

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOSHUA L. ELLIS,)	
)	
Employee,)	
Claimant,)	INTERLOCUTORY
)	DECISION AND ORDER
v.)	
)	AWCB Case No. 202411168
RUS, INC.,)	
)	AWCB Decision No. 25-0050
Employer,)	
and)	Filed with AWCB Anchorage, Alaska
)	on August 12, 2025
ALASKA NATIONAL INSURANCE)	
COMPANY,)	
)	
Insurer,)	
Defendants.)	
)	

Joshua Ellis's (Employee) May 19, 2025, petition seeking review of a designee's April 29, 2025, discovery determination was heard on the written record in Anchorage, Alaska on June 25, 2025, a date selected on May 20, 2025. Employee's May 19, 2025, petition gave rise to this hearing. Attorney Michael Flanigan represented Employee. Attorney Adam Sadoski represented Rus, Inc. and Alaska National Insurance Company (Employer). The record closed at the conclusion of deliberations on June 27, 2025.

ISSUES

Employer requests a hearing continuance because it is seeking a protective order against other discovery requests by Employee, and since the issues raised by those discovery disputes "closely

mirror” the discovery dispute presented here, judicial efficiency would be best served by hearing all similar discovery disputes at one hearing.

Employee opposes continuance and contends, since the designee has not yet ruled on Employer’s most recent petition for a protective order, any potential appeal of a ruling on that petition is speculative, and this hearing should not be continued based on speculation.

1) Should the hearing be continued?

Employee contends, even though he was earning \$60 per hour at the time of his injury, Employer incorrectly set his temporary total disability (TTD) compensation rate at just \$325 per week, the statutory minimum. He contends, since Employer was paying him “under the table” with cash and checks, there was a “gross under-reporting” of his wages that resulted in a “gross underpayment” of his TTD compensation. Employee seeks discovery of Employer’s and Employer’s owner’s bank records to prove his claim for a compensation rate adjustment and contends the designee abused his discretion when he denied his petition to compel the production of this discovery and granted Employer’s petition for a protective order.

Employer contends that the designee did not abuse his discretion in making the above rulings. It contends Employee’s request for all Employer’s and all Employer’s owner’s bank records is overbroad and seeks information that is not relevant since the bank records will show numerous and various transactions that bear no relationship to Employee’s claim for benefits. It further contends, even if cash withdrawals or related checks were demonstrated, they would provide no indication of where the money went or for what purpose. Employer also contends other provisions of the Alaska Workers’ Compensation Act specifically address the situation where an employee’s wages cannot be ascertained and provide information that may be considered in determining Employee’s compensation rate and contends these provisions are his “exclusive remedies.” It additionally contends that the bank records would be inadmissible under the Alaska Rules of Evidence and compelling the production of all an employer’s bank records in a workers’ compensation case would infringe upon the strong privacy protections provided by the Alaska State Constitution.

2) Did the designee abuse his discretion in granting Employer's April 2, 2025, petition for a protective order and denying Employee's April 3, 2025, petition to compel?

FINDINGS OF FACT

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

1) On August 9, 2024, Employee reported injuring his brain, back and left arm when he fell 26 feet from a condominium while working for Employer. (Employee Report of Occupational Injury or Illness, August 8, 2024).

2) According to Employee's vocational rehabilitation specialist, Employee fell off a two-story roof, was unconscious for about an hour, and experienced L1 and L2 fractures along with a traumatic brain injury (TBI) with subdural hematoma. He was intubated and hospitalized for several days, then left the hospital "ill-advised" and returned to the hospital after a few days due to pain. (Eligibility Evaluation, December 11, 2024).

3) On August 23, 2024, Employer began paying TTD benefits at a compensation rate of \$325 per week. (Secondary Report of Injury, August 23, 2024).

4) On January 30, 2025, Employee claimed temporary total disability (TTD) benefits and medical costs. He also sought a compensation rate adjustment and late-payment penalty. His reason for filing his claim was "making \$3500 a wk while employed, now getting \$325 a wk in time loss benefit." (Claim for Workers' Compensation Benefits, January 30, 2025).

