearing Brief for argument.

16. Provide PROOF OF CLAIM that there is no penalty nor interest for undersigned's right to benefits for the months of **November**, and **December** of **2022** under **AS Sec. 23.30.255.**

Employee argued that this discovery documentation will support a finding of fact in a Civil Action. Stating that 10/30/2022 is the only date of injury and Employer had committed fraud under AS 23.30.250.

> Employer representative referred to Employer's 12/30/2024 Hearing Brief for argument noting that AS 23.30.055 does not apply.
>
> 17. Provide PROOF OF CLAIM that the public servant bringing forth any answer to the claim can produce written documentation in affidavit form signed under "**Penalty of Perjury**" with all relevant or related evidence over this Israelite American National (blank space and all emphasis in original).
>
> Employee argued that this discovery request is clearly relevant and will cause all relevant questions to be answered under penalty of perjury and makes all of my adversaries' ploys and tactics to non-effect.
>
> Employer representative referred to Employer's 12/30/2024 Hearing Brief for argument.

Because Employer referred to its hearing brief, the designee cut and pasted Employer's hearing brief into the summary. Abridged here for brevity, the brief contended in relevant part:

> - Employee's October 13, 2024 discovery requests were "irrelevant, incoherent, disallowed, harassing" and not in accord with 8 AAC 45.054.
> - Consequently, Employer's October 24, 2024 petition for a protective order should be granted.
> - Employee filed an ARH on October 4, 2024, stating discovery was complete. Employer contended it was not complete on Employer's side because it may need to depose witnesses, and it had scheduled, and the Board had ordered an EME.
> - Employee on October 13, 2024 filed "nonsensical" discovery requests. These included "Proofs of Claim" which Employer determined were directed to "the employer, its attorney, and its adjuster," and required "proof of various irrelevant items, and that they prove they did not violate various alleged rights."
> - In response, on October 24, 2024, Employer petitioned for a protective order against the October 13, 2024 request.
> - Employer cited several Court and Board decisions regarding discovery in workers' compensation cases.
> - It construed Employee's October 13, 2024 filing as an "informal discovery request."
> - On the request's merits, Employer first defended on grounds that Employee's ARH and sworn statements therein should essentially bar additional discovery. Otherwise, allowing additional discovery "would render the [ARH] as superfluous and meaningless."
> - Second, Employer said Employee's discovery requests were "not standard" and sought irrelevant information.
> - Third, Employee had to "seek permission" to serve "a request for production" and his requests were not "interrogatories" as they were not designed for a designated witness's answers.

- Fourth, Employer does not have to "prove" anything to Employee; it "has to prove its actions and defenses to the Board" at hearing.
- Fifth, attorneys are not witnesses and Employee cannot obtain personal information from an opposing attorney.
- Sixth, Employee's "proofs of claim" are "irrelevant, vague, ambiguous, and harassing," and would force Employer to incur unnecessary discovery costs for requests that have nothing to do with his pending workers' compensation claim.
- Seventh, Employee's requests call for matters outside the scope of the Board's jurisdiction.
- Eighth, his requests are "incoherent," and Employer cannot discern what he is actually seeking.

Having summarized Employee's and Employer's oral arguments, and having cut and pasted Employer's entire hearing brief into his decision, the designee addressed the issues:

> Designee reviewed Employee's and Employer representative's verbal arguments documented above as well as D&O # 25-0001, Employee's 10/14/2024 Petition, Employer's 10/24/2024 Petition, and Employer representative's 12/30/2024 Hearing Brief. Designee finds that Employee's arguments revolve around Civil Rules of Procedure and are an attempt to force Employer to prove that fraud was not committed against Employee. Designee notes that in prior claim experience, a party that makes a fraud claim against an opposing party will file proof of said fraud as part of the discovery process instead of demanding, as part of the discovery process, that the opposing party prove that fraud was not committed. Designee also notes that Employee/Employer representative's personal information is outside the scope of Workers[']' Compensation litigation. Designee did not find that Employee's arguments pertained to whether he is owed Temporary Total Disability (TTD), Permanent Total Disability (PTD), Permanent Partial Impairment (PPI) benefits or a Compensation Rate Adjustment, Unfair Controvert award and/or Penalty/Interest on late payments related to his work injury. Since the subject matter of this pending action relates to Employee's 11/7/2023, 11/24/2023, and 1/17/2025 Workers[']' Compensation Claims (WCC) for benefits, Designee suggests that any party asserting fraud by an opposing party file proof of said fraud as part of the discovery process. Utilizing the discovery process to force an opposing party to prove that they did not commit fraud does not appear to Designee to be a viable tactic for determining what Workers[']' Compensation benefits are owed to Employee. Therefore, the information sought in Employee's 10/14/2024 "discovery request" (1-17) does not appear relevant to this Workers[']' Compensation case. Employer's 10/24/2024 Petition is granted and Employer representative is not ordered to respond to Employee's 17 discovery requests.

Given the above, the designee granted Employer's petition for a protective order. (Prehearing Conference Summary, February 18, 2025).

8) On February 24, 2025, Employee timely appealed designee Pullen's February 18, 2025 discovery order. In his petition attachment, Employee explained his reasons:

**Reason For Petition**

> In Respect to my injury, Designee abused his discretion, and denied my Affidavit under Penalty of Perjury Discovery Questions which were relevant to my claim. Neither did he include all the words in my argument, legal authority, statutes, codes, or rules which proceeded out of my mouth on his summary. My Affidavit of Fact is sworn testimony, sworn statements to support the discovery request, and is enough evidence to support a finding fact as well as all the evidence filed with the agency on November 7, 2023. He did not regard my sworn statements, nor did he review any evidence I filed with the agency to support my claim.
>
> In question #12 he did not review agency file, to see the text messages I sent to Jean (NCM) on April 25th, 2023 or review the (written materials and reports from insurer.pdf) in which Jean Domingues responded to Jacqueline (Adjuster) on April 29th 2023, . . . "the claimant does not want a NCM to attend his appointments. . . ." Then my response to Adjuster on September 17th, 2023 for the uninvited intrusion on the (2nd time revoking NCM.pdf). . . . "Why did a random Nurse Case Manager appear to my doctor's appointment uninvited on the 12th? I clearly told Jean, which I'm sure she relayed to you, that I want to go to my doctor's appointments in private. Not only have you violated my rights, . . ." Then adjuster's response on September 18th, 2023 on the (adversely affected by this conduct . . . pdf). . . . "I just spoke to Johnny and did not know that he had requested for a nurse to not be present at his appointments. . . ."
>
> In Question #16, 14, 13, 8 he did not review agency file, to see (original date of injury accepted.pdf) in which Adjuster stated on February 1st, 2023 ". . . I will do my best to help you through this process and thank you for your continued patience. Please provide your claim information to your providers. Please note the following encompasses all of your claim information: your claim is handled by Sedgwick, Inc. Our billing address is PO Box 14514 Lexington, KY 40512. Your claim number is 4A2301QHSDV-0001 and date of injury is 10/30/2022. I can be reached by phone at 907-339-4637, email: Jacqueline.Salas@Sedgwick.com, . . ." or (AS 23.30.250.pdf) in which Adjuster fraudulently changed my DOI on February 17th 2023 ". . . We go to https://labor.alaska.gov/wc/benefitcalculator.htm and put your Date of injury which is 1/20/2023 (not 10/30/2022 since you had a [sic] injury on 1/20/2023 that resulted in your need to seek medical treatment), . . ."
>
> I also don't stand in agreement with some of the arguments HARVEY PULLEN wrote down on my behalf.
>
> Not only, did he make me look belligerent, obnoxious, loud, disrespectful by putting an exclamation mark on some of my answers, he also removed very

deceptively, and stealthily certain words, and statements completely out of my arguments, and answers. I fairly was calm, and respectful during the pre-hearing.

