

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

M.R., Appellant)	
)	
and)	Docket No. 11-632
)	Issued: September 28, 2011
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS PUGET SOUND HEALTH CARE)	
SYSTEM, Seattle, WA, Employer)	
)	

Appearances:
John E. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On January 14, 2011 appellant, through her attorney, filed a timely appeal from an October 14, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 11-632.

On August 29, 2005 appellant authorized John Eiler Goodwin, Esq., to represent her before OWCP. She requested that all documents related to her claim be sent to Mr. Goodwin's listed address.

By its October 14, 2010 decision, OWCP reduced appellant's compensation based on its finding that her actual earnings as an admissions nurse effective October 4, 2006 fairly and reasonably represented her wage-earning capacity.¹ A copy of that decision was not sent to her authorized representative.

¹ In decisions dated on March 3 and August 4, 2011, OWCP adjudicated whether appellant had established modification of the October 14, 2010 wage-earning capacity determination. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. Consequently, the March 3 and August 4, 2011 decisions, issued while the Board had jurisdiction of the case, are null and void. *Douglas E. Billings*, 41 ECAB 880 (1990); *see also* 20 C.F.R. § 501.2(c)(3).

Regulations and Board case law require OWCP to send a copy of its decision to the authorized representative.² The Board has held that a decision under the Federal Employees' Compensation Act³ is not properly issued unless both appellant and the authorized representative have been sent copies of the decision. As the October 14, 2010 decision was not sent to appellant's representative, the decision was not properly issued. The Board will set aside the decision and remand the case for an appropriate and properly issued merit decision on the relevant issues.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 14, 2010 is set aside and the case is remanded for further proceedings consistent with this order.

Issued: September 28, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² See 20 C.F.R. § 10.127. The Board held in *Travis L. Chambers*, 55 ECAB 138 (2003) that section 10.127 requires that a copy of an OWCP 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. In *George R. Bryant*, Docket No. 03-2241 (issued April 19, 2005), the Board found that OWCP did not properly issue its June 18, 2003 decision when it did not send a copy of that decision to the authorized representative on that date; the Director of OWCP conceded a procedural error and advised that a merit review would be provided on remand to preserve the claimant's appeal rights.

³ 5 U.S.C. § 8101 *et seq.* See *Travis L. Chambers, supra*.