5) On February 11, 2025, Employer answered Employee's January 30, 2025, claim and contended that Employee had not submitted any wage documentation and that he was being properly paid at the statutory minimum weekly wage. (Employer Answer, February 11, 2025).

6) On April 1, 2025, Employee filed another claim, which also sought a compensation rate adjustment. He contended: "My compensation rate is incorrect. I was making \$60 an hour[] but am being paid only \$350 [sic] a week which doesnt [sic] even cover rent. The rate is based on incorrect employer information." (Claim for Workers' Compensation Benefits, March 8, 2025). On that same date, Employee also informally sought Employer's bank records as well as Employer's owner's personal bank records and attached a proposed subpoena for these records covering the period from April 1, 2023, to July 7, 2024. (Flanigan email, April 1, 2025).

7) On April 2, 2025, Employer petitioned for a protective order against Employee's request for Employer's and Employer's owner's bank records. It contended Employee's request was

“overbroad, unduly burdensome, and not reasonably calculated to lead to discoverable information.” (Employer Petition, April 2, 2025).

8) On April 3, 2025, Employee petitioned to compel the production of Employer’s and Employer’s owner’s banking records. He contended: “Employee states that employer was paying him in cash and checks which greatly exceed the amount the employer claims he was paying the Employee. Employee need [sic] the records for his compensation rate adjustment claim.” (Employee Petition, April 3, 2025).

9) On April 22, 2025, Employer answered Employee’s April 1, 2025, claim and controverted benefits. Its controversion states: “To date, the employee has not submitted any wage documentation and has been properly paid at the statutory minimum weekly wage. There is no evidence that the employee is entitled to a compensation rate adjustment, nor has the employee properly attached any earnings records to the WCC.” (Employer Answer, April 22, 2025; Employer Controversion Notice, April 22, 2025).

10) At an April 29, 2025, prehearing conference, the parties set forth their contentions concerning the bank records:

Employer representative objected to Employee’s noted memorandum and argued that Employee’s outrageous and unfounded allegation does not allow for unfettered access to Employer’s business and personal banking records. The information requested is privileged and not admissible as the records will surely show cash withdrawals and checks made out to cash with nothing to prove where that money went. Employer representative added that Employee should be able to produce his own proof to back up his allegations.

Employee representative argued that his client contends that the Employer reported earnings on Employee’s 2023 and 2024 W2(s)/1099(s) are understated and Employee was regularly being paid ‘under the table’ in cash and checks made out to cash from the Employer’s personal bank account. Employee representative recommended that a subpoena be issued to 1st National Bank to supply the bank records from Employer’s business and personal accounts noting that he would be willing to sign a confidentiality agreement to prevent any irrelevant information from being a part of this case.

The designee then ruled on the parties’ respective petitions:

Designee reviewed Employer’s 4/2/2025 Petition for Protective Order and Employee’s 4/3/2025 Petition to Compel along with the documentation attached to the same. Designee finds Employee’s discovery request for Employer’s Banking Records to be overbroad and unlikely to lead to discoverable information noting

that Banking Records are generally confidential/protected and Employee's W2(s) and 1099(s) for the two years prior to Employee's injury (2023 & 2024) are the standard methodology for calculating Employee's Compensation Rate. Employer's 4/2/2025 Petition is granted and Employee's 4/3/2025 Petition is denied.

(Prehearing Conference Summary, April 29, 2025).

