U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. SCHWARTZ and DEPARTMENT OF THE ARMY, IRON HORSE PARK, Fort Carson, CO

Docket No. 03-1756; Submitted on the Record;
Issued September 10, 2003

DECISION and ORDER

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

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injuries; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On June 14, 1990 appellant, then a 25-year-old recreation assistant, filed a traumatic injury claim (Form CA-1), alleging that she sustained injuries to her head and neck as a result of a white water rafting accident that occurred in the performance of duty.[1] Appellant's claim was accepted for cervical strain and subluxation at C4-5, with cervical fusion of C4-6 performed on April 18, 1991. Appellant stopped work on June 15, 1990. In a decision dated February 4, 1993, the Office found that, effective January 1, 1993, appellant was reemployed as a youth services coordinator for a community center with no loss of wage-earning capacity.

On December 13, 2001 appellant filed a claim (Form CA-2a) for a recurrence of disability. On her claim form, appellant stated that she had not gone on disability, and did not want to go on disability, but rather was seeking authorization to undergo physical therapy and attend a pain clinic for treatment of the residuals of her accepted conditions. On her claim form, appellant indicated that her address was P.O. Box 300231, Denver, Colorado, 80203.

By letter dated December 18, 2001, sent to appellant at 845 S. Pennsylvania Street, Denver, Colorado, 80209, the Office requested that appellant submit additional factual and medical evidence in support of her claim for a recurrence of disability.

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[1] While practicing white water rafting, appellant's raft hit a wave, causing the raft to lurch and the raft guide to fall forward on top of her.

In a decision November 15, 2002, also sent to the 845 S. Pennsylvania Street address, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her accepted employment injuries. The Office noted that appellant had failed to respond to its December 18, 2001 request for additional factual and medical evidence.

By letter dated February 3, 2003, appellant requested reconsideration of the Office's decision. Appellant explained that, on January 30, 2003, she contacted the employing establishment to inquire as to the status of her claim, and was informed that the employing establishment had received a letter denying appellant's claim on the grounds that appellant had not responded to an earlier Office letter requesting additional information. Appellant asserted that, when the employing establishment forwarded a copy of the denial letter to her, she noticed that it had been sent to her prior address, where she had not lived for 10 years, and not to the address listed on her CA-2a claim form. Appellant further asserted that, by letter dated June 29, 2001, she contacted the Office with her new address, and later followed up with two to three telephone calls, during which she was assured by an Office employee that her address of record had been changed. In support of her assertion, appellant submitted a copy of a June 29, 2001 letter which contained her new address in the letterhead and requested that the claim be reopened so that she could seek medical treatment for her increasing pain levels. The letter does not indicate to whom it was addressed. Appellant reiterated that she was merely trying to reopen her claim in order to seek additional medical treatment for her accepted conditions, and stated that she was unable to provide the Office with the additional documentation requested because she had never received notice that the Office required additional information. Appellant stated that she was more than happy to provide the Office with whatever evidence was needed to reconsider her case, and asked that Office please advise her as to what was required.

In a decision dated March 7, 2003, the Office found the evidence and arguments submitted on reconsideration to be insufficient to warrant further merit review of appellant's claim.

The Board finds that this case is not in posture for a decision.

The Board notes that appellant submitted a February 3, 2003 letter informing the Office that she had not received a copy of its November 15, 2002 decision, or its December 18, 2001 letter, and requested reconsideration. The Office received this letter on February 7, 2003 and, by decision dated March 7, 2003, the Office denied appellant's request for further merit review.

The Board has held that a decision under the Federal Employees' Compensation Act is not deemed to have been issued unless both appellant and appellant's authorized representative are sent a copy of the decision.[2] Therefore, the Office's November 15, 2002 decision was not properly issued as appellant was not sent a copy of that decision. The fact that appellant eventually got a copy of the decision does not cure the defect of mailing it out incorrectly addressed on the purported day of issue.[3] On remand the Office shall reissue its December 18,

[2] *Thomas H. Harris*, 39 ECAB 899 (1988); *Charles A. Hinton*, 39 ECAB 756 (1988); *see Bertha Keeble*, 45 ECAB 355 (1994).

[3] *See Bertha Keeble, supra* note 2.

2001 request for additional information, after an appropriate time for response, followed by a *de novo* decision regarding the subject matter of the November 15, 2002 decision. In addition, the Board notes that it appears from appellant's claim form and subsequent letters that she is not requesting compensation for any periods of disability, but rather is seeking authorization to obtain additional medical treatment for her accepted conditions. Therefore, on remand, the Office should adjudicate this aspect of appellant's claim.

The time limitation provisions under the Act concerning appellant's right to appeal, request a hearing or request reconsideration of that decision will commence with the issuance of the Office's decision.

The decisions of the Office of Workers' Compensation Programs dated March 7, 2003 and November 15, 2002 decisions are hereby set aside and the case remanded to the Office for further development, to be followed by the issuance of a *de novo* decision on the subject matter of the November 15, 2002 decision and adjudication of appellant's request for additional medical treatment.

Dated, Washington, DC
September 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member