

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOHNNY ANDREW,	)	
	)	
Employee,	)	
Claimant,	)	
	)	INTERLOCUTORY
v.	)	DECISION AND ORDER
	)	
SILVER BAY SEAFOODS, LLC,	)	AWCB Case No. 201810619
	)	
Employer,	)	AWCB Decision No. 25-0042
and	)	
	)	Filed with AWCB Anchorage, Alaska
LIBERTY INSURANCE CORPORATION,	)	on July 16, 2025
	)	
Insurer,	)	
Defendants.	)	
	)	

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Silver Bay Seafoods, LLC's (Employer) February 12, 2025 cross-petition for a screening order was heard on the written record on June 24, 2025, in Anchorage, Alaska, a date selected on May 6, 2025. A May 6, 2025 hearing request gave rise to this hearing. Attorney Jeffrey Holloway represents Employer and its insurer; non-attorney Johnny Andrew (Employee) represents himself. The record closed at the hearing's conclusion on June 24, 2025. However, on the hearing date Employee filed a petition objecting to the hearing and alleging that he had not been properly noticed. The panel construes this as Employee's implicit request for relief.

## ISSUE

On the hearing date, Employee filed a petition stating that he did not receive proper notice for the June 24, 2025 written record hearing, as evidenced by United States Postal Service (USPS) records in the agency file. He objects to the hearing occurring as scheduled.

Employer contends that Employee was present at the May 6, 2025 prehearing conference when the designee set a June 24, 2025 hearing on Employer's cross-petition for a screening order. It further contends the Workers' Compensation Division (Division) properly served a hearing notice on Employee for the June 24, 2025 hearing and it matters not that he did not personally sign the USPS receipt showing service. Employer contends that Employee lacks credibility, misrepresented the facts and cannot be relied upon; therefore, it contends that his implicit petition for a hearing continuance should be denied.

**Shall the hearing record be reopened to allow Employee to be heard?**

**FINDINGS OF FACT**

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

- 1) On January 23, 2025, Employee filed a petition requesting "other" relief. The requested relief included an allegation that Employer was committing "fraudulent or criminal insurance acts," a request to disqualify Workers' Compensation Officer Harvey Pullen from the case and a venue change request. (Petition, January 23, 2025).
- 2) On February 12, 2025, Employer answered Employee's January 23, 2025 and cross-petitioned "for a screening order" and fees and costs against Employee. Given that the February 12, 2025 cross-petition is not listed in Employee's agency file under "Petition," it is likely Division staff did not recognize Employer's answer contained a cross-petition. (Answer to Employee's January 23, 2025 Petition and Cross Petition for a Screening Order and an Order for Attorney Fees and Costs Assessed against the Employee, February 12, 2025; observations).
- 3) On March 17, 2025, *Andrew v. Silver Bay Seafoods, LLC*, AWCB Dec. No 25-0018 (March 17, 2025) (*Andrew X*) ordered the designee at a prehearing conference to explain Employee's rights and responsibilities to him and give him notice of "what will be required before filing new claims or petitions." Employee would have an opportunity at that prehearing conference to explain his pending December 3, 2024 claim. The designee could also attempt to get Employee to agree to comply fully with previously ordered discovery, including signing releases and sitting for his deposition, in good faith. If at that prehearing conference the designee determined that Employee's December 2, 2024 claim was seeking past benefits, the designee could set a hearing on Employer's request for a screening order. (*Andrew X*).

4) On March 25, 2025, the parties attended a prehearing conference telephonically. Employee stated his December 3, 2024 claim was for “both past and continuing benefits as his left knee injury was never addressed.” The designee further advised Employee that if he wanted any new claims and petitions adjudicated he had to cooperate with the discovery process. Employee stated his rights were being “trampled,” and he would see the designee in federal court, and terminated his telephone call. Employer wanted the designee to schedule a hearing on Employer’s February 12, 2025 cross-petition for a screening order, but the designee declined without Employee present. He scheduled a subsequent prehearing conference to address the screening order petition. (Prehearing Conference Summary, March 25, 2025).

