

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAYTON W. KLINE and DEPARTMENT OF AGRICULTURE,
FOOD SAFETY INSPECTION SERVICE, Omaha, NE

*Docket No. 03-342; Submitted on the Record;
Issued April 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability beginning April 20, 1993 due to his December 20, 1991 employment injury.

This case has previously been on appeal before the Board. By decision dated November 19, 1999 the Board found that there was a conflict of medical opinion on the question of whether appellant sustained a recurrence of disability beginning April 20, 1993. The Board remanded the case to the Office of Workers' Compensation Programs to "refer appellant to an appropriate medical specialist for a reasoned opinion on his ability to work beginning April 20, 1993," to be followed by "an appropriate decision on appellant's claim for a recurrence of disability beginning April 20, 1993."¹

By letter dated December 6, 1999, the Office advised appellant that, before it could proceed with an impartial medical evaluation, it needed a list of his activities since his 1993 retirement, including any employers; all records regarding treatment of his back since 1993; and "a computerized listing of all the prescriptions issued for the accepted condition since 1993 to the present time." This letter advised that if the requested information was not received in 30 days, a decision would be issued based on the evidence of record.

By decision dated January 11, 2000, the Office found that no additional information had been submitted in response to its December 6, 1999 letter and denied appellant's claim for a recurrence of disability beginning April 20, 1993 on the basis that he failed to provide the necessary factual and medical evidence to proceed with an examination by an impartial medical specialist.

¹ Docket No. 98-710 (issued November 14, 1999).

By letter dated July 3, 2002, appellant's attorney requested an update from the Office of the status of appellant's claim. The attorney stated that he had not received any communication from the Office since the Board's November 19, 1999 decision.

By letter dated July 11, 2002, the Office advised appellant's attorney that it had issued a decision on January 11, 2000 and sent him a copy of that decision.

By letter dated October 10, 2002, appellant's attorney inquired why the January 11, 2000 decision was not sent to him and why that decision was sent to appellant at an old address.

By letter dated October 22, 2002 the Office apologized to appellant's attorney for not sending him its January 11, 2000 decision and stated: "Since there is evidence that your client did not receive the January 11, 2000 decision, the Office will now afford him the opportunity to utilize his appeal rights. By copy of this letter the statutes [sic] for the remaining appeals starts now." The Board finds that this October 22, 2002 letter was a reissuance of the January 11, 2000 decision, with new appeal rights.

The Board finds that the Office's October 22, 2002 decision was improper.

The Office's December 6, 1999 letter requesting further information on his condition since 1993 was addressed to appellant at an incorrect address: 1614 North 72nd Street, Omaha, NE 68114.² His address at all times since the filing of his claim on January 7, 1992 has been 1908 South 93rd Street, Omaha, NE 68124, as appellant or his attorney informed the Office on June 24, 1996 and on May 27, June 27 and July 7, 1997, following the Office's transmission of its August 1, 1995 and September 12, 1996 decisions to the incorrect 72nd Street address.³

There also is no indication on the December 6, 1999 Office letter that it was sent to appellant's authorized attorney, as required by the Office's procedure manual.⁴ As there is no evidence that the Office notified appellant or his attorney of its December 6, 1999 request for information, the Office's October 22, 2002 decision denying his claim on the basis that he did not provide the requested information was inappropriate.⁵

² As this letter was sent to an incorrect address, there is no presumption that appellant received it; *see Samuel Smith*, 41 ECAB 226 (1989).

³ As these decisions were also sent to appellant's attorney, appellant was able to exercise his appeal rights.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.12 (October 1998) states: "Any letter intended for a claimant ... should be sent to the authorized attorney or other legal representative." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3c(1) (April 1993) states: "The [Office] must provide information about procedures involved in establishing a claim, including detailed instructions for developing the required evidence to all interested parties (the claimant, the employing agency and the representative, if any.)"

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.2b(1) states: "The [Office] must notify the claimant in writing of the specific additional evidence which is needed before denying any claim." 20 C.F.R. § 10.700 provides that any notice requirement is fully satisfied if served on the claimant's representative.

The case will be remanded to the Office to allow appellant an opportunity to submit the information requested in its December 6, 1999 letter.⁶ The Office should then refer appellant to an appropriate impartial medical specialist for a reasoned opinion of whether appellant was disabled for work beginning April 20, 1993 due to his December 20, 1991 employment injury.

The October 22, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
April 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ Whether any or all of information on appellant's status after October 1993 is so crucial that an impartial medical specialist could not determine whether appellant sustained a recurrence of disability beginning April 20, 1993 without it is not addressed by this decision of the Board.