

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK R. ALANDER and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 98-2223; Submitted on the Record;
Issued September 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's disability after May 10, 1980 is causally related to his October 14, 1967 or November 3, 1977 employment injuries.

On October 14, 1967 appellant, then employed as an aircraft mechanic at Travis Air Force Base, filed a claim for a "wrenched back" sustained that day when he slipped and fell on an oily maintenance stand, hitting his back on the stand or on the aircraft fuselage. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar contusion as a result of this injury. On November 3, 1977 appellant, then working as a machinist at the employing establishment, filed a claim for a neck muscle strain that he noticed that day while working in an awkward position. The Office accepted that appellant sustained a cervical strain as a result of this injury.

By letter dated May 8, 1980, the employing establishment advised appellant that it no longer had light duty available for him. Appellant thereafter did not return to work at the employing establishment and retired on disability effective February 9, 1982.

By decision dated August 13, 1982, the Office found that appellant had failed to establish that he sustained a recurrence of disability beginning May 8, 1980 causally related to his October 14, 1967 or January 3, 1977 employment injuries. Appellant requested reconsideration, and the Office, by decision dated September 13, 1983, refused to modify its prior decision, citing an inaccurate history by appellant's physician of a cervical spine injury on October 14, 1967.

On August 8, 1985 appellant filed a claim for an occupational disease, listing the nature of his disease or illness as a back problem from his 1967 injury and indicating that he had lost pay between May 10, 1980 and January 1982. By decision dated September 8, 1993, the Office found that appellant's "current cervical problems are not causally related to [his] industrial injuries of 1967 and 1977." The Office found, "There is no convincing medical evidence establishing that his two minor work injuries affected this [degenerative] process." By letter

dated October 26, 1993, appellant requested a hearing before an Office hearing representative. By decision dated March 30, 1994, the Office found that appellant was not entitled to a hearing since he had already had a reconsideration. By letter dated October 13, 1994, appellant requested reconsideration and the Office, by decision dated October 17, 1994, found that appellant's request was not made within one year and did not show clear evidence of error.

Appellant appealed the Office's March 30, 1994 denial of a hearing to the Board, which, by order dated May 16, 1997, remanded the case to the Office for scheduling of a hearing.¹ A hearing was held before an Office hearing representative on March 24, 1998. By decision dated April 29, 1998, the Office hearing representative found that the medical evidence did not support that appellant's medical problems were causally related to his 1967 or 1977 employment injuries. The Office hearing representative found that the reports of appellant's physician supporting that his current problems were related to his October 14, 1967 employment injury were based on an inaccurate history that appellant sustained a fracture of L2 and a cervical spine injury on October 14, 1967. The Office hearing representative stated that "x-rays taken the day of this episode failed to reveal a fracture or any other significant injury," and that the "emergency room records only diagnosed a low back contusion, which was what the claim was accepted for."

The Board finds that the case is not in posture for a decision.

As recognized by an Office hearing representative in an April 29, 1998 decision, the probative value of the reports of appellant's attending physicians depends largely on the accuracy of the history upon which they rely.² Beginning with a report dated August 29, 1980 from Dr. Michael A. Cerruti, appellant's attending physicians have supported causal relation of appellant's medical problems to his October 14, 1967 employment injury by relying upon a history that appellant sustained a compression fracture of L2 on October 14, 1967. In addition to the history provided by appellant of this compression fracture, Dr. Thomas C. Lake and Dr. Joseph Pramuk also relied on a history provided by appellant that he injured his neck on October 14, 1967, possibly sustaining a fracture of a cervical vertebra.

In an April 29, 1998 decision, an Office hearing representative referred to lumbar x-rays taken on October 14, 1967, stating that they did not show a fracture, and to an emergency room report of October 14, 1967 diagnosing only a low back contusion. The case record submitted to the Board, however, contains no medical report interpreting x-rays of appellant's lumbar spine taken on October 14, 1967, nor does it contain an emergency room report of that date. As these reports are crucial to an informed determination of the probative value of the reports of appellant's attending physicians, the case will be remanded to the Office for inclusion of these reports in the case record. The Office should also obtain, if possible, medical reports addressing appellant's low back or neck prepared between October 14, 1967 and January 3, 1977, as the case record contains no such reports. The Office should also develop the record regarding the

¹ Docket No. 95-1326.

² A medical report based on an inaccurate history of the mechanism of the employment injury and the course of the claimant's condition after the injury has little probative value and is insufficient to establish causal relation. *Peter Seaman*, 34 ECAB 1735 (1983).

accuracy of the history appellant provided to his attending physicians beginning August 1980 that he fell 8 to 10 feet on October 14, 1967, as this history seems inconsistent with that provided by appellant and witnesses on his October 14, 1967 claim form.

The decision of the Office of Workers' Compensation Programs dated April 29, 1998 is set aside and the case remanded to the Office for further action consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, D.C.
September 13, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member