

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

S.T., Appellant

and

**DEPARTMENT OF DEFENSE, NATIONAL
GEOLOGICAL INTELLIGENCE AGENCY,
Bethesda, MD, Employer**

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**Docket No. 11-723
Issued: December 16, 2011**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On January 28, 2011 appellant, through her attorney, filed a timely appeal from an August 5, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying modification of a May 20, 2009 decision terminating her wage-loss compensation. The Board docketed the appeal as No. 11-723.

On April 7, 2009 OWCP proposed to terminate appellant's wage-loss benefits. On May 8, 2009 it received an April 20, 2009 signed statement from appellant designating Thomas S. Harkins, Esquire, to represent her in proceedings before OWCP. In a May 4, 2009 letter, Mr. Harkins presented arguments that the April 7, 2009 proposed termination was contrary to the medical evidence of file and law. In a May 13, 2009 letter, OWCP acknowledged counsel's representation of appellant.

On May 19, 2009 OWCP received a May 15, 2009 letter from appellant's attorney which noted that he previously responded to the notice of proposed termination in a May 4, 2009 letter. Counsel argued that the proposed termination of appellant's compensation benefits was improper and submitted a May 7, 2009 report from Dr. Nelson Henry, a Board-certified family practitioner. In his May 7, 2009 report, Dr. Henry diagnosed lumbar radiculopathy, cervical radiculopathy sacroiliitis, which he opined were all work related. He further opined that appellant was totally disabled from March 20, 2007 to February 16, 2010.

By decision dated May 20, 2009, OWCP terminated appellant's wage-loss compensation effective May 11, 2009 finding that the weight of the medical evidence established that she could return to her date-of-injury position. It did not send a copy of the decision to appellant's attorney. The decision stated that no additional evidence or argument was submitted in response to the proposed termination. In a May 14, 2010 letter, appellant's attorney requested reconsideration. He asserted that the termination decision should be nullified as OWCP did not consider his arguments and evidence in response to the proposed termination and OWCP failed to send him a copy of the termination decision. In an August 5, 2010 decision, OWCP denied modification of its previous decision. A copy of the decision was sent to appellant's attorney.

OWCP regulations and Board precedent require OWCP to send a copy of its decision to the claimant's authorized representative.¹ The Board has held that a decision under the Federal Employees' Compensation Act² is not properly issued unless both appellant and the authorized representative have been sent copies of the decision.³ As the May 20, 2009 termination decision was not sent to appellant's attorney, the decision was not properly issued. The Board will set aside the August 5, 2010 decision and remand the case for issuance of an appropriate merit decision on the subject matter of the case for May 20, 2009 decision which will be sent to appellant and her authorized attorney.⁴

¹ 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. 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.

² 5 U.S.C. § 8101 *et seq.*

³ See *Travis L. Chambers*, *supra* note 1.

⁴ The Board also notes that OWCP did not consider all of the evidence properly before it prior to issuing the May 20, 2009 decision. See *William A. Couch*, 41 ECAB 548 (1990) (when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by appellant and received by OWCP before the final decision is issued).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 5, 2010 is set aside and the case remanded for further proceedings consistent with this order.

Issued: December 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board