



OWCP accepted her claim for right ankle sprain and rupture of the right tibialis anterior tendon. Appellant was placed on the periodic rolls and received appropriate compensation benefits.

On March 31, 2011 OWCP issued a notification of proposed termination of compensation and medical benefits on the grounds that appellant no longer had work-related residuals of her accepted condition. It informed her that, if she did not present additional evidence or argument relevant to her case within 30 days, her benefits would be terminated.

The record contains a letter dated March 10, 2011 whereby appellant designated William H. Brawner, Esquire as her personal representative. The letter was received by OWCP on April 11, 2011. In a letter dated April 10, 2011, appellant's representative requested a copy of all documents relating to appellant's claim.

In a letter dated April 13, 2011, OWCP acknowledged receipt of appellant's statement designating Mr. Brawner as her personal representative and his request for a copy of the file. It stated that a copy would be provided when it became available.

By decision dated May 4, 2011, OWCP terminated appellant's medical and compensation benefits. A copy of the final termination decision was sent to appellant and her representative.

In a letter dated May 9, 2011, OWCP informed appellant's representative that it could take up to 30 days for appellant to receive a copy of the entire case file, but it was sending him a hard copy of the March 31, 2011 proposed notice of termination and the May 4, 2011 final decision terminating her compensation benefits.

### **LEGAL PRECEDENT**

Section 10.127 of the regulations directs OWCP 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.<sup>2</sup>

A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP 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

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<sup>2</sup> 20 C.F.R. § 10.127 (1999). ("A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, 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.") *Travis L. Chambers*, Docket No. 02-1650 (issued April 17, 2003), *reaff'd*, 55 ECAB 138 (2003), holding that section 10.127 requires that a copy of an OWCP decision be sent to the authorized representative and that any other interpretation of the language of the regulations 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, *Initial Development of Claims*, Chapter 2.800.3c(1) (April 1993) stating, "[OWCP] 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)."

contained in the regulations or FECA is fully satisfied if served on the representative and has the same force and effect as if it had been sent to the claimant.<sup>3</sup>

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> A claimant has a property interest in not having his benefits terminated<sup>5</sup> and failure to notify the authorized representative effectively denies appellant's property interest in not having her benefits terminated.<sup>6</sup>

### ANALYSIS

The Board finds that OWCP was required to notify appellant's representative of its intent to terminate appellant's benefits. Failure to provide notice effectively denied appellant's property interest in not having her benefits terminated.

On March 31, 2011 OWCP proposed to terminate appellant's compensation and medical benefits. As appellant was not represented by counsel at that time, OWCP forwarded a copy of the proposed termination notice to her. In a document dated March 10, 2011 and received by OWCP on April 11, 2011, appellant designated William H. Brawner, Esquire as her personal representative. In a letter dated April 10, 2011 and received by OWCP on April 11, 2011, her representative requested a copy of all documents relating to her claim.

In a letter dated April 13, 2011, OWCP acknowledged receipt of appellant's statement designating Mr. Brawner as her personal representative and his request for a copy of the file, indicating that a copy would be provided when it became available. It did not, however, provide her representative with a copy of the notice of proposed termination at that time. Instead, OWCP terminated appellant's medical and compensation benefits on May 4, 2011, without prior notice to her designated representative.

As the Board stated in *Chambers*,<sup>7</sup> the language of the statute must be read with due regard for the remedial nature of FECA, and the Board must attempt to interpret the language to reach a consistent and harmonious result.<sup>8</sup> The applicable section of the Code of Federal Regulations grants significant powers to the representative, including the ability to resubmit legal argument or new evidence prior to termination of benefits.<sup>9</sup> When OWCP fails to notify a claimant's representative of a proposed termination, the claimant is deprived of the opportunity to have her representative exercise the powers granted by the Code of Federal Regulations. The

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<sup>3</sup> 20 C.F.R. § 10.700(c) (1999).

<sup>4</sup> *Franklin H. Brydon*, 49 ECAB 227, 227 (1997); *see also Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>5</sup> *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818, 823 (1992).

<sup>6</sup> *See Franklin H. Brydon*, *supra* note 4 at 229.

<sup>7</sup> *See Travis L. Chambers*, *supra* note 2.

<sup>8</sup> *Id.*

<sup>9</sup> *See* 20 C.F.R. § 541.

Board has held, even in the face of contradictory language, that section 10.127 requires that a copy of an OWCP decision be sent to the authorized representative. OWCP procedures also mandate notice to a representative of decisions and information. To accept an interpretation that does not require notice to a representative would be contrary to the clear intent of FECA, the regulations and OWCP procedures.<sup>10</sup>

In this case, OWCP failed to notify appellant's representative of its intent to terminate benefits. Although appellant had not designated Mr. Brawner as her personal representative on the date OWCP issued the notice of proposed termination, she did so only 10 days thereafter. In its April 13, 2011 letter to counsel, OWCP acknowledged the designation and his request for a copy of the entire file. It did not, however, provide appellant's representative with copies of any documents related to the termination of appellant's benefits and thereby denied her the opportunity to present evidence to protect her interest. Once OWCP was advised of appellant's representation, it was obligated to inform counsel of information relating to her proposed termination.

In *Stephanie P. Efflandt*,<sup>11</sup> the Board found that OWCP's notification of proposed termination of benefits was a "determination" in accordance with the regulations. The Board further found that OWCP's failure to notify the representative of its intent to terminate benefits denied appellant's property interest in not having her benefits terminated." The principle of *Efflandt* applies in the present case.<sup>12</sup>

Under principles of fairness and in accordance with the remedial nature of FECA, appellant was entitled to an opportunity to attempt to retain her benefits with the assistance of counsel and was denied the right to do so. Therefore, the May 4, 2011 decision must be reversed.

### **CONCLUSION**

The Board finds that OWCP's failure to send a copy of the proposed termination of benefits to the authorized representative effectively denied appellant's property interest in not having her benefits terminated.

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<sup>10</sup> See *supra* note 2.

<sup>11</sup> Docket No. 04-2088 (issued January 28, 2005).

<sup>12</sup> See *Franklin H. Brydon*, 49 ECAB 227 (1997) (where the Board found that the notification of the suitability of a position was a "determination" in accordance with the regulation, that notification to the claimant's authorized representative was required and that failure to notify the authorized representative effectively denied appellant's property interest in not having her benefits terminated. Finding that OWCP violated its own procedures, the Board reversed OWCP's decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 4, 2011 is reversed.

Issued: March 9, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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