The only person loud, disrespectful, with much attitude, sighing, while trying to oppress me was Jeffrey Holloway, he was not professional required by his profession, and was very emotional during our 02/18/2025 pre-hearing.

(1) I never stated anything about fraud in question #1. Designee deceptively, and stealthily included that word in his summary which never proceeded out of my mouth during that argument, he also did not include my entire argument, and legal authority for the question.
(2) He did not include my entire argument, and legal authority for question #2.
(3) He did not include my entire argument, and legal authority for question #7.
(4) He did not include my entire argument, and legal authority for question #8, he also made me seem unpleasant, and obnoxious in stating my argument to him by putting an exclamation mark in "allegedly" (emphasis added) one sentence in which I responded.
(5) He did not include my entire argument, and legal authority for question #10.
(6) He did not include my entire argument, and legal authority for question #11.
(7) He did not include my entire argument, and legal authority for question #12, he also made me seem unpleasant, and obnoxious in stating my argument to him by putting an exclamation mark in "allegedly" (emphasis added) one sentence in which I responded. I also by mistake forgot to include the number 2 before 6 in AS sec. 23.30.60 for the correction of 23.30.260(2), but designee did not even attempt to search "penalty for soliciting" in the statutes thus not performing, and acting impartially.
(8) He did not include my entire argument, and legal authority for question #13.
(9) He did not include my entire argument, and legal authority for question #14.
(10) He did not include my entire argument, and legal authority for question #15.
(11) He did not include my entire argument, and legal authority for question #16.
(12) He deceptively, and stealthily removed the word claim in my argument and other words for question # 17.

I have enough evidence to prove that Designee HARVEY PULLEN violated his oath of office again, committing, and conspiring with Employer's attorney; USC 18 subsection 242 Deprivation of Rights Under Color of Law: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any state to the deprivation of any rights shall be fined under this Title, or imprisoned not more than one year, or both.

USC 42 subsection 1983 Civil Action For Deprivation of Rights: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any STATE subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

USC 18 subsection 241 Conspiracy Against Rights: If two of [sic] more persons conspire to injure, oppress, threaten, or intimidate any person in any State in the free exercise or the enjoyment of any right they shall be fined under this title or imprisoned not more than ten years, or both.

I will be adjudicating the agency through HARVEY PULLEN, for the violations and acts committed against me during this 02/18/2025 pre-hearings and previous one last year, for the violations in my Declaration, in which he committed a felony against me, to the Supreme Court. In this federal, and serious matter there is no judicial immunity for him. The fact he is still representing the designee in my pre-hearings, supports that the agency abused their discretion in not removing him from my claim, in respect to my injury after previous violations against me, injuring, and damaging me, in which I have been adversely, and unfavorably affected. I hereby also request a new designee during my pre-hearings, and not one who repeatedly deprives my [sic] rights.

Public Officials are deemed to know the law and are sworn to uphold it and can hardly claim that they acted in good faith. They certainly cannot plead ignorance of the law, for that would make the law look unintelligent of knowledgable [sic] public official to claim ignorance of a law. Therefore, there is no judicial immunity.

DUTY OF THE COURTS

"It is the duty of the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon." [Boyd v. United States]

"No higher duty rests upon this court than to exert its full authority to prevent all violations of the principles of the constitution." [Downs v. Bidwell]

JUDICIAL IMMUNITY

No officer of the law may set that law at defiance with impunity. All the officers of the government, from highest to the lowest, are creatures of there [sic] law, and are bound to obey it.

"It is the only supreme power on our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives." [US v Lee]

"There is a general rule that ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action, and cannot claim the immunity of the sovereign." [Cooper v. O'Connor]

"Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution, and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason." [Cooper v. Aaron]

"A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts." [Davis v. Burris]

"The courts are not bound by an officer's interpretation of the law under which he presumes to act." [Hoffsomer v. Hayes]

RIGHT TO RECORD

The Supreme Court has ruled that I am protected under the 1st amendment to record all public officials in their acts of duty.

My Affidavit alone as well, will prove the agency through HARVEY PULLEN's violations, and acts in which he committed against me are truth, and facts.

"Every man is independent of all law, except those prescribed by nature. He is not bound by any institutions forms by his fellowman without his consent." [Cruden v. Neale]

"All codes, rules, and regulations are for government authorities only not human/creatures in accordance with God's law. All codes, rules, and regulations are unconstitutional and lacking due process. . . ." [Rodriques v. Ray Donovan] (U.S. DEPARTMENT OF LABOR)

"All laws, rules, and practices which are repugnant to the constitution are null, and void." [Marbury v. Madison]

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." [Miranda v. Arizona]

"The STATE cannot diminish rights of people" [Hurtado v. People of the State of California]

I based my entire argument on the DECISION & ORDER from the panel on January 8th, 2025, USC (codes), PRINCIPLES OF LAW Rules and 8 AAC 45.065(a), AAC 45.120 Evidence, Civil Rule 36, Alaska Rules of Evidence Rule 803(23) Other Exceptions, AS 23.30.001. I even stated in an argument under FINDINGS OF FACT & ANALYSIS whom Employer contended that I'm no longer entitled to any "Discovery" because I filed an ARH "they cited no law in support an [sic] the panel found none [] and that they cited no legal authority of this proposition" and HARVEY PULLEN overruled it.

> Nearly all questions as well would be admissible over objection in civil actions under AAC 45.120 Evidence, (for the damages in civil action, and fraud) regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence. Furthermore a properly executed Affidavit is Law until it is rebutted by another Affidavit, sworn statements signed by a notary. If I'm wrong then I can go to jail for perjury. An un-rebutted Affidavit stands as Truth. They had adequate time to prepare rebuttal evidence. They did not rebut within my limit, and I'm legally entitled. My announcements, and demands are just as valid as theirs. My notice is in the form of an Affidavit no designee, judge, court, or officer may deny my claim. I have discovered the fraud, misrepresentation, and deceit of the Adjuster and my Employer. The agency which represents them have also violated my 4th amendment right on 11/05/2024, which is constitutionally protected, which damaged, and injured me grievously, and adversely.
>
> "The right to be let alone is the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government (or agency) upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." [Olmstead v. U.S.]
>
> There is no particular layout that's required on my Affidavit, it's sworn statements of true and complete facts with as date, and notarize's [sic] signature.
>
> I reasonably calculated the information sought which is relevant to my claim to lead to facts. In my Affidavit of Fact-Request for Proof of Claim which should significantly strengthen a discovery request. An Affidavit serves to provide sworn testimony to support the discovery request. I will also be attaching evidence of the 11/05/2024 violation of my 4th Amendment right by which agency Jeffrey Holloway is employed to, to hire a private investigator against me, committing a slew of USC violations against me, to this petition.
>
> I request this petition in good faith, and equity. (Petition; attachment, February 24, 2025).

