United States Department of Labor Employees' Compensation Appeals Board

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R.F., Appellant

and

DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bainbridge Island, WA, Employer

Docket No. 12-684 Issued: August 29, 2012

Case Submitted on the Record

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

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On February 6, 2012 appellant, through his attorney, filed a timely appeal from a November 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 12-684.

The Board has considered the matter and finds that OWCP's November 28, 2011 decision must be set aside. On appeal appellant's attorney contends that he did not receive a copy of the November 28, 2011 decision. On April 18, 2011 OWCP received an April 11, 2011 signed statement from appellant designating John E. Goodwin, Esq., to represent him in proceedings before OWCP. By letter dated April 20, 2011, OWCP acknowledged John E. Goodwin, Esq., as appellant's authorized representative. By decision dated November 28, 2011, OWCP denied appellant's schedule award claim finding that his hearing loss was not severe enough to be considered ratable. A copy of that decision was not sent to appellant's authorized representative.

OWCP's regulations and Board case law require OWCP to send a copy of its decision to the authorized representative.¹ The Board has held that a decision under the Federal Employees Compensation Act² (FECA) is not properly issued unless both appellant and the authorized representative have been sent copies of the decision.³ As the November 28, 2011 decision was not sent to appellant's representative, the Board concludes that 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. Accordingly,

IT IS HEREBY ORDERED THAT the November 28, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 29, 2012 Washington, DC

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

¹ 20 C.F.R. § 10.127 provides, a copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision will also be mailed to the representative. *See also M.R.*, Docket No. 11-632 (issued September 28, 2011). 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. In *James Consentino*, Docket No. 04-1774 (issued October 21, 2004), the Board found that OWCP improperly issued a decision terminating compensation because it did not mail the decision to appellant's representative and declared the termination decision null and void.

² 5 U.S.C. § 8101 *et seq.*

³ See R.J., Docket No. 12-174 (issued June 25, 2012); Travis L. Chambers, 55 ECAB 138 (2003).