5) On May 6, 2025, parties appeared telephonically at a prehearing conference. Employee orally withdrew his petition to remove the designee and to change venue. He again stated he would see the designee and Holloway in federal court. Employee again asked for a hearing on his “fraud” petition. The designee again declined, finding Employee’s “rights to benefits have been suspended” until he provided signed discovery releases and sat for his deposition. Employee again stated he was willing to provide discovery and “ordered” Holloway to send him new releases and schedule his deposition. Holloway responded that the releases had already been provided to Employee “17 times.” “Employee advised Designee to go ahead and set the Procedural Hearing and disconnected the call. After Employee disconnected, Employer representative requested that the Procedural Hearing be set on the Written Record.” The designee set a written record hearing for June 24, 2025, with appropriate instructions for filing evidence and briefs. (Prehearing Conference Summary, May 6, 2025).

6) On May 6, 2025, the Division served on both parties, at their record addresses, by USPS certified mail with a return receipt requested (green card), the May 6, 2025 Prehearing Conference Summary, along with a notice that the parties had a written record hearing scheduled for June 24, 2025. The Division served these two documents in the same envelope, and paid the USPS an extra fee to obtain the addressee’s signature. (Prehearing Conference Summary; Written Record Hearing Notice, May 6, 2025; Agency file: Judicial, Prehearings and Hearings, Prehearing Conference Summary Served tabs, May 6, 2025).

7) On May 15, 2025, the Division received the USPS green card that was attached to the May 6, 2025 Division mailing. In box “A,” on the green card, reserved for the addressee’s signature someone wrote “USPS,” and in box “B,” reserved for the addressee’s printed name, wrote “in the

mail box.” The green card provides no evidence that any person at Employee’s address received or signed for the Division’s May 6, 2025 envelope containing the Prehearing Conference Summary and Hearing Notice. (USPS Return Receipt, Division received May 15, 2025).

8) On June 17, 2025, Employer filed and served its hearing brief on the screening order issue. (Hearing Brief of Silver Bay Seafoods, LLC, June 17, 2025).

9) Employee did not file a hearing brief for the June 24, 2025 hearing. (Agency file).

10) On or before June 23, 2025, Employee contacted the Division and asked for copies of the signed and returned USPS green cards and online tracking for his hearing notice. On June 23, 2025, Division staff emailed Employee the requested documents. (Agency file: Judicial, Communications, Email tabs, June 23, 2025).

11) On June 24, 2025 at 9:49 AM, Employee filed and served on Holloway a petition requesting “other” relief. He explained, “Employee was not notified by certified mail about today[’]s 06/24/2025 hearing and oppose[s] it. See certified mail return slip[.] Employee[’s] signature is not on there. [S]ee exhibits 1, 2, 3.” Exhibit 1 to Employee’s petition is the USPS’ online tracking information associated with the certified mail number affixed to the Division’s May 6, 2025 green card. This document indicates that the May 6, 2025 mailing to Employee arrived at the Anchorage, Alaska Distribution Center on May 6, 2025, at 10:52 PM. It was “In Transit” to the next facility on May 8, 2025. On May 9, 2025, at 8:53 AM, the envelope arrived at the Los Angeles, California Distribution Center. Finally, the online tracking document states the envelope was “Delivered, Left with Individual” on May 10, 2025, at 3:51 PM in ZIP Code “10047.” Employee’s ZIP Code is “90047.” Exhibit 2 attached to Employee’s petition is a copy of the USPS green card with the same information cited in factual finding 7, above. Notably, the green card states the document was placed “in mailbox,” while the online tracking document states the envelope was “Left with Individual.” (Petition with attachments, June 24, 2025).

12) On June 25, 2025, Employer responded to Employee’s June 24, 2025 petition. It considered the request a petition to continue the June 24, 2025 written-record hearing. Employer argued the request “must be summarily denied and dismissed.” It asserted that Employee made false statements in his petition and is not credible. Employer stated that the written-record hearing was scheduled at the May 6, 2025 prehearing conference, “which the employee attended.” It added, “Therefore, he had knowledge of its occurrence.” Lastly, Employer asserted that the Division need only serve Employee with a notice of hearing via certified mail and does not have to guarantee

that he personally signed for it when delivered by the USPS. It contended that the petition should be denied. (Petition, June 25, 2025).

### PRINCIPLES OF LAW

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

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

....

(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.

**AS 23.30.110. Procedure on claims.** . . .

(c) . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . .

**AS 23.30.135. Procedure before the board.** (a) . . . The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

**8 AAC 45.120. Evidence.** . . .

(m) The board will not consider evidence or legal memoranda filed after the board closes the hearing record, unless the board, upon its motion, determines that the hearing was not completed and reopens the hearing record for additional evidence or legal memoranda. The board will give the parties written notice of reopening the hearing record, will specify what additional documents are to be filed, and the deadline for filing the documents.

### ANALYSIS

**Shall the hearing record be reopened to allow Employee to be heard?**

Each party to a workers' compensation claim must be given basic due process, which includes an opportunity to be heard and their arguments considered. AS 23.30.001(4). The Alaska Workers' Compensation Act (Act) must be construed to ensure fairness to all parties at a reasonable cost to

employers. AS 23.30.001(1). This panel must conduct this hearing in a manner by which it may best ascertain all parties' rights. AS 23.30.135(a).

The Act in AS 23.30.110(c) requires that each party be given at least 10 days' notice of a hearing, either "personally or by certified mail." At the March 25, 2025 prehearing conference, the designee declined to set a hearing "without Employee present." Employer correctly noted that Employee attended the May 6, 2025 prehearing conference at which the June 24, 2025 hearing was scheduled. However, the Prehearing Conference Summary clearly states that Employee "disconnected the call" before the designee scheduled the hearing. Therefore, Employee had no personal knowledge of the hearing date, or any associated filing deadlines.

In accordance with AS 23.30.110(c), the Division on May 6, 2025, served a Hearing Notice on the parties by certified mail. The Division paid the USPS an extra fee to have the addressee sign for the certified documents. This helps ensure that the addressee actually receives the Hearing Notice. Here, even without taking Employee's credibility into account, there are several inconsistencies, which cast doubts on whether Employee got basic, due process notice of his June 24, 2025 hearing. First, the USPS green card does not contain his signature or even his "agent's" signature. By not requiring a signature, the USPS defeated the whole purpose of the Division paying an extra fee to obtain the addressee's signature. Rather, the green card suggests the postal worker simply put the document "in mailbox." Second, the USPS online tracking document states the certified mail was "Delivered, Left with Individual." Both statements cannot be true. Third, the USPS online tracking information states the Division's mailing was sent to ZIP Code "10047," while Employee's ZIP Code is "90047." While this may be a typographical error, it is troubling.

Ordinarily, an injured worker will receive the Prehearing Conference Summary setting forth the hearing date and deadlines for filing a hearing brief and evidence well before the Division serves the Hearing Notice. Here, the Division put the May 6, 2025 Prehearing Conference Summary in the same certified mail envelope with the Hearing Notice. There is no evidence that Employee received either document timely. On or before June 23, 2025, he contacted the Division, which on that date, sent him the green card and USPS online tracking information.

Given these service irregularities, the panel will not continue the hearing, but will reopen the hearing record so Employee can be heard on Employer's petition for a pre-hearing "screening order." AS 23.30.001(4); 8 AAC 45.120(m). Employee will be given an opportunity to file with the Division and serve on Holloway a written response specifically addressing and limited to Employer's February 12, 2025 cross-petition for a screening order. His briefing should only address why Employer's request for a screening order should not be granted. To be clear, Employee need not file anything; this decision simply gives him an opportunity to be heard and addresses his June 24, 2025 objection. If he files a brief, Employee must file and serve it on or before 5:00 PM Alaska time on Friday, July 25, 2025. At that time and on that date the record will close, the panel will deliberate and issue a decision on Employer's petition promptly.

CONCLUSION OF LAW

The hearing record will be reopened to allow Employee to be heard.

ORDER

- 1) Employee's June 24, 2025 implicit request for relief is granted.
- 2) The June 24, 2025 hearing record is reopened. Employee has until 5:00 PM Alaska time on Friday, July 25, 2025, to file and serve optional briefing specifically addressing and limited to Employer's February 12, 2025 cross-petition for a screening order.

Dated in Anchorage, Alaska on July 16, 2025.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/  
William Soule, Designated Chair

\_\_\_\_\_/s/  
Sara Faulkner, Member

\_\_\_\_\_/s/  
Pamela Cline, 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 Andrew, employee / claimant v. Silver Bay Seafoods, LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201810619; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 16, 2025.

/s/  
Rochelle Comer, Workers Compensation Technician