9) On April 23, 2025, Employer submitted its hearing brief; it largely mirrors its prior briefing. It added to its ARH-ending-discovery argument by stating it need not cite case law to support its position because §110(c) is clear. Employer asked, "Is there no meaning to the statute? (This is not a rhetorical question.)." It cited for support the "Legislature's requirements" that "discovery is complete upon the filing of an ARH," and to rule otherwise would be "tossing AS 23.30.110 into the sea." Employer reiterated its arguments about Employee's "not standard" requests and how in its view they were not "valid" and do not comport with the statutes and regulations for discovery. It added that even if Employee intends to file lawsuits against the designee, Employer,

its agents or its representatives, discovery in this case is not designed to be a "fishing expedition for such lawsuits." (Brief of Peter Pan Seafood Co., LLC, April 23, 2025).

10) Employee did not timely file an additional hearing brief. (Agency file).

11) The Division uses October 30, 2022 as Employee's injury date. (Agency file).

12) It is routine for different lawyers in the same firm to participate in case-related activities when the primary attorney handling the case is unavailable. (Experience; observations).

13) When a party sends a medical release to a medical provider, the provider may or may not filter out records not included in the release. Frequently, work-related medical symptoms or diagnoses are mingled with other records for non-work-related diagnoses or treatments. (Experience, observations).

## PRINCIPLES OF LAW

United States Constitution, Article VI states in relevant part:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. . . .

> **AS 23.30.001. Legislative intent.** It is the intent of the legislature that
>
> > (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers; . . .
> > . . . .
> > (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 a decision on direct testimony, medical findings, other tangible evidence, 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). "Neither the Appeals Commission [Alaska Workers' Compensation Appeals Commission (Commission)] nor the Board [Alaska Workers' Compensation Board (Board)] has jurisdiction to hear any action outside of a workers' compensation claim." *Alaska Public Interest Research Group (AKPIRG) v. State*, 167 P.3d 27, 36-37 (Alaska 2007). "Proof of

claim" is a term in bankruptcy. *Wien Air Alaska v. Bubbel*, 723 P.2d 627 (Alaska 1986); *Schwarz v. K&L Distributors*, AWCB Dec. No. 16-0059 (July 22, 2016). It is also used in auto insurance claims. *Lockwood v. Geico Insurance Co.*, 323 P.3d 691 (Alaska 2014). "Proof of Claim" has otherwise only ever appeared in one other workers' compensation decision -- *Nie II*.

Parties have a constitutional right to prove or defend against claims or petitions. *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999). A thorough investigation allows parties to verify information provided by an opponent, effectively litigate 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*. *Granus* provided a two-step analysis to determine if information was discoverable: (1) Identify matters in dispute; this requires the designee to, at a minimum, review both the claims (which generally state the issues from the injured worker's perspective) and the answers and controversions (which generally state the issues from the employer's perspective). (2) Decide (*i.e.*, analyze) whether the information sought is relevant; or in other words, is it "reasonably calculated" to lead to admissible facts that will tend to make a disputed issue, identified in step (1), more or less likely.

> **AS 23.30.075. Employer's liability to pay.** (a) An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state. . . .
>
> **AS 23.30.108. Prehearings on discovery matters**. . . .
>
> (c) . . . 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 board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.
>
> (d) If the employee files a petition seeking a protective order to recover medical and rehabilitation information that has been provided but is not related to the employee's injury, and the board or the board's designee grants the protective order, the board or the board's designee granting the protective order shall direct

> the division, the board, the commission, and the parties to return to the employee, as soon as practicable following the issuance of the protective order, all medical and rehabilitation information, including copies, in their possession that is unrelated to the employee's injury under the protective order.
>
> **AS 23.30.110. Procedure on claims**. . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

*Kim v. Alyeska Seafoods, Inc*., 197 P.3d 193, 196-99 (Alaska 2008) said, citing §110(c):

> The first sentence of the subsection [§110(c)] sets out prerequisites for scheduling a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing. The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if "the employee does not request a hearing within two years" of controversion, "the claim is denied. . . ."
> . . . .
>
> . . . The House Judiciary Committee's sectional analysis of the legislation reenacting subsection .110(c) to include an affidavit requirement stated that this subsection was meant to address delays in getting disputed cases before the Board and "the [B]oard's problems in timely docketing cases for hearing."
> . . . .
>
> . . . The lack of a Board regulation to deal with exceptional circumstances, and the myriad reasons why a party might not be able to swear truthfully that the claimant is prepared for an immediate hearing despite conducting discovery and obtaining evidence, make strict adherence to an affidavit requirement problematic. A party or attorney should not be in a position of having to choose between perjury and relinquishing a valid claim. . . .

*Boyd v. Arctic Slope Native Assn*., AWCB Dec. No 00-0200 (September 15, 2000) stated:

> The employer argues that the employee was no longer entitled to request discovery after August 11, 1999, when she filed her [ARH]. The affidavit form does state that discovery is complete and directs a party not to file it unless ready to proceed to hearing. However, we note AS 23.30.110(c) requires an employee to file an [ARH] within two years of an employer's controversion. In the present case, the employee filed he [ARH] on the last day before the statute of limitation ran out. Although the employee did not file a petition to compel discovery until January 26,

> 2000, she requested production of the report on numerous occasions. We find it would be unfair to allow an employer to ignore an employee's properly served discovery request until the statute of limitations is about to run and then assert discovery is closed upon the employee's filing of an affidavit of readiness. We find that Officer Gerke was correct to order production of the report, even after the employee filed her [ARH]. . . .
>
> **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. The board may make its investigation or conduct its inquiry in the manner by which it may best ascertain the rights of the parties. . . .
>
> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions.** (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums. . . . is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -- 11.46.150. . . .

In a civil action *Johnson v Corporate Special Services, Inc*., 602 So.2d 385 (Alabama 1992), a workers' compensation claimant alleged a private investigator hired by the insurance carrier to observe him invaded his privacy. *Johnson* held that the trial court did not err in entering summary judgment against the claimant where he had to expect reasonable inquiry into, and investigation of, his claims; where the investigator simply parked outside the claimant's house to observe his outside activities; where the claimant's activities in his front yard could have been observed by any passerby; and where there was thus no wrongful intrusion into claimant's privacy.

> **AS 23.30.255. Penalty for failure to pay compensation.** (a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds $25,000 or a class C felony if the amount involved is $25,000 or less. . . . [Corporate officers] are personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075.

> **AS 23.30.260. Penalty for receiving unapproved fees and soliciting**. (a) A person is guilty of a misdemeanor and, upon conviction, is punishable for each offense by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, if the person
>
> . . . .
>
> (2) makes it a business to solicit employment for a lawyer or for the person making the solicitation with respect to a claim or award for compensation.

The Alaska Executive Branch Ethics Act (AEBEA) states in relevant part:

> **AS 39.52.010. Declaration of policy**. (a) It is declared that
>
> (1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;
> (2) a code of ethics for the guidance of public officers will
>
> (A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;
> (B) improve standards of public service; and
> (C) promote and strengthen the faith and confidence of the people of this state in their public officers;
>
> (3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;
> (4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
> (5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
> (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
> (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates. . . .
>
> **AS 39.52.110. Scope of code; prohibition of unethical conduct**. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation

of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

> (1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;
> (2) people who serve as public officers retain their rights to interests of a personal or financial nature; and
> (3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

> (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or
> (2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions.