- 11) On May 5, 2025, Employee obtained a signed subpoena for "All business account statements and copies of checks on all Rus, Inc. accounts, for the period 4/1/2023 to 7/7/2024," and "All personal account statements and copies of checks on all Tony T. Rus accounts, for the period 4/1/2023 to 7/7/2024." (Signed subpoena, May 5, 2025).
- 12) On May 6, 2025, Employer wrote Employee and set forth several objections to his bank records subpoena, including that it was "in direct contravention of the recent protective order against your request for this specific information." (Sadoski letter, May 6, 2025).
- 13) On May 7, 2025, Employer wrote the designee to clarify its contentions at the April 29, 2025, prehearing conference. It contended it did not make any claim regarding whether the bank records would show cash withdrawals and checks made out to cash during the conference but rather had argued "even if the bank records showed that information, it would not prove anything relevant to [Employee's] injury or his related claim for benefits under the Act." (Sadoski letter, May 7, 2025).
- 14) On May 8, 2025, Employee petitioned for reconsideration of the designee's April 29, 2025, rulings, where he set forth his contentions in greater detail:

On 7/17/2024, the employee was catastrophically injured and remains disabled, due to a fall from a roof while working for the employer as a roofer. Although the employee claims he was making \$60 an hour, his TTD rate was set at \$350 [sic] a week (which is not enough to cover rent) due to what the employee states is a gross under-reporting of his wages by the Employer, which is resulting in a gross underpayment of his TTD benefits and will affect [sic] his other benefits (PPI & PTD). The employee claims that the employer was paying him 'under the table' with business and personal checks and cash and not reporting his true earnings. The employee has no records of these payments since he cashed most of the checks at the employer's bank. In order to prove his claim of the employer's underreporting of his earnings, the employee in this case has requested the issuance of a subpoena to the Employer's Bank for copies of statements and checks that were issued during the time the employee was employed by the employer . . . Rus, Inc. and its owner, Anthony Rus.

(Employee Petition, May 8, 2025).

15) On May 8, 2025, Employee also filed an affidavit in which he averred he worked for Employer as a foreman for three seasons in 2022, 2023 and 2024, overseeing roofing, carpentry, remodels, painting and tile work. He was paid \$60 per hour, and although he thinks his 2023 W2 showed he made \$1,700, he believed he made \$70,000 that year. Employer paid him 75 percent of his earnings by check and 25 percent of his earnings in cash. The checks were written on Employer's or Employer's owner's bank accounts at First National Bank and Alaska USA. Employee cashed Employer's checks at the banks they were written on and "mostly just used the cash to live on[] rather than deposit them in a bank account." (Employee affidavit, May 7, 2025).

16) On May 12, 2025, the designee denied Employee's May 8, 2025, petition for reconsideration finding Employee's request for Employer's banking records "overbroad and irrelevant," and that the banking records were "confidential and protected." He also referred the parties to AS 23.30.220(5) and AS 23.30.220(10) and quoted both subsections. (Designee's letter, May 12, 2025).

17) On May 15, 2025, Employee requested additional discovery from Employer. (First Set of Requests for Production to Employer/Insurer, May 15, 2025).

18) On May 19, 2025, Employee petitioned to seek a review of the designee's April 29, 2025, and May 12, 2025, rulings. (Employee Petition, May 19, 2025).

19) On May 22, 2025, Employer petitioned for a protective order against Employee's May 15, 2025, discovery requests. (Employer Petition, May 22, 2025).

20) On May 22, 2025, Employer also petitioned for a continuance of the instant hearing on the basis it was seeking a protective order against Employee's May 15, 2025, discovery requests and the issues raised by that petition "closely mirror" the discovery dispute here. It contended judicial efficiency would be best served by hearing all similar discovery disputes at one hearing. (Employer Petition, May 22, 2025).

21) On May 23, 2025, Employee opposed Employer's May 22, 2025, petition for a continuance and contended, since the designee had not yet ruled on Employer's May 22, 2025, petition for a protective order, any potential appeal of a ruling on that petition was speculative, and a continuance of the instant hearing should not be granted based on speculation. (Employee Answer, May 23, 2025).

22) On May 23, 2025, Employee also petitioned to compel production of his May 15, 2025, discovery requests. (Employee petition, May 23, 2025).

