

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**DIANE M. REDDEN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Edison, NJ Employer**

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**Docket No. 04-558  
Issued: May 12, 2004**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On December 23, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' March 4, 2003 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office's March 4, 2003 schedule award decision was properly issued; and (2) whether appellant has more than an eight percent permanent impairment of her lower extremities, for which she received a schedule award.

**FACTUAL HISTORY**

On November 24, 1997 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that on November 1, 1997 she injured her back after moving trays of mail. The Office accepted appellant's claim for a herniated lumbar disc. Appellant subsequently filed a claim for a schedule award.

In a report dated September 12, 2001, Dr. David Weiss, appellant's attending orthopedic surgeon, provided findings on examination and determined that appellant had a 7 percent permanent impairment each of the left and right lower extremities based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001), which included a 4 percent impairment for each lower extremity for sensory deficit of the right L3 nerve root according to Tables 15-15 and 15-18 at page 424 of the A.M.A., *Guides* and a 3 percent impairment for pain based on Figure 18-1 at page 574.

In a report dated February 5, 2002, the Office district medical adviser stated that appellant had a four percent impairment of each lower extremity based on sensory deficit of the L3 nerve root according to Tables 15-15 and 15-18 at page 424 of the A.M.A., *Guides*. He did not indicate any additional impairment for pain based on Figure 18-1 at page 574.

By letter dated December 26, 2002, appellant's representative advised the Office of her change of address.

By decision dated March 4, 2003, the Office granted appellant a schedule award for an eight percent impairment of the lower extremities.

### **LEGAL PRECEDENT -- ISSUE 1**

20 C.F.R. § 10.127, effective as of January 4, 1999, provides:

"A copy of [an Office] decision shall be mailed to the employee's last known address. If the employee has a designated representative before [the Office], a copy of the decision will also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer."

The Office's regulation further provide:

"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 [Federal Employees' Compensation Act] is fully satisfied if served on the representative and has the same force and effect as if sent to the claimant."<sup>1</sup>

### **ANALYSIS -- ISSUE 1**

In this case, the Office issued its schedule award decision on March 4, 2003. Appellant's authorized representative<sup>2</sup> indicated that he did not receive a copy of the decision until

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<sup>1</sup> 20 C.F.R. § 10.700 (c); see also *Sara K. Pearce*, 51 ECAB 517 (2000).

<sup>2</sup> The record shows that the Office received notice of appellant's designated representative on July 13, 2001.

July 14, 2003. The record indicates that the Office mailed a copy of the March 4, 2003 decision to the correct address of record for appellant's representative. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual.<sup>3</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>4</sup> The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.<sup>5</sup> However, in this case that presumption is rebutted by evidence in the record that appellant's representative did not receive a copy of the Office's March 4, 2003 decision until July 14, 2003. The representative submitted a copy of the envelope he received from the Office showing it was postmarked July 8, 2003 and the copy of the March 4, 2003 decision contained in the envelope, which was date stamped by his staff as having been received July 14, 2003. This evidence is sufficient to rebut the presumption that the representative was timely sent a copy of the March 4, 2003 decision. Additionally, the record shows that the Office did not send a copy of the decision to appellant's correct address as provided to the Office on December 26, 2002 by her representative.

The Board has held that a decision under the Act is not deemed to have been issued unless both appellant and the authorized representative have been sent copies of the decision.<sup>6</sup> Since the record in this case indicates that the Office's March 4, 2003 decision was not sent to the authorized representative on that date and was not sent to appellant's correct address on March 4, 2003 it was not properly issued. The Office's failure to timely notify appellant and her representative of the schedule award decision denied her the opportunity to exercise her appeal rights in a timely fashion and to have her representative assist her in exercising her appeal rights, including the right to request a hearing within 30 days of the date of the decision. As a result, appellant was unfairly prejudiced by the omission to her detriment.

### **CONCLUSION**

The Board finds that the Office's March 4, 2003 decision is moot as it was not properly issued. This case will be remanded to the Office for proper reissuance of the March 4, 2003 decision to protect appellant's appeal rights.<sup>7</sup>

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<sup>3</sup> *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

<sup>4</sup> *Michelle Lagana*, 52 ECAB 187 (2000).

<sup>5</sup> *Larry L. Hill*, 42 ECAB 596 (1991).

<sup>6</sup> *Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988).

<sup>7</sup> In light of the Board's resolution of the first issue, the second issue is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 4, 2003 is set aside and the case is remanded for further action consistent with this decision.

Issued: May 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member