(d) Stock or other ownership interest in a business is presumed insignificant if the value of the stock or other ownership interest, including an option to purchase an ownership interest, is less than $5,000.

**AS 39.52.120. Misuse of official position**. (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

> . . . .
> (2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;
> . . . .
> (4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;
> (5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time; or. . . .

. . . .

(e) Except for supplying information requested by the hearing officer or the entity with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a public officer may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer or individual, board, or commission with authority to make the final decision in the case assigned to the hearing officer unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or
(2) fact and substance of the contact is promptly disclosed by the public officer to all parties to the hearing and the contact is made a part of the record. . . .

**AS 39.52.130. Improper gifts**. (a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment. . . .

**AS 39.52.140. Improper use or disclosure of information**. (a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(b) A current or former public officer may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law. . . .

**AS 39.52.310. Complaints**. . . .

(b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.
. . . .

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220. . . .

**AS 39.52.960. Definitions**. In this chapter, unless the context requires otherwise,

> . . . .
> (20) "public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;
> (21) "public officer" or "officer" means
>
> (A) a public employee; . . .
>
> **AS 39.52.910. Applicability**. (a) Except as specifically provided, this chapter applies to all public officers within executive-branch agencies, including members of boards or commissions. . . .

The Alaska Administrative Procedure Act (APA) states in relevant part:

> **AS 44.62.330. Application of AS 44.62.330 - 44.62.630**. (a) The procedure of the state boards, commissions, and officers . . . shall be conducted under AS 44.62.330 - 44.62.630. This procedure, including . . . matters concerning evidence . . . impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards . . . and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency.
> . . . .
>
> (12) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act; . . .
>
> **AS 44.62.570. Scope of Review**. . . .
>
> (b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

An agency's failure to apply controlling law may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962). A designee's decision on discovery matters must be upheld, absent "an abuse of discretion." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

> **AS 44.62.630. Impartiality.** The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

Applicable administrative regulations state:

> **8 AAC 45.065. Prehearings**. (a) . . . At the prehearing, the . . . designee will exercise discretion in making determinations on
>
> . . . .
> (3) accepting stipulations, requests for admissions of fact, or other documents that may avoid presenting unnecessary evidence at the hearing;
> . . . .
> (6) the relevance of information requested. . . .
> . . . .
> (10) discovery requests;
> (11) the closing date for discovery; . . .
> . . . .
> (15) other matters that may aid in the disposition of the case.
>
> (c) After a prehearing the . . . designee will issue a summary of the actions taken at the prehearing . . . . The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.
>
> (d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. . . . If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request.
> . . . .
>
> (g) A party may audio record the prehearing at the party's expense. If a party audio records the prehearing and transcribes the recording, the party must file a copy of the recording and a certified transcript with the board and serve a copy upon the opposing party at least 10 days before a scheduled hearing. If a party fails to timely file the copy of the audio recording and a certified transcript, the board will exclude the transcript or audio recording from the evidence considered in making its decision.
>
> (h) Notwithstanding . . . (d) of this section, a party may appeal a discovery order entered by a board designee under AS 23.30.108 by filing with the board a petition in accordance with 8 AAC 45.050 that sets out the grounds for the appeal. . . .

The legislature gave the Board designee authority and responsibility to decide all discovery issues at the prehearing conference level, with the right of both parties to seek Board review. *Smith v. CSK Auto, Inc.*, AWCAC Dec. No. 002 (January 27, 2006).

> **8 AAC 45.070. Hearings**. . . .
>
> (b) . . . The board has available an [ARH] form that a party may complete and file. The board or the board's designee will return an [ARH] and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.
>
> **8 AAC 45.074. Continuances and cancellations**.
> . . . .
>
> (b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,
>
> (1) good cause exists only when
> . . . .
>
> (K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;
>
> (L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

*Russell v. University of Alaska*, AWCB Dec. No. 91-0276 (October 16, 1991) denied an injured worker's request for a hearing continuance after she filed an ARH, a hearing was scheduled, and the employer subsequently filed reports from several witnesses. The claimant contended she needed more time to prepare. As grounds for its order, *Russell* stated:

> We disagree for several reasons. First, we find that by filing her [ARH] on May 29, 1991, the employee indicated that she had completed all discovery. She claimed at that time that she was ready for a hearing, notwithstanding the fact that she knew that the employer was going to have a medical examination performed and conduct other discovery to prepare its case for hearing. In her opposition to further delay filed on June 14, 1991, the employee adamantly opposed any delay in holding a hearing contending in no uncertain terms that to do so would cloud the issues, squander taxpayers' dollars, and, in essence, cause her an injustice. Second, the witnesses, whose reports the employee objects to, are on the list filed by the employer on October 4, 1991, and will testify at the hearing and be subject to cross-

> examination. . . . Third, we find that the employer has done all that is required to do to bring this case to hearing in a timely manner and, therefore, it should not be denied the opportunity to bring it to conclusion without further delay. We also note that the employer has coordinated the efforts of three out-of-state witnesses to be in Anchorage for the hearing on October 17, 1991, a difficult feat and one that would be difficult to duplicate. . . .

*Lee v. Luigi's Pizza*, AWCB Dec. No. 16-0020 (March15, 2016) in a continuance case stated:

> Claimant was the party who submitted the ARH, in which the affiant swore he had "completed necessary discovery, obtained necessary evidence, and [was] fully prepared for a hearing on the issues." Claimant did not show any surprise evidence that required additional time for response, nor any other change in circumstances that rendered his statement of readiness inaccurate.

> **8 AAC 45.178. Appearances and withdrawals.** (a) A person who seeks to represent a party in a matter pending before the board shall file a written notice of appearance with the board, and shall serve a copy of the notice upon all parties. The notice of appearance must include the representative's name, address, and phone number and must specify whether the representative is an attorney licensed to practice law within the State of Alaska. If the person who seeks to represent a party is not licensed to practice law within the State of Alaska, the notice of appearance must be accompanied by
>
> . . . .
>
> (2) the employer's written authorization unless the person seeking to represent the employer is an employee of
>
> (A) the employer's insurer; or
> (B) the adjusting company handling the claim for the employer's insurer.

## ANALYSIS

**1) Shall the designee's February 18, 2025 discovery request be affirmed?**

This is mainly an appeal from a discovery order. 8 AAC 45.065(h). WCO Pullen had the initial duty at a prehearing conference to rule on "discovery matters" in dispute. AS 23.30.108(c); *Smith*. On an "appeal" from a discovery order, this panel may not consider any evidence or argument that was not presented to designee Pullen at the prehearing conference and must determine the issue "solely" on "the written record." This decision must uphold the designee's discovery decision except when the designee's determination was "an abuse of discretion." *Id*.