23) On June 17, 2025, the designee ruled on Employer's May 22, 2025, petition for a protective order and Employee's May 23, 2025, petition to compel. (Prehearing Conference Summary, June 17, 2025). Both parties sought reconsideration of the designee's rulings. (Employer Petition, June 23, 2025; Employee Petition, June 24, 2025).

24) In his June 18, 2025 hearing brief, Employee cites numerous cases that he contends support the disclosure of Employer's bank records, including *Jones v. Jennings*, 788 P.2d 732, 739 (Alaska 1990) (personnel records of police officers, accused of assault and battery of a citizen, neither privileged nor is their disclosure violative of the Alaska Constitution); *In the Matter of the Petition for Finding a Failure to insure for Workers' Compensation Liability Against Arcterra Engineering and Surveying*, AWCBC Dec. No. 2012-0193 (November 6, 2012) (ordering employer to provide employee names and earnings information in order to affix failure to insure penalty); *United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) (holding that bank records are not the depositor's private papers, but instead are the business records of the bank and there is no legitimate privacy expectation in information contained in bank records); *Dep't of Revenue v. Oliver*, 636 P.2d 1156, 1168 (Alaska 1981) (ordering production of bank records to determine tax amount owned by individuals); *Pharr v. Fairbanks North Star Borough*, 638 P.2d 666 (Alaska 1981) (individual's interest in business records outweighed by borough's need to inspect them to implement tax system); *Cogan v. State Dep't of Revenue*, 657 P.2d 396 (Alaska 1983) (taxpayer's privacy rights were not invaded as a result of State's imposition of an income tax based on W2 forms which the Department of Revenue had acquired independently acquired); *Pratt v. Kirkpatrick*, 718 P.2d 962 (Alaska 1986) (ordering production of checkbooks and check register in support of securities violation investigation); *Trudell v. Hibbert*, 272 P.3d 331, n.78 and 82 (Alaska 2012) (superior court ordered tax returns of employer's owners to determine whether contacted work was business related or home repairs); and *In the Matter of the Petition for Finding a Failure to insure for Workers' Compensation Liability Against Division Five, LLC*, AWCBC Dec. No. 21-4053 (June 24, 2021) and 23-0005 (January 19, 2023) (subpoena issued to banks for the employer's bank records).

25) In its June 18, 2025, hearing brief, Employer distinguished Employee's cited cases and contended the tax cases were "not applicable to workers' compensation," were not "precedential or relevant within the realm of workers' compensation," and "useless in the workers' compensation context." (Employer's Hearing Brief, June 18, 2025).

PRINCIPLES OF LAW

AS 23.30.005. Alaska Workers' Compensation Board.

. . . .

(h) The . . . board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of books and records of the parties to a proceeding that relate to questions in dispute. . . .

The Board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

Administrative agencies do not have jurisdiction to decide issues of constitutional law. *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 36 (Alaska 2007); *Dougan v. Aurora Electric, Inc.*, 50 P.3d 789, 795 n. 27 (2002).

AS 23.30.107. Release of information. (a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. . . .

AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.

. . . .

(c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. . . . If a 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.

AS 23.30.108(c) gives 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 Decision No. 002 (January 27, 2006).

The Alaska Supreme Court describes abuse of discretion as “issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive.” *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985); *Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979). An agency’s failure to properly apply controlling law, or follow its own regulations, may also be considered an abuse of discretion. *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1013 (Alaska 2009); *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

The definition of relevant for discovery purposes in Civil Rule 26(b)(1) is persuasive as to the meaning and legislative intent of the phrases “relative to employee’s injury” and “that relate to questions in dispute” used in AS 23.30.107(a), and AS 23.30.005(h), respectively. *Granus v. Fell*, AWCBC Decision No. 99-0016 (January 20, 1999). The central question in determining whether authority exists under the statute to compel discovery is whether the information being sought is reasonably calculated to lead to the discovery of facts that are relevant to a question in dispute. *Id.* (citing Alaska Civ. R. 26(b)(1)). For a discovery request to be “reasonably calculated,” it must be based on a deliberate and purposeful design to lead to admissible evidence, and that design must be reasonable and articulable. *Id.* The relevancy relationship of information sought need not be strong: “relevant evidence means evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* (emphasis in original) (citing Alaska Evid. R. 401).

