

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAWN P. HAMPTON and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 99-325; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the grounds that her disability and medical condition causally related to her September 23, 1995 employment injury had ceased; and (2) whether the Office abused its discretion in denying appellant's request for an oral hearing.

On September 23, 1995 appellant, then a 25-year-old mail processor, sustained a left knee strain in the performance of duty. She stopped work on September 29, 1995 and returned to limited-duty work on October 2, 1995. Appellant underwent surgery on July 8, 1996 and returned to limited duty on September 3, 1996.

By decision dated December 5, 1997, the Office terminated appellant's compensation benefits for wage loss and medical benefits effective that date on the grounds that the weight of the medical evidence established that appellant's disability and medical condition causally related to her September 23, 1995 employment injury had ceased. The decision was addressed and mailed only to appellant; no copy was sent or provided to her designated representative, Alan Shapiro, Esq.¹

By letter dated June 2, 1998, Mr. Shapiro advised the Office that he had not received a copy of the December 5, 1997 decision, although the Office had been aware of his representation of appellant since 1996. He requested that the Office reissue its decision to protect appellant's appeal rights.

By letter dated August 20, 1998, appellant requested an oral hearing before an Office hearing representative.

¹ The record shows that Mr. Shapiro had represented appellant regarding her compensation claim since March 7, 1996 and that the Office had corresponded with Mr. Shapiro on several occasions in 1996.

By decision dated September 17, 1998, the Office denied appellant's request for an oral hearing on the grounds that it was not timely made within 30 days of the December 5, 1997 decision and that the issue could be equally well resolved by a request for reconsideration and the submission of additional evidence.

The Board finds that the Office's decision of December 5, 1997 was not properly issued.

The applicable Office regulations state:

"A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the [Federal Employees' Compensation] Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it had been sent to the claimant."²

The Board finds that notification of appellant's authorized representative was required and the failure to notify him effectively denied appellant the opportunity to have him assist her in remedying the deficiencies of her claim and the full opportunity to exercise her appeal rights in a timely fashion. As a result, appellant was unfairly prejudiced by the failure to provide the December 5, 1997 decision to appellant's counsel.

The case will be remanded for proper issuance of the December 5, 1997 decision to afford appellant the opportunity to completely exercise her appeal rights. As the Board is making this finding with regard to the December 5, 1997 decision, the Board finds that the Branch of Hearings and Review's decision dated September 17, 1998 is moot.

² See 20 C.F.R. § 10.144 (April 1, 1997); see also *Sara K. Pearce*, 51 ECAB ____ (Docket No. 98-708, issued May 12, 2000).

The decision of the Office of Workers' Compensation Programs dated December 5, 1997 is hereby set aside and the case is remanded for further action in accordance with this decision and order of the Board. The September 17, 1998 decision is set aside.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member