

ISSUE

The issue is whether the Office properly denied appellant's request for a preresoupment hearing.

FACTUAL HISTORY

Appellant, a 50-year-old meat cutter, filed a claim for a back injury sustained on August 7, 1985, File No. A 130774108. His claim was accepted for lumbosacral intervertebral disc degeneration.³ A subsequent claim for injuries sustained on August 31, 1990 was also accepted for lumbosacral intervertebral disc degeneration, File No. A 130963033. Case Nos. 130774108 and 130963033 were eventually consolidated under master File No. 130963033.

The record contains an appointment and authorization of representative signed by appellant and dated April 28, 1992, authorizing Ms. Johnson as appellant's representative. Appellant stated that all communications with regard to his claim should be addressed to his representative and that the authorization should remain in full force and effect until the matter was concluded or until he rescinded the authorization.

On April 11, 2005 the Office made a preliminary finding that appellant had been overpaid in the amount of \$78,404.62, as he had simultaneously received workers' compensation benefits on File Nos. 130774108 and 130963033 from October 1, 1999 through April 16, 2005 for the same accepted condition. The Office found that appellant was without fault in the creation of the overpayment. The April 11, 2005 preliminary determination was mailed to appellant at his address of record. The record does not reflect that a copy of the April 11, 2005 letter was mailed to appellant's representative.

On June 2, 2005 the Office forwarded an overpayment recovery questionnaire to appellant for completion in connection with the April 11, 2005 preliminary overpayment determination. By letter dated June 13, 2005, appellant's representative requested an oral hearing on the Office's June 2, 2005 "decision."⁴ By letter dated June 14, 2005, appellant's representative requested a hearing on the overpayment issue and stated that appellant had not received the April 11, 2005 preliminary overpayment determination. On June 29, 2005 the Office acknowledged receipt of appellant's request for a hearing, sending a copy of the acknowledgement to both appellant and his representative.

By decision dated October 20, 2005, the Office denied appellant's request for a hearing, on the grounds that the request was not made within 30 days of the April 11, 2005 preliminary

³ The Board notes that a substantial portion of the file relating to File No. 130774108, including the CA-1, is missing from the record. The record reflects that the Office "misplaced" the complete file as it existed on December 10, 1996 and subsequently attempted to reconstruct the record.

⁴ The Board notes that the Office's June 2, 2005 letter to appellant was an informational letter.

overpayment determination.⁵ The decision was mailed to appellant at his address of record. The record does not reflect that a copy of the October 20, 2005 decision was mailed to appellant's representative.

LEGAL PRECEDENT

Office regulations provide that a copy of an Office decision shall be mailed to an employee's last known address. If the employee has a designated representative, then 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.⁶

Office regulations provide that 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 the facts or the law and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in the regulations or the Federal Employees' Compensation Act⁷ is fully satisfied if served on the representative and has the same force and effect as if sent to the claimant.⁸

A decision under the Act is not deemed to have been properly issued unless both appellant and the authorized representative have been sent copies of the decision.⁹

ANALYSIS

The Office issued its decision denying appellant's request for a hearing on October 20, 2005. The record reflects that on April 28, 1992 appellant notified the Office of the name and address of his authorized representative, Ms. Johnson. The record also reflects that the Office recognized the representative and periodically sent her copies of correspondence.

⁵ Although the Office referred to the April 11, 2005 preliminary overpayment determination as a final decision, the Board notes that it was not a final decision with rights of appeal. Rather, the preliminary determination was subject to the conditions of 20 C.F.R. § 10.432, which provides appellant with the option of a requesting a precoupment hearing within 30 days of the preliminary determination. *See* 20 C.F.R. § 10.432.

⁶ 20 C.F.R. § 10.127.

⁷ 5 U.S.C. §§ 8101-8193.

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

⁹ *See Travis L. Chambers*, (Docket No. 02-1650, issued April 17, 2003), 55 ECAB 138 (2003), holding that section 10.127 requires that a copy of an Office decision be sent to the authorized representative and that any other interpretation of the language of the regulation would be inconsistent with the clear language of its initial provisions. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.12 (October 1998) stating, "Any letter intended for a claimant should be sent to the authorized attorney or other legal representative" and Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3c(1) (April 1993) stating, "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 establishment and the representative, if any)"; *see also Sara K. Pearce*, *supra* note 8; *Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988).

However, the Office failed to send the representative a copy of the October 20, 2005 decision as required.

The Board has held that a decision under the Act is not deemed to have been properly issued unless both appellant and the authorized representative have been sent copies of the decision.¹⁰ Since the record establishes that the Office's October 20, 2005 decision was not sent to the authorized representative on that date, the Board finds that it was not properly issued. Therefore, the case must be remanded to the Office, so that the order may be properly issued.

CONCLUSION

The Board finds that the Office's October 20, 2005 decision was not properly issued. The case will be remanded to the Office for further action in conformance with this decision.¹¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2005 is set aside and the case is remanded for further action consistent with this decision.

Issued: December 29, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Id.*

¹¹ Upon return of the record, the Office should consider that fact that the April 11, 2005 preliminary overpayment decision also appears to have not been served on appellant's representative.