

**INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

K&S Iron Works,	)	
<i>Employer,</i>	)	I.A.B. No.: 1287991
	)	
vs.	)	
	)	
Jorge Nevarez,	)	
<i>Employer.</i>	)	

**ORDER**

This matter came before the Industrial Accident Board on September 1, 2016 on a motion by K&S Iron Works (“Employer”) to compel Jorge Nevarez (“Employee”) to provide complete discovery in response to Employer’s requests for production pursuant to an upcoming hearing on Employer’s petition for review. Employer had been serving its requests for production on the Employee’s counsel since May 27, 2016; however, despite multiple requests the Employee’s counsel only responded two days before this legal hearing on August 30, 2016.

Employer requested copies of all medical records within the Employee’s possession; however, although the Employee confirmed he has medical records from 31 separate providers, he did not provide any of those records despite stating that he intends to rely upon portions of them at trial to maintain that he remains totally disabled. Furthermore, although the Employee has had over three months to respond to the Employer’s request for production, his answer simply states “to be provided” in response to Employer’s request for information on the Employee’s prior employers, copies of every Federal and State tax return for the past three years and documentation concerning subsequent automobile accidents in which the Employee has been involved following his industrial accident.

Due to the fact that this industrial accident occurred on June 7, 2006, which is over ten years ago, Employer provided a blank Statement of Facts form for the Employee to complete, sign and date and requested that the Employee return this with his answers to Employer’s request

for production. In response, the Employee's counsel stated that "a Statement of Facts was completed by my client at the initial stages of this claim," which was over ten years ago, and refused to complete the new Statement of Facts that Employer forwarded.

The information Employer seeks is discoverable and the Employee has now had over three months to produce that evidence. Regarding the Statement of Facts, the Board agrees with Employer that the Statement of Facts from over a decade ago may likely have outdated answers to many of the questions that would be relevant to the current petition. I.A.B. Rule 6(B) allows the Board to require additional information from "any party" appearing before the Board to assist in adequately ascertaining the rights and liabilities of the parties. 29 *Del. C.* § 10125(b)(5) allows the Board to "cause interrogatories to issue."

The Board has created the Statement of Facts form under I.A.B. Rule 5(A) for that purpose, which are the only interrogatories available to parties in litigation before the Board. While a Statement of Facts form is initially completed on an initial petition signed by a claimant under 19 *Del. C.* § 2345, Superior Court and the Board have previously held that employers have the right to have claimants complete new Statements of Facts on petitions filed under 19 *Del. C.* § 2347 in recognition of the fact that answers to those questions in prior litigation may become outdated.<sup>1</sup> The Board agrees and orders the Employee to complete and return the Statement of Facts previously forwarded on May 27, 2016; a copy of which is attached to this order.

Finally, Employer asks the Board to order the Employee, and not his attorney, to sign and date the Statement of Facts that has been provided on the ground that there are far too many times that Statements of Facts are returned that have been prepared by attorneys who, not being the claimants themselves, may be unaware of all pertinent information and provide incomplete responses. The Statement of Facts is usually signed by a claimant by being attached to a

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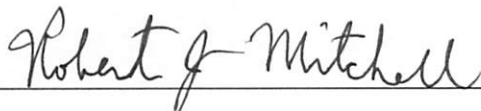
<sup>1</sup> *Paolino v. Industrial Accident Bd.*, 711 A.2d 800, 802-04 (Del. Super. 1997); *Am. Communs. Installations v. DiNorscia*, 1985 Del. Super. LEXIS 1235 at \*14 (Del. Super.).