The burden of demonstrating the relevancy of information being sought rests with the proponent of the discovery request. *Granus*. The proponent of a discovery request must be able to articulate a reasonable nexus between the information sought and evidence relevant to a material issue in the case. *In the Matter of Mendel*, 897 P.2d 68, 93 (Alaska 1995).

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 inquiry or conduct its

hearing in the manner by which it may best ascertain the rights of the parties. . . .

Because the statute makes most rules of civil procedure and evidence inapplicable, the scope of evidence admissible in administrative hearings is broader than is allowed in civil courts generally. Under relaxed evidence rules, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad. *Schwab v. Hooper Electric*, AWCB Decision No 87322 (December 11, 1987). The statute gives the workers' compensation board wide latitude in making its investigations and in conducting its hearings and authorizes it to receive and consider not only hearsay testimony, but any kind of evidence that may throw light on a claim pending before it. *Cook v. Alaska Workmen's Compensation Board.*, 476 P.2d 29 (Alaska 1970).

AS 23.30.155. Payment of Compensation.

. . . .

(h) The board may upon its own initiative at any time . . . where right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended . . . make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties. . . .

AS 23.30.220. Determination of spendable weekly wage. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

. . . .

(4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;

(5) if at the time of injury, the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;

. . . .

(10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings

under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury.

AS 06.01.028. Depositor and customer records confidential. (a) The records of financial institutions relating to their depositors and customers and the information in the records are confidential. A financial institution may not disclose the records and information to another person except when, and only to the extent that, the disclosure is

....

(2) required by federal or state statute or regulation or by an order directed to the financial institution and issued by a court or administrative agency of competent jurisdiction;

....

In *United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976) the U.S. Supreme Court held that bank records are not the depositor's private papers, but instead are the business records of the bank and there is no legitimate Fourth Amendment privacy expectation in information contained in bank records. *Id.* at 440-41, 1622-23. In response to *Miller*, Congress passed the Right to Financial Privacy Act (RFPA) in 1978, which "permits individuals to contest Government access to certain records held by banks and other financial institutions . . . by requiring the Government authority to notify the banks customer of the subpoena or summons served on the financial institution as well as the nature of the law enforcement inquiry to which the subpoena or summons relates." *In re Administrative Subpoena Directed to Craig Blunden, Custodian of Records, Provident Savings Bank*, 896 F. Supp. 996, 999 (C.D. Ca. August 18, 1995).

8 AAC 45.054. Discovery. (a) The testimony of a material witness . . . may be taken by written or oral disposition in accordance with the Alaska Rules of Civil Procedure. . . .

(b) Upon the petition of a party, the board will, in its discretion, order other means of discovery.

....

8 AAC 45.074. Continuances and cancellations. (a) A party may request the continuance or cancellation of a hearing by filing a

(1) petition with the board and serving a copy upon the opposing party

(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

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(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;

(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

....

8 AAC 45.120. Evidence.

....

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege apply to the same extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.

The relevant and reliable admission standard gives the Board discretion to exclude untrustworthy evidence. *Granus* at n.34 (citing *Whaley v. Alaska Workers' Compensation Board*, 648 P.2d 955; 958 (Alaska 1982)). "However, we find the trustworthiness of relevant evidence is an issue properly addressed at the time of its admission at hearing and does not impose an additional requirement for the discovery of information." *Id.*

Alaska Rule of Civil Procedure 26. General Provisions Governing Discovery; Duty of Disclosure.

....

(b) Discovery Scope and Limits.

- (1) *In General.* Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action . . . The information sought need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

....

The Alaska Workers' Compensation Board frequently looks to the Alaska Rules of Civil Procedure for guidance in interpreting its procedural statutes and regulations. *Granus*.

