

As no medical information was submitted with his claim, the Office, in a letter dated January 31, 2001, informed appellant that the evidence was insufficient to establish his claim and advised him to provide additional information, including a medical report which contained a physician's opinion with medical reasons on the cause of his condition. He responded with additional factual information in a letter dated February 20, 2000, but submitted no medical documentation.

By decision dated March 26, 2001, the Office denied the claim, finding that appellant had not established that he sustained any condition causally related to his employment.

Appellant requested a hearing before an Office representative, which was held on July 23, 2002. Evidence submitted included medical reports and copies of objective studies. By decision dated October 7, 2002, an Office hearing representative affirmed the denial of appellant's claim on the grounds that the medical evidence submitted was insufficient to establish fact of injury.

In a letter dated March 16, 2002, appellant, through his representative, requested reconsideration. He also submitted medical reports and objective testing. By decision dated June 18, 2003, the Office denied appellant's reconsideration request without reviewing the merits of his claim. The Office noted that the evidence submitted did not address the deficiency of his claim, *i.e.*, the lack of any medical evidence which established that appellant suffers from a condition causally related to his federal employment.

On September 15, 2003 appellant, through his representative, filed an appeal before the Board and requested oral argument. Accordingly, oral argument was scheduled for April 5, 2005.

On March 8, 2005 the Director of the Office filed a motion requesting that the Board set aside the June 18, 2003 decision, remand the case for further development and cancel the scheduled oral argument. The Director noted that the Office's June 18, 2003 nonmerit decision on reconsideration was only served on appellant and not his authorized representative and that such decision indicated that there was nothing authorizing appellant's representative to act in such a capacity. The Director pointed out that the record contained authorization for appellant's representative and argued that, although the Office's regulation stated that service upon either party is service on both,¹ the Board had found that the regulation required service upon both a claimant and his representative.² The Director requested that the Board remand the case to the Office so that a new decision could be issued on appellant's request for reconsideration.

On March 20, 2005 appellant's representative objected to the motion, contending that the Office did not properly deny the claim. His representative reiterated his intention to appear at the oral argument scheduled for April 5, 2005.

¹ 20 C.F.R. § 10.127.

² *Stefanian P. Efflandt*, Docket No. 04-2088 (issued January 28, 2005).

On March 31, 2005 the Board issued an order denying motion to remand and cancel oral argument as appellant contended that he had met his burden of proof in establishing his claim. The Board advised that the case would proceed to oral argument scheduled for April 5, 2005.

On April 5, 2005 at oral argument before the Board, appellant's representative was asked to clarify whether the nonservice of the Office's June 18, 2003 decision constituted harmless error or whether it was a procedural deficit which required remand. Appellant's representative asserted that the Office had not properly issued the June 18, 2003 denial of reconsideration. Based on this error, the Board noted it could not proceed to the merits of the case. Counsel for the Director stated that, on remand, the Office would conduct a merit review on appellant's reconsideration request in order to preserve his right to appeal.

LEGAL PRECEDENT -- ISSUE 1

20 C.F.R. § 10.127, effective 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 regulations 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.”³

ANALYSIS -- ISSUE 1

In this case, the Office issued its decision denying reconsideration on June 18, 2003. The record shows that on July 11, 2002 appellant had advised the Office of the name and address of his designated representative. However, it failed to send a copy of the June 18, 2003 decision to the authorized representative as required.

The Board has held that a decision under the Federal Employees' Compensation Act is not deemed to have been properly issued unless both appellant and the authorized representative have been sent copies of the decision.⁴ Since the record establishes that the Office's June 18,

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

⁴ *Stefanian P. Efflandt*, *supra* note 2; *Sara K. Pearce*, *supra* note 3; *see also Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988).

2003 decision was not sent to the authorized representative on that date, it was not properly issued. The parties have conceded that the procedural error occurred and the Solicitor advised that, on remand, a merit review would be provided to preserve appellant's right to appeal to the Board.

CONCLUSION

The Board finds that the Office's June 18, 2003 decision was not properly issued. The case will be remanded to the Office for further action in conformance with this decision in order to protect appellant's appeal rights.⁵

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2003 is set aside and the case is remanded for further action consistent with this decision.

Issued: April 19, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ In light of the Board's resolution of the procedural issue, the case is not in posture for the Board to render a decision on the merits.