

On December 21, 2011 appellant filed a notice of recurrence of a medical condition as a result of her accepted work injury. By letter dated January 13, 2012, OWCP advised her that it had terminated her compensation and to follow the appeal rights that accompanied the March 24, 2011 decision.

On December 20, 2012 appellant filed a notice of a recurrence of a medical condition due to her August 19, 2008 employment injury. In a decision dated January 29, 2013, OWCP declined to adjudicate her notice of recurrence of a medical condition as it had previously terminated her authorization for medical benefits. Its January 29, 2013 decision did not identify itself as a final decision and was not accompanied by appeal rights. However, as it effectively denied her notice of recurrence of a medical condition, it constituted an adverse decision under 20 C.F.R. § 10.126. The basis for OWCP's denial, though, is faulty. It found that appellant could not establish a recurrence of a medical condition following a termination of medical benefits. Appellant, however, can establish entitlement to continuing medical benefits notwithstanding the prior termination if the medical evidence substantiates that she requires further medical treatment due to her August 19, 2008 employment injury.³ OWCP thus improperly interpreted the relevant facts of the present case when it failed to adjudicate her claim for recurrence of a medical condition.⁴ The case, therefore, is remanded for OWCP to consider the merits of appellant's notice of recurrence of a medical condition and issue a *de novo* decision containing findings of fact and conclusions of law consistent with section 10.126 of OWCP's regulations.

³ See generally *M.K.*, Docket No. 12-724 (issued October 26, 2012) (where the Board affirmed OWCP's denial of appellant's claim for continuing disability and medical benefits subsequent to a termination of compensation).

⁴ See *J.F.*, Docket No. 12-955 (issued April 11, 2013) (Notwithstanding OWCP's termination of appellant's compensation benefits, the Board found that, as OWCP had intermingled the issue of termination of appellant's benefits in 2008 with his 2009 claim for a recurrence of a medical condition, appellant was entitled to a decision on the issue of whether he sustained a recurrence of his medical condition in 2009 which necessitated surgery. The Board noted that OWCP effectively denied appellant's recurrence claim in its denial of reconsideration under the clear evidence of error standard and that he was entitled to an appropriate decision on the issue).

IT IS HEREBY ORDERED THAT the January 29, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 12, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board