ANALYSIS

1) Should the hearing be continued?

Hearing continuances are not favored, will not be routinely granted, and may only be granted for "good cause." 8 AAC 45.074(b). Circumstances constituting good cause are set forth in the regulation and the reason Employer provides, judicial efficiency, is not among them. Accordingly, Employer's May 22, 2025, petition for a continuance will be denied.

2) Did the designee abuse his discretion in granting Employer's April 2, 2025, petition for a protective order and denying Employee's April 3, 2025, petition to compel?

Many of the decisional authorities cited in Employee's hearing brief are addressed as a preliminary matter. One of the bases for the designee's original April 29, 2025, ruling was that bank records are "generally confidential/protected." In response, Employee now relies on the U.S. Supreme Court's decision in *Miller*, which held bank records are the business records of the bank and there is no reasonable expectation of privacy in those records, as well as numerous state tax cases that relied on the holding in *Miller*. Employee's reliance on *Miller* and its state progeny is misplaced because Congress superseded *Miller* with passage of the RFPA in 1978, as is more fully set forth in this decision's points of law. Additionally, Employer's contentions that Employee's cited cases are "not applicable to workers' compensation," not "precedential or relevant within the realm of workers' compensation," and "useless in the workers' compensation context," are largely

persuasive since these proceedings are being conducted under different statutory and regulatory schemes than those cited. Nevertheless, Employee is correct to the extent he argues that this panel has authority to order the production of Employer's bank records, should they be discoverable. AS 23.30.005(h); AS 23.30.108(c); AS 23.30.135(a); AS 23.30.155(h). *See also* AS 06.01.028 (permitting the disclosure of confidential bank records by order of an administrative agency).

Employer opposes Employee's request for its bank records on numerous bases, which are also now addressed as preliminary matters. It contends its bank records should not be produced because they would be inadmissible at hearing under the Alaska Rules of Evidence. However, the Alaska Rules of Evidence do not apply to these proceedings, and neither is admissibility a prerequisite for discovery. AS 23.30.135(a); 8 AAC 45.120(e); *Granus*. Employer also contends that compelling production of its bank records would infringe upon the strong privacy protections provided by the Alaska State Constitution. However, this panel lacks authority to address its constitutional contentions. *Alaska Public Interest Research Group; Dougan*. Employer further contends, even if cash withdrawals or related checks were demonstrated, they would provide no indication of where the money went or for what purpose. However, under the relevant and reliable standard at 8 AAC 45.120(e), its argument in this regard is one for the hearing on the merits of Employee's claim. *Granus*. Finally, relying on the designee's May 12, 2025, reference to AS 23.30.220(5) and AS 23.30.220(10), Employer contends these provisions of the Act specifically address the situation where an employee's wages cannot be ascertained and provide information that may be considered in determining the employee's compensation rate. However, those subsections are inapplicable under the facts of this case. Since Employee averred, he was paid by the hour, the correct subsection to use in calculating his compensation rate is AS 23.30.220(4), not either of the two subsections cited by the designee and urged by Employer.

In civil actions, parties may obtain discovery regarding *any* matter, not privileged which is *relevant* to the subject matter involved in the pending action. ARCP 26(b)(1) (emphasis added). Under relaxed evidence rules in workers' compensation proceedings, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad. *Schwab*. With these guidelines in mind, Employee's discovery request for Employer's and Employer's owner's (collectively, Employer's) bank records is reviewed.

Here, Employee's compensation rate is at issue. Although the record is unclear as to its basis, Employer started paying Employee TTD at \$325 per week, the statutory minimum rate last year. Meanwhile, Employee contends he was being paid \$60 per hour at the time of his injury and believes earned \$70,000 in 2023, which, if he is correct in his contentions, would result in a substantially higher compensations rate than he was paid or may now be due. *Rogers & Babler*. The discrepancy in his compensation rate, according to him, arises because Employer was paying him "under the table" with checks written on Employer's bank accounts and in cash. Consequently, to prove his claim for a compensation rate adjustment, Employee seeks "All business account statements and copies of checks on all Rus, Inc. accounts, for the period 4/1/2023 to 7/7/2024," and "All personal account statements and copies of checks on all Tony T. Rus accounts, for the period 4/1/2023 to 7/7/2024."