Employee's three claims as amended seek TTD, PTD and PPI benefits; a compensation rate adjustment; an unfair or frivolous controversion finding; a penalty; interest; and relief under §250(a) for what Employee alleges are Employer's, its agents', or its representatives' "fraudulent or misleading acts." Employer's defenses to these claims are not pertinent to this decision because the designee addressed Employee's discovery requests, not Employer's. *Granus*. The benefits and other relief Employee seeks must be kept in mind when reviewing WCO Pullen's discovery decision. Given what Employee is seeking, to be discoverable, the information sought in his October 13, 2024 request must be relevant; in other words, it must be "reasonably calculated" to lead to admissible facts that will tend to make a disputed issue in his claims more or less likely. The law favors liberal discovery on both sides and discovery in a workers' compensation case is generally more liberal than discovery in a formal civil action. *Granus*.

Before proceeding further, the panel notes that Employee uses unconventional terms and pseudo-legal concepts in his October 13, 2024 discovery request. First, his "Proof of Claim" phrase is confusing because "proof of claim" is used primarily in bankruptcy law and auto insurance claims. *Bubbel*; *Lockwood*. It is not a term of art used in workers' compensation law and has appeared in only two agency decisions -- *Schwarz*, which involved a bankruptcy, and *Nie II*. Second, Employee's use of unconventional terms and his reliance on pseudo-legal concepts makes it difficult for even those well-experienced in workers' compensation law to understand what he is requesting. This decision again invites Employee to use simple English or standard legal phrases and language, and rely on Alaska statutes, regulations and relevant workers' compensation case law to support his contentions, and not on pseudo-law.

At the February 18, 2025 prehearing conference, the designee reviewed Employee's 17 separate "requests." He noted that request (9) was blank, and recorded in his order that Employee had withdrawn four other requests. The designee addressed the remaining requests, which include only the following, which this decision will also address in numerical order:

> 1. Provide PROOF OF CLAIM or your "Oath of Office" and your bond as a public servant up to date and in good standing.

Employee contends that Holloway is a "witness," an "Officer of the Court" and sent a private investigator to surveil him. He also references otherwise unidentified "agency action" to support his request to "verify" Holloway's "oath of office," presumably as an attorney, but again this is not clear. Employee cites federal law in support. Employer also suspects Employee wants Holloway to provide documents related to his lawyer "oath" and "bond." Holloway asserts he is not a "government employee" or "public servant" and whatever Employee seeks in this request is not relevant to his claims under the Act.

WCO Pullen could find no connection that this request for Holloway's "oath" he took when sworn in as an attorney, or any "bond" he may have, could have to Employee's claims for TTD, PTD and PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion finding, a penalty, interest or relief under §250(a). Neither can this panel. Holloway producing an "oath" he once took or an unidentified "bond," will not help a future panel decide if Employee is entitled to the benefits or relief he claims. If Employee believes Holloway is violating his "oath" or is behaving unethically in this matter, he can contact the Alaska Bar Association and file a bar complaint. The designee's order on this point will be affirmed. 8 AAC 45.065(a)(6), (10).

As for Employee's "surveillance" objection, at best this is a civil matter. While there is no Alaska case on point, a court in *Johnson* held that a workers' compensation claimant had no expectation of privacy in his front yard; he had to reasonably expect that his insurer would investigate his claim for possible fraud. A private investigator in his vehicle who was observing what any person who passed by could observe, did not create a basis for a lawsuit against the private investigator.

> 2. Provide PROOF OF CLAIM that by your words and deeds as a public servant you are adhering to your Oath binding you to your obligation to the People, in that you will protect, preserve, and secure the Rights (birth) of the People in harmony with Article VI of the United States Republic Constitution.

The parties at the prehearing conference before designee Pullen reiterated their contentions from request (1), above. Employee's request (2) is more difficult to understand than request (1). It could be construed as more of a challenge to Holloway to live up to his "oath" than it is a request for discovery. Article VI of the United States Constitution refers to oaths administered to United States Senators, Representatives, State Legislators, all "executive and judicial officers" in the

United States and "in the several states." There is no evidence that Holloway fits any of these categories. Even if he did, his "oath" and "bond" would not make it more or less likely that Employee is entitled to any benefits or relief he seeks in his claims; thus the request is not relevant. Designee Pullen's order on this point will also be affirmed. 8 AAC 45.065(a)(6), (10).

> 7. Provide PROOF OF CLAIM that you are licensed to practice law in the STATE OF ALASKA.

The parties again reiterated their contentions from request (1). Employee has not demonstrated how Holloway's bar status in Alaska is relevant to Employee's claims for benefits and other relief. *Granus*. If he wants to determine Holloway's bar status in Alaska, he is invited to visit the Alaska Bar Association website at https://www.alaskabar.org, click on "For Community," then "I Need a Lawyer," then "Directory of Alaska Lawyers," and type in Holloway's last and first names. Because this request is not relevant, the order will be affirmed. 8 AAC 45.065(a)(6), (10).

> 8. Provide PROOF OF CLAIM that the undersigned had a 'meeting of the mind(s)' with Sedgwick on 2/17/23 when they changed the undersigned's **Date of Injury** from **10/30/22** to **1/20/2023** pursuant to the Workers[']' Compensation Claim in respect to full disclosure and that said Claim contained or contains no elements of fraud by Sedgwick under **AS Sec. 23.30.250.**

Employee contended his discovery "documentation" and request (8) will support a factual finding in a civil action. He asserts he was not in agreement with an alleged "change" in his injury date, and "changing" it was "fraud." Employer relied on its argument from request (1).

Employee's request relates to his §250(a) allegation. It is not clear from the record why there were three different injury dates used in this case -- October 30, 2022, November 30, 2022 and January 20, 2023. Employee contends October 30, 2022 was his actual injury date; that is the date the Division uses in his agency file. *Rogers & Babler*. This request sounds more like a demand for an admission than a request to produce a document. It is unclear what Employee is requesting. Although formal "Requests for Admission" used in civil court under formal evidence rules are not applicable in workers' compensation cases, parties may informally ask opposing parties to admit facts to "avoid presenting unnecessary evidence at the hearing," and these admissions may be chronicled in a prehearing conference summary. 8 AAC 45.065(a)(3). To the extent Employee sought such an admission in this request, Employer stated in its response that the request was

"nonsense," implying that Employer denied that it or its agents or representatives engaged in fraud. That constitutes a valid "no" response to Employee's possible request to admit facts.

On the other hand, if Employee is seeking informal production of any documents from Employer or its agents or representatives explaining why there were three separate injury dates used in this case, that information may lead to evidence admissible at hearing on his §250(a) claim. In fact, any such evidence will likely render the §250(a) claim moot. It is likely that there are innocuous explanations for these three dates that do not involve "fraud"; alternately, perhaps Employer thought it could gain some advantage by using a different date -- the latter notion could support a §250(a) claim. Under liberal discovery rules, Employee has a right to find out. *Granus*.

WCO Pullen did not expressly list Employee's §250(a) claim in prehearing conference summaries, although he did address "fraud" in his discovery dispute analyses. The designee stated that in his experience, a party who makes a "fraud" allegation must file proof of fraud instead of demanding that the opposing party prove that fraud was not committed. The designee's analysis may be true if the party alleging fraud already has the evidence. But here Employee is trying to obtain evidence to support his §250(a) fraud claim. In this instance, in fairness under AS 23.30.001(1) and to save time and expense for both parties, this decision will assume Employee is seeking unprivileged documents that could explain why November 30, 2022 and January 20, 2023 were also used as his injury date in this case. Therefore, the designee did not proceed in the manner prescribed by law and abused his discretion on this point. AS 44.62.570(b); *Manthey*. Employer will be ordered to produce any unprivileged documents regarding the November 30, 2022 and January 20, 2023 dates used in this case. The designee's ruling on this point will be reversed. *Sheehan*.

