United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 07-1546**
	)	**Issued: August 12, 2008**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
John Eiler Goodwin, Esq., for the appellant
No appearance, for the Director

Oral Argument July 16, 2008

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 21, 2007 appellant, through counsel, filed a timely appeal from an Office of Workers' Compensation Programs' March 21, 2007 schedule award decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office's March 21, 2007 schedule award decision was properly issued; and (2) whether appellant has more than a 14 percent permanent impairment of the left lower extremity for which he received a schedule award.

FACTUAL HISTORY

On February 10, 1992 appellant, then a 50-year-old insulator, filed an occupational disease claim alleging that he realized that factors of his federal employment aggravated a preexisting osteoarthritis ankle condition.[1] The Office accepted appellant's claim for

[1] The Office assigned claim number 14-0271154.

aggravation of left osteoarthritis talonavicular joint and authorized left ankle arthrotomy surgery,[2] which occurred on March 15, 1993, and left ankle triple arthrodesis surgery, which occurred on April 20, 1998.[3] Appellant subsequently filed a claim for a schedule award.

In a July 28, 2004 report, Dr. Patrick N. Bays, a second opinion osteopath, concluded that appellant had a five percent impairment of the left lower extremity using Table 17-12 at page 537.

On September 7, 2004 the Office medical adviser concluded that appellant had a 14 percent left lower extremity impairment using Tables 17-12 and 17-11 at page 537.

On February 17, 2006 the Office received an attorney authorization form for John E. Goodwin's law firm for claim numbers 14-0271154 and 14-0341116.

By decision dated March 21, 2007, the Office granted appellant a schedule award for a 14 percent impairment of the left lower extremity. It addressed and mailed this decision to appellant at his address of record and also mailed a copy to the employing establishment.

LEGAL PRECEDENT -- ISSUE 1

Section 10.127 of the Office's regulations 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.[4]

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

[2] Initially, appellant identified the ankle in question as the right ankle and the Office accepted appellant's claim for aggravation of right osteoarthritis talonavicular joint. However, in an August 10, 1992 report, Dr. Larry M. Gorman, appellant's treating Board-certified orthopedic surgeon, stated there was a mix-up in the identification of the ankle in question and that he "mistakenly said the right ankle but it should have been the left." In a June 21, 2004 statement of accepted facts, the Office noted appellant's claim had been accepted for a left ankle injury and that two left ankle surgeries had been approved. It also stated that a February 28, 1992 traumatic injury claim had been accepted for left lower leg contusion and right wrist sprain. This was assigned claim number 14-0341116. Appellant retired from the employing establishment effective June 3, 2001.

[3] It noted that a February 28, 1992 traumatic injury claim had been accepted for left lower leg contusion and right wrist sprain. The Office assigned claim number 14-0341116. Appellant retired from the employing establishment effective June 3, 2001.

[4] 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).

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[5] is fully satisfied if served on the representative and has the same force and effect as if it had been sent to the claimant.[6]

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.[7]

ANALYSIS -- ISSUE 1

The record reflects that the Office issued its schedule award decision on March 21, 2007, which it addressed and mailed to appellant and mailed a copy to the employing establishment. On February 17, 2006 appellant had advised the Office of the name and address of his designated representative. However, the Office failed to send a copy of its March 21, 2007 decision to the authorized representative as required. The record contains no evidence that the Office sent a copy of its March 21, 2007 decision to appellant's designated representative.

The Board has held that a decision under the Act is not deemed to have been issued unless both appellant and the authorized representative have been sent copies of the decision.[8] Since the record in this case indicates that the Office's March 21, 2007 decision was not sent to the authorized representative on that date, it was not properly issued. The Office's failure to timely notify appellant's representative of the March 21, 2007 schedule award decision denied him the opportunity to have his representative assist him in exercising his appeal rights, including the right to request a hearing within 30 days of the date of the decision. As a result, appellant was unfairly prejudiced by the omission.

CONCLUSION

The Board finds that the Office's March 21, 2007 decision was not properly issued. This case will be remanded to the Office for further action in conformance with this decision in order to protect appellant's appeal rights.[9]

[5] 5 U.S.C. §§ 8101 *et seq.*

[6] 20 C.F.R. § 10.700(c); *see also Sara K. Pearce*, 51 ECAB 517 (2000).

[7] *See Travis L. Chambers*, *supra* note 4.

[8] *Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988).

[9] 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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2007 be set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: August 12, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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