A designee's specific authority to order discovery is derived from AS 23.30.005(h), AS 23.30.107(a) and AS 23.30.108(c) under the Act. It has long been understood that the meaning and legislative intent of the phrases "relative to employee's injury" and "that relate to questions in dispute" as used in those statutes is the same as the definition of relevant for discovery purposes under Civil Rule 26(b)(1). *Granus*. *Granus* reminds us, the relevancy relationship of information sought need not be strong: "relevant evidence means evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* (emphasis in original).

Here, if Employer was making cash withdrawals proportionate to the cash payments described in Employee's affidavit that corresponded to his paydays, it would make his contention that he was being paid "under the table" in cash and earning more money than Employer attributes him as having earned more probable than it would be without that evidence. *Rogers & Babler*. Similarly, if the bank records show checks made payable to Employee or payable to "cash" and bearing Employee's endorsement, it would make his contention that he was being paid "under the table" with such checks and earning more money than Employer attributes him as having earned more likely than it would be without that evidence. *Id.* An articulable nexus exists between the information Employee seeks and evidence relevant to his compensation rate adjustment claim.

Mendel. Some information Employee seeks is relevant to his claim for compensation rate adjustment and is discoverable. *Granus*; *Cook*; AS 23.30.105(h); AS 23.30.107(a); AS 23.30.108(c). Since the designee granted Employer's April 2, 2025, petition for a protective order and denied Employee's April 3, 2025, petition to compel in their entirety, he abused his discretion because he failed to apply controlling law. *Smith*; *Manthey*.

Employer is correct that Employee's informal request and his subpoena for *all* Employer's bank records is overbroad and seeks information that is not relevant since the bank records will show numerous and various transactions that bear no relationship to Employee's claim for benefits. Therefore, to best ascertain and protect the parties' rights, other means of discovery will be ordered. AS 23.30.135(a); AS 23.30.155(h); 8 AAC 45.054(b). Employer will be ordered to produce monthly statements for all Rus, Inc. and Tony T. Rus accounts at Global Credit Union (formerly Alaska USA) and First National Bank Alaska, as well as copies of all checks written on those accounts, to include dates between April 1, 2023, through July 7, 2024, for an in-camera review.

CONCLUSIONS OF LAW

- 1) The hearing should not be continued.
- 2) The designee abused his discretion in granting Employer's April 2, 2025, petition for a protective order and denying Employee's April 3, 2025, petition to compel in their entirety because he failed to apply controlling law.

ORDERS

- 1) Employee's May 19, 2025, petition seeking review of a designee's April 29, 2025, discovery determination is granted.
- 2) Employer is directed to provide hearing officer Kathryn Setzer monthly statements for all Rus, Inc. and Tony T. Rus accounts at Global Credit Union (formerly Alaska USA) and First National Bank Alaska, as well as copies of all checks written on those accounts, to include dates between April 1, 2023 through July 7, 2024, for an in camera review to determine what, if any, banking records are relevant to Employee's claim or Employer's defenses or are reasonably calculated to lead to the discovery of relevant evidence.

- 3) The hearing officer shall hold a pre-hearing conference as soon as possible after receiving and reviewing the records.
- 4) Jurisdiction is retained over this discovery dispute.

Dated in Anchorage, Alaska on August 12, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Randy Beltz, Member

/s/
Brian Zematis, 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 JOSHUA L. ELLIS, employee / claimant v. RUS, INC., employer;

JOSHUA L. ELLIS v. RUS, INC.

ALASKA NATIONAL INSURANCE COMPANY, insurer / defendants; Case No. 202411168; 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 August 12, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician