

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

ROBIN A. FREELONG,)	
Employee,)	
Claimant,)	FINAL DECISION AND ORDER
)	
v.)	AWCB Case Nos. 200919643 & 200812594
)	
CHUGACH ALASKA SERVICES, INC.,)	AWCB Decision No. 14-0140
Employer,)	
)	Filed with AWCB Fairbanks, Alaska
and)	on October 20, 2014
)	
ZURICH AMERICAN INSURANCE CO.,)	
Insurer,)	
Defendants.)	
)	

Chugach Alaska Services' Inc.'s July 3, 2014 petition for board-ordered mediation was heard on August 28, 2014 on the written record in Fairbanks, Alaska. This hearing date was selected on August 1, 2014. Attorney Michael Stepovich appeared and represented Robin A. Freelong (Employee). Attorney Robert Bredesen appeared and represented Chugach Alaska Services Inc. (Employer). The record closed at the hearing's conclusion on August 28, 2014.

ISSUE

Employer contends that even though a decision and order has been issued on the merits, the case is far from a final conclusion and the board should order the parties to attend mediation. Employer points out that mediation may allow the parties to craft a mutually acceptable resolution by considering matters outside the strictures of the Act. Employee points out that, unlike other cases where the board has ordered mediation, this case has not languished, but has

proceeded steadily. Employee contends that in such cases compelling parties to mediate when the parties do not wish to do so would set a questionable precedent.

Should the parties be ordered to attend a mediation/settlement conference?

FINDINGS OF FACT

All findings of fact in *Freelong v. Chugach Alaska Services, Inc.*, AWCB Decision No. 12-0044 (March 6, 2009) (*Freelong I*), *Freelong v. Chugach Alaska, Inc.*, AWCB Decision No. 13-0005 (January 14, 2013) (*Freelong II*), and *Freelong v. CESI – Alaska Job Corps*, AWCB Decision No. 14-0087 (*Freelong III*), are incorporated herein. The following facts and factual conclusions are reiterated from *Freelong I*, *Freelong II*, *Freelong III*, or are established by a preponderance of the evidence:

1. Employee reported injuring his right shoulder in a fall while working for Employer on August 4, 2008. (*Freelong III*).
2. Employee reported injuring his left shoulder on December 13, 2009 while unloading a truck for Employer. (*Freelong III*).
3. On February 25, 2010, Employee filed a claim on his December 13, 2009 left shoulder injury. (*Freelong III*).
4. The August 2008 and December 2009 injury cases were consolidated on June 6, 2013. (*Freelong III*).
5. To date, Employee has filed five claims or amended claims (February 25, 2010, March 26, 2010, May 6, 2010, September 19, 2011, and June 28, 2012). (Workers' Compensation Division's electronic events calendar, October 1, 2014).
6. To date, the parties have filed 15 petitions, including Employer's July 3, 2014 petition for board-ordered mediation (August 24, 2011, February 17, 2012, May 31, 2012, October 11, 2012, November 2, 2012, January 15, 2013, January 23, 2013, January 30, 2013, February 4, 2013, February 6 2013, Mary 7, 2013, May 17, 2013, November 26, 2013, June 12, 2013, and July 3, 2014). (Workers' Compensation Division's electronic events calendar, October 1, 2014).
7. To date, Employer has filed nine controversions (April 15, 2010, August 26, 2011, October 5, 2011, December 27, 2011, January 10, 2012, April 11, 2012, June 30, 2012, September 21,

- 2012, and February 1, 2013). (Workers' Compensation Division's electronic events calendar, October 1, 2014).
8. To date, there have been 21 prehearing conferences (April 1, 2010, April 23, 2010, May 5, 2010, May 28, 2010, June 9, 2010, November 18, 2010, May 22, 2012, June 7, 2012, July 25, 2012, August 17, 2012, September 6, 2012, September 21, 2012, October 31, 2012, February 12, 2013, March 26, 2013, April 29, 2013, May 29, 2013, September 18, 2013, February 10, 2014, May 29, 2014, and August 1, 2014). (Workers' Compensation Division's electronic events calendar, October 1, 2014).
 9. To date, the parties have filed one partial compromise and release. (Compromise and Release, August 25, 2010).
 10. To date there have been four decision and orders issued in the case. (*Freelong I*, *Freelong II*, *Freelong III*, and *Freelong v. Chugach Alaska Services, Inc.*, AWCB Decision No. 14-0087 (June 20, 2014) (granting Employer's request for reconsideration of *Freelong III*)).
 11. In addition to its petition requesting reconsideration of *Freelong III*, on June 13, 2014, Employer appealed *Freelong III*, to the Alaska Worker's Compensation Appeals Commission (Commission). On June 27, 2014, Employee cross-appealed *Freelong III* to the Commission. The appeal has been suspended pending further board action. (Commission Docket, October 1, 2014).
 12. *Freelong III* addressed nine issues. (*Freelong III*).
 13. Mediation is often successful in workers' compensation cases because the parties can craft a mutually acceptable resolution free of the strictures and limitations of the Workers' Compensation Act and regulations. (Experience; Observation).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. 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;

- 2) Worker's compensation cases shall be decided on their merits except where otherwise provided by statute. . . .

AS 23.30.005. Alaska Workers' Compensation Board.

. . .

(h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible.

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, 533-534 (Alaska 1987).

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 in 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. . . .

The board has broad statutory authority in conducting its hearings. *De Rosario v. Chenenga Lodging*, AWCBC Decision No. 10-0123 (July 16, 2010).

The issue of board-ordered mediation was first addressed in *Lindeke v. Anchorage Grace Christian School*, AWCBC Decision No. 11-0400 (April 18, 2011). *Lindeke* noted there was no specific statutory or regulatory provision requiring parties to submit to mediation, but the Alaska Workers Compensation Act contained broad authority for resolving disputes. The Act requires "process and procedure" to be as "summary and simple as possible," and is to be interpreted to ensure the "quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost" to Employer. That goal and intent had not been met in *Lindeke* as the case had languished or "gone nowhere" for over six years. *Lindeke* noted that

mediation is relatively quick, usually taking only one business day, very efficient because it normally resolves the entire case with very little Division resources, and fair because both parties must agree to a mediated settlement. Also, costs to the employer for a mediated settlement are likely to be significantly less than continued litigation. Consequently, *Lindeke* ordered the parties to mediate, but advised they were not required, or forced, to actually resolve this case through mediation

Board-ordered mediation was again addressed in *Ellison v. Fairbanks Gold Mining Co.*, AWCB Decision No. 13-0026 (March 15, 2013). *Ellison* had been ongoing for over seven years without resolution, and, relying on *Lindeke*, mediation was ordered. *Ellison* noted that employers were equally entitled to a reasonable-cost resolution as employees were to medical and indemnity benefits.

ANALYSIS

Should the parties be ordered to attend a mediation/settlement conference?

It has been over four and one-half years since Employee filed his first claim in these cases. It has been almost five years since Employee's December 13, 2009 injury, and over six years since his August 4, 2008 injury. With five claims, 15 petitions, nine controversions, 21 prehearing conferences, and four decisions and orders, there has been an abundance of "process and procedure" in this case. It has not, however, been as "summary and simple as possible."

While *Freelong III* was a decision on the merits of Employee's claims, the matter is not resolved. Both parties have appealed to the Commission, and Employer's petition for reconsideration was granted. There will be significant litigation before a final resolution is reached by the board or Commission. That litigation will probably take several months, if not a year or more.

As in *Lindeke* and *Ellison*, the goals of simple and summary procedures and a quick, efficient, fair, and predictable delivery of indemnity and medical benefits to Employee at a reasonable cost to Employer have not been met in this case. Given the time expended by the parties to date, and the time and cost of further proceedings, it will not be unduly burdensome to require the parties

to spend one day attempting to mediate their differences. The parties will be directed to attempt a mediated resolution of this case.

The parties are advised that they are not being required or forced to actually resolve the case, but only to make an attempt to settle their differences through mediation. If the parties are not able to successfully mediate the claim, either party has the right to seek further board action.

CONCLUSION OF LAW

Mediation will be ordered.

ORDER

1. The parties are ordered to schedule and attempt mediation as soon as possible.
2. Jurisdiction is reserved to resolve any remaining disputes.

ROBIN A. FREELONG v. CHUGACH ALASKA SERVICES, INC.

Dated in Fairbanks, Alaska on October 20, 2014.

ALASKA WORKERS' COMPENSATION BOARD

Not available for signature _____
Robert Vollmer, Designated Chair

/s/ _____
Julie Duquette, Member

/s/ _____
Lake Williams, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of ROBIN A. FREELONG, employee / claimant; v. CUGACH ALASKA SERVICES, INC., employer; ZURICH AMERICAN INSURANCE CO., insurer / defendants; Case Nos. 200812594 and 200919643; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties on October 20, 2014.

/s/ _____
Darren Lawson, Office Assistant II