> 10. Provide PROOF OF CLAIM that MATIAS PAEZ, who practiced and is licensed under Alaska State Law to depose the undersigned during his March 12, 2024, at 8:00 a.m. (Pacific Daylight Time) deposition.

Employee objected to Paez participating in his deposition and demanded proof that Paez is licensed in Alaska to practice law. He contends that by deposing Employee, Paez committed a misdemeanor. Employer argued that a person does not have to be licensed to practice law in Alaska to represent a party in a workers' compensation case. Moreover, it contended that Paez, like Holloway, is not a government employee or public official so his licensure is irrelevant.

The designee did not address this issue extensively in his analysis but found it along with the other requests "not relevant." Employer and designee Pullen are correct. Whether or not Paez is licensed to practice law in Alaska does not help a panel decide if Employee is entitled to the benefits or relief he seeks in his claims. Therefore, it is not relevant. *Granus*. Moreover, on December 4, 2023, Holloway entered an appearance for "the law firm of Babcock Holloway Caldwell & Stires" as "Attorneys for Employer and Its Workers' Compensation Insurance Carrier/Adjuster." This entry on its face encompasses all lawyers in Holloway's firm. Employer is correct that a lawyer need not be licensed in Alaska to represent a party in a workers' compensation claim. 8 AAC 45.178. Routinely, attorneys in a firm participate in a given case if the lead attorney is not available. *Rogers & Babler*. According to Holloway's letterhead, Paez is his associate and is licensed in California. If Employee wants to verify Paez's legal licensure, he can visit https://www.calbar.ca.gov. If Employee has issues with Paez's license to practice law, he can file a bar complaint with The State Bar of California. The designee found this request irrelevant; so does this panel. This designee order will be affirmed. 8 AAC 45.065(a)(6), (10).

> 11. Provide PROOF OF CLAIM that MATIAS PAEZ who practiced and is licensed under Alaska State Law to represent Employer during undersigned's 5/30/2024 Prehearing.

The analysis for request (10), above, is incorporated here by reference. WCO Pullen's ruling on this point will be also affirmed. 8 AAC 45.065(a)(6), (10).

> 12. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not violate their Client's Bill Of Rights when the undersigned instructed the NCM that on 4/25/2023 that he no longer requires Nurse Case Managers at his appointments and on 9/12/2023 a random NCM did not appear uninvited to his appointment with Dr. Fait under **AS Sec. 23.30.60** [sic].

Employee at the prehearing conference contended that this request would support a factual finding in a civil action, and Employer was "soliciting and accosting [him]." Employer argued that this request makes no sense. The panel has to agree with Employer. It is not clear what Employee is requesting. He is clearly upset because he says he told the adjuster he did not want an NCM attending his medical examinations. He alleges that subsequently, one did. He further states he inadvertently left the "2" off statute "23.30.[2]60" and actually meant to cite §260(2), not §060. But Employee's explanation makes this request even more confusing. His new cited statute

§260(2) states a person is guilty of a misdemeanor and upon conviction is punishable in accordance with the law if that person "makes it a business to solicit employment for a lawyer or for the person making the solicitation with respect to a claim or award for compensation." Employee failed to explain how an NCM attending a medical appointment with him violated §260(2), or how it is relevant to the benefits or relief sought in his claims. Therefore, designee Pullen's ruling on this point will be affirmed. 8 AAC 45.065(a)(6), (10).

> 13. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not commit fraud on the Worker's Comp Injury Claim in respect to the undersigned below in any capacity.

Employee contended this discovery would support a factual finding in a civil action and reiterated that Employer had committed "fraud" under §250. Employer reiterated its defenses stated in its brief. This request is less detailed than request (8), above, but it too contains a fraud allegation. It sounds more like a request for an admission than a request for documents. 8 AAC 45.065(a)(3). To the extent Employee is requesting documents, his request is too vague to understand. If he is requesting that Employer admit fraud, Employer's previous "nonsense" response is its answer. The designee's ruling on this point will be affirmed. 8 AAC 45.065(a)(6), (10).

> 14. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not file a false and misleading submission, while coercing the undersigned to file fraudulent date of injury affecting payment, and engaged in deceptive leasing practices for the purpose of evading full payment of workers[']compensation under **AS Sec.23.30.250**.

The parties reiterated their positions from request (13) to address this one. Employee suggests that Employer's adjuster coerced him to file fraudulent injury dates, which affected payment of benefits. He did not develop this point well enough to understand what he is talking about. This decision has already directed that Employer will be ordered to produce any unprivileged documents regarding the November 30, 2022 and January 20, 2023 injury dates used in this case. Employee has not explained what "leasing practices" have to do with his claim for benefits and relief under the Act. "Leasing practices" are not relevant and the designee's ruling on this point will be affirmed in accordance with these analyses. 8 AAC 45.065(a)(6), (10).

> 15. Provide PROOF OF CLAIM that Sedgwick by and through its employees and agents, did not breach the limitations of Medical Release signed on 01/20/2023 by

> undersigned, by producing information that is outside of the limits designated in the release, and Sedgwick did not engage in unauthorized oral communication, and ex parte written information with provider disclosing nature of his examination, care, and treatment under **AS Sec. 23.30.108.**

Employee argued that Employer "breached the limits" of a medical release that Employee had signed. Employer referred designee Pullen to its hearing brief. Again, one can speculate about what Employee meant by breaching limits of a medical release. It is likely that by "producing information" outside the release Employee meant that Employer or its agents or representatives filed with the Division medical summaries with records that did not directly pertain to his work injury. Experience teaches that when a party sends a medical release to a medical provider, the provider may or may not filter out records not included in the release. Moreover, occasionally work-related medical symptoms or diagnoses are mingled with other records for non-work-related conditions or treatments. *Rogers & Babler*. Thus, a medical provider providing non-work-related medical records under a limited medical record release is at fault for providing records outside the parameters of the release, not the party who submitted a proper release.

Employee has already decided that Employer or its agents and representatives have allegedly breached the limits of a release, so it is not clear what he wants now. If he wants them to admit they did it, they have already stated "nonsense." On the other hand, if Employee wants to "recover medical and rehabilitation information that has been provided but is not related" to Employee's injury, he can petition for a protective order and the designee will rule on it at a prehearing conference. AS 23.30.108(d). Employee is advised, however, that what is or is not "related" to his injury may vary depending upon the circumstances. In such petition, Employee must specify with particularity exactly what records he wants returned, and why.

The second part of this request refers to unauthorized, and *ex parte* oral communication presumably with a medical provider. Again, Employee is either seeking an admission or requesting documentation; it is unclear from his wording. Absent a better explanation or specificity, this decision cannot find that the designee abused his discretion on the latter half of this request, and his ruling on this point will be affirmed. 8 AAC 45.065(a)(6), (10).

