

**United States Department of Labor
Employees' Compensation Appeals Board**

STEFANIAN P. EFFLANDT, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Long Beach, CA, Employer**

)
)
)
)
)
)
)

**Docket No. 04-2088
Issued: January 28, 2005**

Appearances:

*Steven Roseman, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 23, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 1, 2004, terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits.

FACTUAL HISTORY

On July 10, 1980 appellant, then a 62-year-old housekeeper, filed a traumatic injury claim alleging that she injured her back on that date as she reached to pick up trash. The Office accepted her claim for low back strain and entered her on the periodic rolls. Appellant has been receiving compensation benefits since September 8, 1980.

By letter dated August 1, 1984, the Office acknowledged receipt of a statement from appellant designating Steven Roseman as her representative. The record contains numerous pieces of correspondence between Mr. Roseman and the Office, as well as letters from the Office to appellant with copies to Mr. Roseman. The record also reflects that Mr. Roseman made an appearance on behalf of appellant in conjunction with a reinstatement of benefits in 1984. There is no notification in the record from appellant to the Office withdrawing authorization of Mr. Roseman as her representative.

On June 1, 2004 appellant received notification of proposed termination of benefits on the grounds that she no longer had a work-related condition.¹ The Office informed her that, if she did not present additional evidence or argument relevant to her case within 30 days, her benefits would be terminated. The Office did not send a copy of the notice to appellant's attorney.

By decision dated June 1, 2004, the Office terminated appellant's medical and compensation benefits. The Office did not send a copy of the decision to her attorney.²

LEGAL PRECEDENT

Section 10.127 of the regulation directs the Office to mail a copy of any decision it may issue to claimant's last known address. However, if the claimant has a designated representative, then a copy of the decision must also be mailed to the representative.³

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

¹ The Office based its decision largely on the opinion of Dr. Thai T. Do, a Board-certified internist, that appellant's current medical problems are due to degenerative joint disease of the lumbar spine and advanced age not related to her work injury.

² The Board notes correspondence in the file which was submitted after the Office rendered its June 1, 2004 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, the correspondence cannot be considered by the Board.

³ 20 C.F.R. § 10.127 (1999). ("A copy of the 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.") *Travis L. Chambers*, (Docket No. 02-1650, issued April 17, 2003), *reaff'd* 55 ECAB ____ (Docket No. 02-1650, issued April 17, 2003), holding that section 10.127 requires that a copy of an Office decision be sent to the authorized representative and that any other interpretation of the language of the regulation would be inconsistent with the clear language of its initial provisions. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.12 (October 1998) stating, "Any letter intended for a claimant ... should be sent to the authorized attorney or other legal representative" and Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3c(1) (April 1993) stating, "The [Office] must provide information about procedures involved in establishing a claim, including detailed instructions for developing the required evidence to all interested parties (the claimant, the employing establishment and the representative, if any)."

contained in the regulation or the Federal Employees' Compensation Act⁴ is fully satisfied if served on the representative and has the same force and effect as if it had been sent to the claimant.⁵

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ A claimant has a property interest in not having his benefits terminated⁷ and failure to notify the authorized representative effectively denies appellant's property interest in not having her benefits terminated.⁸

ANALYSIS

The Board finds that the Office was required to notify appellant's representative of its intent to terminate her benefits and to provide the representative with a copy of its decision dated April 27, 2004. Failure to provide notice effectively denied appellant's property interest in not having her benefits terminated.

The Office acknowledged that Mr. Roseman was appellant's representative. The record contains a substantial amount of correspondence between Mr. Roseman and the Office, including documents relating to a reinstatement of appellant's benefits in 1984, as well as letters from the Office to appellant with copies to Mr. Roseman. The record also reflects that Mr. Roseman made an appearance on behalf of appellant in conjunction with a reinstatement of benefits in 1984. Although a significant period of time elapsed between Mr. Roseman's last appearance in this case prior to the Office's notification of proposed termination, there is no notification in the record from appellant to the Office withdrawing authorization of Mr. Roseman as her representative. Therefore, he remained appellant's representative when the Office issued its notice of proposed termination and its April 27, 2004 decision.

Pursuant to 20 C.F.R. § 10.127, the Office is required to mail a copy of any decision it may issue to claimant's last known address. However, if the claimant has a designated representative, then a copy of the decision must also be mailed to the representative.⁹ In this case, in contravention of its own procedures, the Office failed to send a copy of its April 27, 2004 decision to appellant's representative and it, therefore, was not properly issued and is null and void.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 20 C.F.R. § 10.700(c) (1999).

