United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Islandia, NY, Employer**	**Docket No. 07-38** **Issued: September 26, 2007**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2006 appellant filed a timely appeal from an August 17, 2006 merit decision of the Office of Workers' Compensation Programs which affirmed the denial of her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether the Office's August 17, 2006 decision was properly issued; and (2) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after December 18, 2004 causally related to her accepted employment injury of December 22, 1994.

FACTUAL HISTORY

On January 9, 1995 appellant, then a 36-year-old manual clerk, filed an occupational injury claim (Form CA-2) alleging that she developed low back pain due to moving containers and lifting bags weighing up to 70 pounds. On February 14, 1996 the Office accepted her claim

for a subluxation L5-S1. Appellant stopped work on December 23, 1994 and returned to work on January 9, 1995.

In a Form CA-2a received by the Office on February 25, 2005, appellant claimed a recurrence of her December 22, 1994 employment injury on or about December 18, 2004. She advised that her back pain never completely stopped and that it had intensified. Appellant stopped work on December 18, 2004 and has not returned. She filed CA-7 forms for wage-loss compensation from December 18, 2004 onwards.

In an attending physician's report (Form CA-20) received by the Office on March 21, 2005, Dr. John M. Stamatos, a Board-certified anesthesiologist, advised that appellant had a lumbar herniated nucleus pulposus with radiculopathy.

In an April 4, 2005 letter, the Office advised appellant of the factual and medical evidence required for claiming a recurrence of her employment-related condition.

In a May 3, 2005 report, a nurse for Dr. Stamatos noted appellant's subjective complaints of pain and outlined a treatment plan.

By decision dated June 24, 2005, the Office denied appellant's recurrence of disability claim on the basis that the medical evidence failed to establish that her medical condition was causally related to the accepted employment injury.

In a letter dated June 6, 2006, appellant's attorney requested reconsideration based on medical evidence not previously submitted and advanced legal arguments.[1] New evidence, not previously considered, consists of a May 5, 2006 report from Dr. Stamatos and a May 31, 2005 report from a nurse.

By decision dated August 17, 2006, the Office denied modification of its June 24, 2005 decision. The record does not reflect that a copy of the August 17, 2006 decision was mailed to appellant's attorney.

[1] The letter also contains a June 7, 2006 statement from appellant authorizing the attorney to represent her in support of her claim.

LEGAL PRECEDENT -- ISSUE 1

Section 10.127 of the regulation directs the Office to mail a copy of any decision it may issue to claimant's last known address. If the claimant has a designated representative, then a copy of the decision must also be mailed to the representative.[2]

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 the regulation or the Federal Employees' Compensation Act[3] is fully satisfied if served on the representative and has the same force and effect as if it had been sent to the claimant.[4]

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.[5]

ANALYSIS -- ISSUE 1

The record establishes that appellant had an authorized representative. The representative first wrote to the Office on June 6, 2006 when he filed a request for reconsideration of the denial of appellant's recurrence claim. To establish his authority to act on appellant's behalf, he filed an appointment of representation, which appellant signed on June 7, 2006. When it issued its August 17, 2006 decision denying modification of appellant's recurrence claim, the Office did not mail a copy of the August 17, 2006 decision to appellant's representative 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.[6] Since the record establishes that the Office's August 17, 2006 decision was not sent to the authorized representative on that date, the Board finds that the decision was not properly

---

[2] 20 C.F.R. § 10.127 (if the employee has a designated representative before the Office, a copy of the decision will also be mailed to the representative). *See Travis L. Chambers*, 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, *Fees for Representative's Services*, Chapter 2.1200.2(b)(2) (February 2005) (copies of all correspondence and decisions should be sent to both the claimant and the authorized representative); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(1) (April 1993) (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).

[3] 5 U.S.C. § 8101 *et seq.*

[4] 20 C.F.R. § 10.700(c). *See also Sara K. Pearce*, 51 ECAB 517 (2000).

[5] *See Travis L. Chambers, supra* note 2.

[6] *Id.*

issued. Therefore, the case must be remanded to the Office, so that the decision may be properly issued.

CONCLUSION

The Board finds that the Office's August 17, 2006 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.[7]

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: September 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[7] 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 second issue.