> 16. Provide PROOF OF CLAIM that there is no penalty nor interest for undersigned's right to benefits for the months of **November**, and **December** of **2022** under **AS Sec. 23.30.255.**

Employee argued that this information would support a factual finding in a civil action and that October 30, 2022 is the only injury date. Therefore, he contends Employer committed "fraud" under §250(a). Employer referred designee Pullen to its brief.

Employee contends he was entitled to benefits for November and December 2022, which is presumably included in his TTD benefit claim. He also appears to seek an admission that there is or is not a penalty or interest due on these benefits. Whether Employee is entitled to any additional TTD benefits will be determined at a merits hearing, at which time he can present his evidence and arguments supporting a claim for TTD benefits, a penalty and interest, and Employer will present its contrary evidence and arguments. Moreover, Employee misunderstands the law: By reference to §075(a), §255(a) limits its application to only uninsured employers. Employer is insured. Employee is directed to review Employer's Controversion Notices, which give factual and legal bases for Employer denying Employee's claims as stated in those notices. At a merits hearing, if the hearing panel agrees with Employee's position, it may order Employer to pay TTD benefits, a penalty, and interest. But seeing no error, designee Pullen's ruling on this point will be affirmed. 8 AAC 45.065(a)(6), (10).

> 17. Provide PROOF OF CLAIM that the public servant bringing forth any answer to the claim can produce written documentation in affidavit form signed under "**Penalty of Perjury**" with all relevant or related evidence over this Israelite American National.

Employee told designee Pullen that his discovery was all relevant and would cause relevant questions to be answered under "penalty of perjury" and would reveal that Employer's alleged ploys and tactics were to no avail. Employer referred to its hearing brief. This request contains pseudo-law, and the panel has no idea to what Employee is referring. Therefore, since the panel cannot understand the request, it is likely designee Pullen could not determine its relevance, so the designee's ruling on this request will be affirmed. 8 AAC 45.065(a)(6), (10).

Employer raised another argument requiring analysis. It contended as a general rule that once Employee filed an ARH he was no longer entitled to discovery. It relies on §110(c)'s "plain language" and suggests it need not cite legal authority for this proposition. But nothing in the statutes or regulations expressly state that once a party files an ARH they waive the right to additional discovery. Specifically, §110(c) advises a party how to request and schedule a hearing. According to §110(c) on its face, without judicial interpretation, to schedule a hearing, a party must file a request for hearing together with an affidavit stating the party "has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing." Nothing in that statute implies an end to discovery for the person filing the ARH. There is little law on this issue and most cases involve hearing continuances under §074(b).

The results in these decisions are broad in their extremes. For example, *Russell* decided that once a party filed an ARH, the party could no longer seek discovery, essentially adopting Employer's position in this case. *Russell* reasoned that the claimant filed an ARH knowing that the employer would present additional evidence. But the *Russell* panel failed to consider any additional discovery the employer's future evidence could require. For example, current §074(b)(1)(K), (L) provides for a hearing continuance, after an ARH was filed and a hearing was scheduled, for "good cause." "Good cause" includes the party filing an ARH thinking they were ready for hearing but finding out for some reason they were not, under §074(b)(1)(K), and a designee determining that for some reason additional evidence is required under §074(b)(1)(L). By contrast, *Lee* implied that some reasons could allow for discovery after a party filed an ARH. At the other extreme, *Boyd* ordered the employer to provide additional discovery after the claimant had filed an ARH. These cases are not particularly helpful.

But a careful reading of *Kim* suggests that the legislature and the Court separated the concept of filing "a request for a hearing" from the concept of filing "an affidavit of readiness to schedule a hearing." In other words, a person may want a hearing but may not be ready to sign an affidavit to schedule one immediately. *Kim* noted that §110(c) has separate requirements in its first and last lines. The first line states, "Before a hearing is *scheduled*, the party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing." By contrast, the last line

states, "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not *request* a hearing within two years following the filing of the controversion notice, the claim is denied" (emphasis added).

*Kim* raises a problem with the Division's ARH form, which gives instructions including, "Do not submit this form unless you are fully prepared for a hearing." The ARH form serves two functions: (1) In block 12, a party states, "Having first been duly sworn, I state that I have completed necessary discovery, obtained necessary evidence, and am fully prepared for a hearing on the issues set forth in" the specified claim or petition on which the person swears they are ready for hearing. And (2) In block 13, a party asks the Division to schedule a hearing. The form also includes an area for a Notary Public to verify the person's affidavit. In theory, a party could complete part of the ARH to just request a hearing to avoid running afoul of §110(c), but not complete the affidavit part stating he is ready for one to be scheduled immediately. This, combined with a petition requesting an extension of time to file an affidavit to schedule the hearing would suffice under *Kim* to toll the running of §110(c). However, the Division will "return an affidavit of readiness for hearing" if among other things, "the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing." 8 AAC 45.070(b). This places an injured worker in an awkward situation, especially if he or she is self-represented and does not understand all the subtle and complicated legal nuances. Employer's suggested ARH-end-of-discovery rule makes this problem worse, not better.

*Kim* noted the lack of an administrative regulation to deal with "exceptional circumstances," and the many reasons why a party might not be able to swear truthfully that he is ready for an immediate hearing. Directly contrary to Employer's argument, and according to *Kim*'s legislative history research, §110(c) was intended to "address delays in getting disputed cases" heard and addressed "problems in timely docketing cases for hearing." Thus, §110(c) is a "directory" procedural statute to solve a problem with a party requesting a hearing and then canceling it for no good reason. The legislature implemented §110(c) to ameliorate this problem. *Kim* aptly noted, "A party or attorney should not be in a position of having to choose between perjury and relinquishing a valid claim." Employer's proposed rule is not "fair" or "predictable" and is unlikely to ensure a "reasonable cost" to employers. It runs contrary to the legislature's intent that hearings in these cases are

impartial, fair to all parties, and that parties shall be afforded due process, an opportunity to be heard, and for their arguments and evidence to be fairly considered under §001(1), (4). In short, according to *Kim*, an ARH under §110(c) was never intended to denote the end of discovery.

Moreover, in practical application, Employer's proposed ARH rule will not work. In the instant case, after Employee filed his ARH, Employer opposed it stating (1) Employer's discovery was not complete, (2) depositions may be required, and (3) an employer's medical evaluation had been scheduled. Depending upon the evidence Employer could produce under any of these three bases, Employee may need to respond by requesting additional discovery. Under Employer's proposed rule, Employee's discovery would be precluded altogether simply because he filed an ARH. The Act gives this panel the right to make its investigation or inquiry and conduct a hearing in a way to "best ascertain the rights of the parties." AS 23.30.135(a). Employer's ARH-discovery rule would inappropriately limit that ability.

The same nonsensical rule would apply to Employer, if it had filed an ARH before Employee completed his discovery. Therefore, Employer's contention that once Employee filed an ARH he could require no more discovery is not supported by statute or legal precedent. Lastly, the designee on October 23, 2024 "elected" in his discretion to hold Employee's ARH in abeyance until these other issues were resolved. Neither party objected to that decision, and it may aid in this case's disposition. 8 AAC 45.065(a)(15), (c)-(d). There is no hearing on the merits currently set in this case and the designee has discretion to determine "the closing date for discovery." 8 AAC 45.065(a)(11). WCO Pullen properly exercised his discretion to not set a hearing yet, notwithstanding the ARH.

