

**DOROTHEA BULLOCK, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Southeastern, PA, Employer**

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### Case Submitted on the Record

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

On December 23, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' April 29, 2003 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office's April 29, 2003 schedule award decision was properly issued; and (2) whether appellant has more than a 17 percent permanent impairment of the left upper extremity for which she received a schedule award.

On February 6, 2000 appellant, then a 39-year-old mail processor, filed a claim alleging that she injured her left shoulder on January 31, 2000 due to repetitive lifting of mail trays. The Office accepted appellant's claim for a left shoulder strain/sprain and impingement syndrome.<sup>1</sup>

<sup>1</sup> The Office inadvertently indicated that appellant's right shoulder was injured, rather than the left.

On February 19, 2002 appellant underwent surgery that included arthroscopic rotator cuff repair and distal clavicle excision. She subsequently filed a claim for a schedule award.

By decision dated April 29, 2003, the Office granted appellant a schedule award for a 17 percent impairment of the left upper extremity.

### **LEGAL PRECEDENT -- ISSUE 1**

20 C.F.R. § 10.127, effective as of January 4, 1999, provides:

“A copy of [an Office] decision shall be mailed to the employee’s last known address. If the employee has a designated representative before [the Office], a copy of the decision will also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer.”

The Office’s regulations further provide:

“A properly appointed representative who is recognized by [the Office] may make a request or give direction to [the Office] regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this part or the [Act] is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.”<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

In this case, the Office issued its schedule award decision on April 29, 2003. The record shows that on September 10, 2002, appellant had advised the Office of the name and address of her designated representative. However, the Office failed to send a copy of its April 29, 2003 decision to the authorized representative as required. It was not until September 8, 2003 that the Office sent a copy of its April 29, 2003 decision to the representative.

The Board has held that a decision under the Federal Employees’ Compensation Act is not deemed to have been issued unless both appellant and the authorized representative have been sent copies of the decision.<sup>3</sup> Since the record in this case indicates that the Office’s April 29, 2003 decision was not sent to the authorized representative on that date, it was not properly issued. The Office’s failure to timely notify appellant’s representative of the April 29, 2003 schedule award decision denied her the opportunity to have her representative assist her in

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<sup>2</sup> 20 C.F.R. § 10.700(c); *see also* *Sara K. Pearce*, 51 ECAB 517 (2000).

<sup>3</sup> *Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988).

exercising her appeal rights, including the right to request a hearing within 30 days of the date of the decision.<sup>4</sup> As a result, appellant was unfairly prejudiced by the omission to her detriment.

### **CONCLUSION**

The Board finds that the Office's April 29, 2003 decision was not properly issued. This case will be remanded to the Office for proper reissuance of the April 29, 2003 decision in order to protect appellant's appeal rights.<sup>5</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 29, 2003 is set aside and the case is remanded for further action consistent with this decision.

Issued: June 1, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> As noted above, appellant's representative did not receive a copy of the Office's April 29, 2003 decision until September 8, 2003.

<sup>5</sup> In light of the Board's resolution of the first issue, the second issue is moot.