⁶ *Franklin H. Brydon*, 49 ECAB 227, 227 (1997); *see also Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁷ *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818, 823 (1992).

⁸ *See Franklin H. Brydon*, *supra* note 6 at 229.

⁹ *See Travis L. Chambers*, *supra* note 3.

In *Travis L. Chambers*,¹⁰ the Board set aside the Office's decision because a copy was not sent to the authorized representative. At issue in *Chambers* was 20 C.F.R. § 10.127, effective January 4, 1999, which reads in pertinent part:

"A copy of the 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...."¹¹

The Office argued that its regulation permitted notice to either the claimant or the authorized representative. However, the Board found that section 10.127 requires that a copy of an Office decision be sent to the authorized representative and stated that any other result would be inconsistent with the clear language of the initial provisions of the regulation. The Board opined that "the language of section 10.127 must be read with due regard for the remedial nature of the Act, the unambiguous language requiring that copies of decisions be sent to both the employee and the authorized representative and the previously recognized importance of the right of the employee to have the authorized representative notified of any Office decision."¹² Likewise, in the instant case, the provisions of the Code of Federal Regulations required the Office to send a copy of its decision to appellant's representative.

The Office also failed to notify appellant's representative of its intent to terminate benefits, thereby denying her the opportunity to present evidence to protect her interest. The Office did not provide copies of any documents related to the termination of appellant's benefits to her representative, thereby violating its own procedures. Accordingly, the case must be reversed.

In *Franklin H. Brydon*,¹³ the issue was whether the Office properly terminated the claimant's compensation benefits on the grounds that he refused an offer of suitable work. The Office informed appellant that he had 30 days to accept the position or offer him reasons for refusal but did not provide appellant's representative with a copy of the letter. The Board found that the notification of the suitability of a position was a "determination" in accordance with the regulation, that notification to the claimant's authorized representative was required and that failure to notify the authorized representative effectively denied appellant's property interest in not having her benefits terminated. Finding that the Office violated its own procedures, the Board reversed the Office's decision.¹⁴ The principle of *Brydon* applies in the present case. The Board sought to protect the claimant's property interest in *Brydon* based on a notification of the suitability of an employment position. In this case, appellant's property interest was threatened when her representative was not notified that her benefits would be terminated in 30 days. The

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.127 (1999).

¹² See *Travis L. Chambers*, *supra* note 3.

¹³ 49 ECAB 227 (1997).

¹⁴ *Id.* at 229.

Board finds that notification of proposed termination of benefits was a “determination” in accordance with the regulation and that the Office’s failure to notify the representative denied appellant’s property interest in not having her benefits terminated.”

As the Board stated in *Chambers*,¹⁵ the language of the statute must be read with due regard for the remedial nature of the Act and the Board must attempt to interpret the language to reach a consistent and harmonious result.¹⁶ The applicable section of the Code of Federal Regulations grants significant powers to the representative, including the ability to resubmit legal argument or new evidence prior to termination of benefits.¹⁷ When the Office fails to notify a claimant’s representative of a proposed termination, the claimant is deprived of the opportunity to have her representative exercise the powers granted by the Code of Federal Regulations. As discussed above, the Board has held, even in the face of contradictory language, that section 10.127 requires that a copy of an Office decision be sent to the authorized representative. Office procedures also mandate notice to a representative of decisions and information. To accept an interpretation that does not require notice to a representative would be contrary to the clear intent of the Act, the regulation and Office procedures.

Under principles of fairness and in accordance with the remedial nature of the Act, appellant was entitled to an opportunity to attempt to retain her benefits with the assistance of counsel and was denied the right to do so.

CONCLUSION

The Board finds that the Office’s failure to send a copy of the proposed termination of benefits and the June 1, 2004 decision to the authorized representative effectively denied appellant’s property interest in not having her benefits terminated.

¹⁵ See *Travis L. Chambers*, *supra* note 3.

¹⁶ *Id.*

¹⁷ Section 8124 of the Act provides that a claimant not satisfied with a decision of the Office is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before an Office representative, provided there has been no review under section 8128(a), relating to reconsideration. 5 U.S.C. § 8124(b)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2004 is reversed.

Issued: January 28, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member