**2) Shall designee Pullen remain the prehearing officer in this case?**

Employee's additional contentions also require a brief analysis: He contends designee Pullin did not include "all the words and [Employee's] argument, legal authority, statutes, codes, or rules which preceded out of [Employee's] mouth on his summary." This is undoubtedly correct. However, the "prehearing conference summary" is simply that, a "summary," and not a verbatim recording of everything said or done at the prehearing conference.

Employee references text messages he previously filed with the Division as support for his NCM objection. He did not say whether the NCM actually attended the subject medical examination. Clearly, he had the right and ability to ask the NCM to leave. He did not explain how an NCM appearing at an appointment (but not necessarily attending it) after he told the adjuster the NCM was no longer welcome, violated his rights under the Act. Text messages Employee filed with the Division show the adjuster's response stating she was not aware that he had earlier requested no NCM attend his appointments. WCO Pullen made no obvious error on this point.

Employee also objected to designee Pullen's use of certain words, deletion of other words and his use of punctuation to allegedly make Employee look belligerent, obnoxious, loud and disrespectful. But given the above analyses, the words and punctuation the designee chose in his summary did not affect the outcome of his appeal. Any words omitted, including arguments and citations, were subject to Employee's correction within 10 days. 8 AAC 45.065(d). Employee in his February 22, 2025 petition promptly appealed the designee's February 18, 2025 discovery order. However, although he repeatedly stated that designee Pullen "did not include [his] entire argument, and legal authority" for every request addressed in this decision and order, Employee never directly stated what the designee allegedly left out, and how it would make any difference to the designee's discovery order. If that information is somewhere buried in Employee's February 22, 2025 petition and attachment, the panel could not clearly discern it.

In his February 22, 2025 petition, Employee also accused WCO Pullen of willfully depriving him of his rights under federal law, including conspiring to injure, oppress, threaten and intimidate him, and ultimately committing a felony against him. Other than the designee's alleged intentional use of certain punctuation and words, and omitting some words and verbatim arguments, Employee has not demonstrated that the designee has done anything to him except not rule in his favor. His reference to federal law is not relevant to this discovery dispute arising under the Act.

The Act does not contain a specific provision applying to WCO designees who are not Hearing Officers, who make decisions on discovery disputes. Similarly, ethical regulations pertinent to workers' compensation cases are applicable to only Hearing Officers and "panel members." WCO

Pullen is neither. In such cases where the Act does not have an express provision concerning prehearing conference designee ethics, the APA controls. AS 44.62.330(a)(12).

Even the APA is sparse on ethic statutes for WCOs like Pullen who are prehearing conference designees. The closest applicable APA statute involves "Impartiality," and would apply to WCO Pullen as an "officer" "participating in decisions" on discovery orders made at prehearing conferences. AS 23.30.108(c); AS 44.62.630. Other than Employee's subjective feelings about punctuation, he presented no evidence that WCO Pullen was not impartial to Employee's rights or did not orderly and promptly dispatch his duty on February 18, 2025. Likewise, Employee did not suggest the designee had *ex parte* discussions with Holloway or his clients in this case.

The AEBEA also applies to WCO Pullen because he works for the State of Alaska, is a Division "public employee," and thus a "public officer" or "officer" under AS 39.52.960(20), (21)(A). The AEBEA is broad: Employee did not provide any evidence that designee Pullen has a conflict of interest, engaged in unethical conduct, misused his official position for personal or financial gain, obtained improper gifts, disclosed information improperly or engaged in *ex parte* contact with Employer. AS 39.52.010(a)(1), (7); AS 39.52.120(a)-(b), (e); AS 39.52.130-140. He did not allege that the designee engaged in unethical conduct. AS 39.52.110(a)-(d). As evidenced by Employee's appeal, the designee did nothing to impugn Employee's rights, because he is currently exercising his rights by appealing designee Pullen's discovery order. 8 AAC 45.065(h). In any event, this panel has no jurisdiction over complaints coming under AEBEA. *AKPIRG*. Complaints under this law must be made to the Alaska Attorney General. AS 39.52.310(b), (e). Therefore, Employee's request to have designee Pullen removed from this case will be denied for lack of proof under the Act, the APA and applicable administrative regulations.

Employee's petition makes a vague reference to "Duty of the Courts," and "Judicial Immunity" presumably in reference to designee Pullen's actions. Neither the Division, WCO Pullen nor this hearing panel is a "court." This panel only has jurisdiction over claims coming under the Act, as prescribed by law. *AKPIRG*. If Employee has extra-Act criminal complaints, civil rights issues or claims he wants to make against Holloway, Employer, the adjuster, the Division, designee Pullen or this panel, he must bring those matters before the applicable state or federal agency.

Employee's attachment to his February 22, 2025 petition also mentions his "Right to Record." He is correct; Employee has the right to "audio record the prehearing at [his] expense." If Employee records a prehearing conference and transcribes the recording, he must file a copy of the recording and a "certified transcript" with the Division and serve a copy upon Holloway at least 10 days before any scheduled hearing. If he fails to timely file a copy of the recording and a certified transcript, a hearing panel will exclude the transcript or audio recording from evidence considered at that hearing. 8 AAC 45.065(g). A "certified transcript" is one done by a licensed court reporter or legal transcriptionist, not one homemade or made by artificial intelligence.

Lastly, Employee's February 22, 2025 petition refers to his October 13, 2024 "Affidavit of Fact" and states it is unrebutted and therefore "stands as Truth." Employee relied on his affidavit at the February 18, 2025 prehearing conference and designee Pullen obviously reviewed it because from it he retrieved Employee's 17 discovery requests. Employee's affidavit's unconventional nature and pseudo-law arguments made it difficult to understand exactly what he was saying in that document. Discovery disputes involve applying law to claims; Employee's affidavit is considered but is not binding. WCO Pullen reviewed the affidavit and ruled on his requests, and this decision has reviewed the designee's order and affirmed it with exception of one issue, as discussed above. Clearly, nothing in the Act or accepted legal concepts empower this panel to place Holloway in "dishonor," fine him or his clients $3 million "per [alleged] violation," punish them for alleged "treason," seize their assets or expel them from North America. *AKPIRG*. Employee's request to disqualify WCO Pullen will be denied, and he will remain the prehearing officer in this case.

## CONCLUSIONS OF LAW

1) The designee's discovery order will be denied in part and otherwise affirmed.
2) Designee Pullen shall remain the prehearing officer in this case.

## ORDER

1) Employee's February 22, 2025 petition appealing the designee's February 18, 2025 discovery order is denied in part and granted in part.

2) The designee's February 18, 2025 discovery order is reversed as to request (8), in accordance with this decision and order; the order is affirmed as to requests (1)-(2), (7), and (10)-(17).

3) Employer is ordered to produce to Employee within 30 days of the date of this decision and order any unprivileged documents regarding, addressing or explaining the November 30, 2022 and January 20, 2023 injury dates used in this case.

4) Employee's request to disqualify designee Pullen from this case is denied.

Dated in Anchorage, Alaska on April 30, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

## PETITION FOR REVIEW

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

## RECONSIDERATION

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

## MODIFICATION

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

## CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Johnny Nie, employee / claimant v. Peter Pan Seafood Co., LLC, employer; Tokio Marine America Insurance Co., insurer / defendants; Case No. 202301076; 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 30, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician