

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRAVIS L. CHAMBERS and U.S. POSTAL SERVICE,
GWYNN OAK STATION, Baltimore, MD

*Docket No. 02-1650; Submitted on the Record;
Issued April 17, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's compensation for refusal to cooperate with rehabilitation efforts.

On March 16, 2000 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that on January 20, 2000 she injured her right leg and knee when she slipped and fell on ice. By letter dated May 31, 2000, the Office accepted appellant's claim for a right knee sprain.¹

In a letter dated June 29, 2000, Roberta Decker, a registered nurse and medical case manager assigned to appellant, stated that she had made attempts to contact appellant by leaving messages on her telephone answering machine on June 22, 27, 28 and 29, 2000 with no response. She asked appellant to contact her and provided her office telephone number.

In an undated report to the Office covering the period June 14 to August 8, 2000, Ms. Decker stated that attempts to contact appellant by telephone and letter had been unsuccessful. She noted that an Office claims examiner sent appellant a noncompliance letter and instructed Ms. Decker to attempt contact for another 30 days.

By letter dated August 9, 2000, Ms. Decker advised appellant that her attempts to contact her by telephone and letter had been unsuccessful and asked appellant to contact her.

In an undated report covering the period June 14 to August 8, 2000, Ms. Decker advised the Office that appellant returned a telephone call on September 8, 2000 and stated that she had not received any other messages. Appellant told Ms. Decker that she had received one letter from Ms. Decker, which she gave to her attorney, Stephen J. Dunn, Esq. She asked Ms. Decker

¹ The Office later accepted a brief depressive reaction as causally related to the January 20, 2000 incident.

to telephone Mr. Dunn and she said she would do what he instructed. Ms. Decker stated that she telephoned Mr. Dunn and arranged for a meeting with appellant at his office.

By letter dated August 31, 2000, received by the Office on September 6, 2000, Mr. Dunn advised the Office that he was appellant's representative and enclosed a copy of an August 18, 2000 authorization letter from appellant. By letter dated September 8, 2000, Mr. Dunn requested that the Office send him copies of correspondence and other documents related to the case.

In notes dated September 22, 2000, appellant's psychologist, Dr. Joseph Eisenberg, noted that appellant had referred the rehabilitation nurse to her attorney and advised the nurse that she was residing with her parents. In notes dated February 23, 2001, he indicated that appellant's attorney was Mr. Dunn. In notes dated September 12, 2001, he stated that appellant tried to make appointments with her attorney but he did not return her calls. In notes dated November 20, 2001, Dr. Eisenberg stated that appellant expressed unhappiness with the manner in which her attorney was handling her case and indicated that she might hire a new attorney. In notes dated December 14, 2001, Dr. Eisenberg indicated that appellant had retained new counsel.

In an undated report covering the period September 15 to October 14, 2000, Ms. Decker indicated that she had her first meeting with appellant on October 10, 2000 and discussed the planned rehabilitation services.

In a letter dated January 19, 2001, Ms. Decker stated that she had been unable to contact appellant and asked that appellant telephone her. Ms. Decker sent a copy of the letter to Mr. Dunn.

By letter dated April 17, 2001, Ms. Decker advised appellant that she had been unsuccessful in attempting to contact appellant and asked her to call. She stated that the Office claims examiner had told her to reopen the file. Ms. Decker sent a copy of the letter to Mr. Dunn.

By letter dated April 19, 2001, Ms. Decker asked appellant to call her and to call the Office claims examiner to reschedule her arthroscopic right knee surgery. Ms. Decker sent a copy of the letter to Mr. Dunn.

In an undated report covering the period April 3 to May 6, 2001, Ms. Decker stated that she had not been able to contact appellant.²

In a letter dated May 3, 2001, an Office claims examiner advised appellant that she had failed to respond to two letters from Ms. Decker.³ Appellant was advised to send a written statement that she would participate in the nursing services rehabilitation program or provide her reasons for failure to participate within 30 days or the Office would suspend her compensation.

² Ms. Decker indicated that appellant's attorney, Mr. Dunn, told her that on May 2, 2001 he sent appellant a letter withdrawing from her case. However, there is no such letter of record or any indication that Mr. Dunn advised appellant or the Office prior to issuance of the Office's May 3, 2001 noncompliance letter or the June 25, 2001 decision, or any other time, that he was no longer representing appellant.

³ The record shows that the letters were returned to Ms. Decker as unclaimed.

In an undated report covering the period May 7 to June 6, 2001, Ms. Decker indicated that she met with appellant at her physician's office on May 30, 2001.

In an undated report covering the period June 7 to July 12, 2001 and received by the Office on July 18, 2001, Ms. Decker noted that an Office claims examiner told her to suspend activity on appellant's file because she had refused to cooperate and had not responded to the Office's May 3, 2001 noncompliance letter.

By decision dated June 25, 2001, the Office suspended appellant's compensation effective July 15, 2001 on the grounds that she failed to cooperate with rehabilitation efforts as required under section 8113(b) of the Federal Employees' Compensation Act⁴ and 20 C.F.R. §§ 10.518 and 10.519. This decision was addressed and mailed only to appellant, without a copy being sent or provided to her designated representative, Mr. Dunn.

By letter dated August 17, 2001, received by the office on August 24, 2001, appellant requested reconsideration. She stated that she never received the Office's May 3, 2001 letter or a request from the nurse to submit a written statement indicating her willingness to cooperate with the rehabilitation program.

By letter dated March 6, 2002, the Office advised appellant, through her new attorney, Jeffrey P. Zeelander, Esq., that her benefits had been reinstated effective February 27, 2002 based on her letter of that date stating that she would cooperate with her nurse and vocational rehabilitation efforts.

By letter dated March 11, 2002, appellant, through her attorney, requested reconsideration of the Office's June 25, 2001 decision.

By decision dated May 23, 2002, the Office denied modification of its June 25, 2001 decision.⁵

The Board finds that the Office decision dated June 25, 2001 was not properly issued.

The applicable Office regulations state:

"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 contained in this part or the

⁴ 5 U.S.C. § 8113(b).

⁵ The record contains additional evidence that was not before the Office at the time it issued its May 23, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

[Federal Employees' Compensation Act] is fully satisfied if served on the representative, and has the same force and effect as if been sent to the claimant."⁶

The Board finds that the Office was required to send to appellant's representative, Mr. Dunn, a copy of the Office's May 3, 2001 letter advising that appellant compensation would be suspended in 30 days if she failed to cooperate with rehabilitation efforts and a copy of the Office's June 25, 2001 decision suspending her compensation effective July 15, 2001.⁷ The failure to notify appellant's representative denied her the opportunity to have him assist her in avoiding suspension of her compensation. As a result, appellant was unfairly prejudiced by the omission to her detriment.

The case will be remanded to the Office for proper reissuance of the June 25, 2001 decision, therefore, the Board finds that the Office's decision dated May 23, 2002 is moot.

The decisions of the Office of Workers' Compensation Programs dated May 23, 2002 and June 25, 2001 are set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, DC
April 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ See 20 C.F.R. § 10.700(c); *see also Sara K. Pearce*, 51 ECAB 517, 518 (2000).

⁷ As noted above, the Office was advised of Mr. Dunn's representation of appellant by letter dated August 31, 2000. There is no written evidence of record that Mr. Dunn notified either appellant or the Office that he was not serving as appellant's representative at the time of the issuance of the Office's May 3, 2001 noncompliance letter or the June 25, 2001 decision suspending appellant's compensation. Also, as noted above, Dr. Eisenberg indicated that, through at least November 20, 2001, appellant believed that Mr. Dunn was acting as her representative.