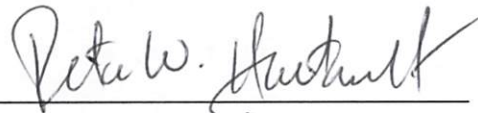
claimant's initial petition, which requires a claimant's signature under I.A.B. Rule 5(B). This also correlates with Superior Court rules of discovery, which may be consulted when the Board's own rules of discovery are silent.<sup>2</sup> As the Statements of Facts are the Board's allowed interrogatories, Del. Super. Ct. Civ. R. 33 can be consulted. Here, Rule 33(b)(2) states that answers to interrogatories "are to be signed by the person making them," which in this case would be the Employee. Moreover, Rule 33(a) states that "if a party elects to file answers signed by the attorney, sworn answers *signed by a party* shall be filed within 30 days of the date when the answers signed by the attorney are filed." As more than 90 days have passed since Employer requested the Statement of Facts to be completed and signed by the Employee, the Board orders the Employee himself to complete the answers on the attached form, sign, date and return them to Employer's counsel within fifteen days from the date of this order.

Employer's motion is GRANTED. The Employee is ORDERED to provide full and complete responses to all of Employer's requests for production within fifteen days from the date of this order, to include the Employee being required to complete, sign, date and return the Statement of Facts, or Employer shall be entitled to seek additional sanctions at that time to include costs and a continuance if needed.

**IT IS SO ORDERED** this 1<sup>ST</sup> day of SEPTEMBER, A.D. 2016.

**INDUSTRIAL ACCIDENT BOARD**

  
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*Joseph Andrews, Esquire for Employer*  
*Michael Ippoliti, Esquire for Employee*

<sup>2</sup> *Robey v. State*, 2004 WL 440378 at \*2 (Del. Super.); *Townsend's Inc. v. Foraker*, 1985 Del. Super. LEXIS 1133 at \*3 (Del. Super.).

**INDUSTRIAL ACCIDENT BOARD  
STATE OF DELAWARE**

**STATEMENT OF FACTS**

*Delaware's law requires every Employee alleging an injury at work to complete ALL information on this form for his Employer. The Employee must also sign and date this form after its completion.*

1. Employee: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_
2. Date of Accident: \_\_\_\_\_
3. Place of Accident: \_\_\_\_\_
4. Employer: \_\_\_\_\_  
Employer Contact Name: \_\_\_\_\_ E-mail (optional): \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_
5. Name of Insurance Carrier / Third Party Administrator: \_\_\_\_\_
6. Occupation of Employee at the time of accident: \_\_\_\_\_
7. Describe the ACCIDENT and how it happened (attach new sheet if more space needed):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Describe the nature of the INJURY / list the BODY PARTS (attach new sheet if more space needed):  
\_\_\_\_\_  
\_\_\_\_\_
9. Did Employee receive medical, surgical or hospital service: YES  NO
10. When was notice of injury given to or received by Employer: \_\_\_\_\_
11. Give names & addresses of all employers in PAST 5 YEARS (attach new sheet if more space needed):  
NAME: ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. State weekly wage when injured: \_\_\_\_\_
13. Name & address of every treating doctor in THIS CLAIM (attach new sheet if more space needed):  
NAME: ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Name & address of every treating doctor in LAST 10 YEARS (attach new sheet if more space needed):  
NAME: ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Give names, addresses & dates of treatment of all hospitals & institutes treating you for THIS INJURY (attach new sheet if more space needed):  
NAME: ADDRESS: DATE OF SERVICE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. To what extent did injury prevent employee from working and for how long:  
\_\_\_\_\_  
\_\_\_\_\_

17. State whether or not Employee has fully recovered and if only partially to what extent:  
\_\_\_\_\_  
\_\_\_\_\_

18. Has Employee resumed work: YES  NO   
a. If YES, state when and give name of present Employer:  
\_\_\_\_\_  
b. If YES, state what trade or occupation and weekly wages:  
\_\_\_\_\_  
c. If NO, state how long likely to be incapacitated from resuming work:  
\_\_\_\_\_

19. Identify, describe and give dates of all PREVIOUS and SUBSEQUENT injuries:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. State any other important facts bearing on the claim above presented:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. \_\_\_\_\_

\_\_\_\_\_  
EMPLOYEE SIGNATURE