

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-092

DONATO CONTRERAS,
Claimant-Respondent,

v.

MILLER & LONG COMPANY, INC. and
SEDGWICK, CMS,
Employer/Third-Party Administrator-Petitioners.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 NOV 16 AM 11 52

Appeal from a June 22, 2016 Final Order
by Claims Examiner Myrna Parada
OWC No. 705267

Decided November 16, 2016

David H. Jacobs for Employer
Manuel Rivera for Claimant

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

Claimant was injured while working for Employer on May 25, 2015. Claimant received disability benefits and medical benefits for a time.

Pertinent to this appeal, an Informal Conference was held on November 7, 2013 in response to an Application for Informal Conference submitted by the Claimant. Outlined in the application were the names and addresses of the Claimant, Claimant representative, Employer, Carrier, and the Employer/Carrier representative. Claimant sought temporary total disability from October 30, 2013 to the present and continuing.

On September 11, 2014, Counsel for Employer sent a change of address to Claim Examiner Parada, informing the Office of Workers' Compensation ("OWC") that Counsel had moved,

providing OWC with his new address. That letter was received by OWC on September 16, 2014.

On October 23, 2014, a Memorandum of Informal Conference was issued, awarding Claimant continuing temporary total disability benefits. The recommendation was sent to the Claimant, Claimant representative and to the Employer's representative at his prior address.

On January 18, 2015, Claimant, through Counsel, filed a Request for Order of Default with OWC. Claimant served Employer at Counsel's new address.

Employer opposed Claimant's Request for Order of Default and filed an Application for Formal Hearing.

On June 22, 2016, OWC issued a Final Order ("Order"). In that Order, the Claims Examiner stated:

The Office of Workers' Compensation sent the Memorandum of Informal Conference to employer/carrier representative attorney David Jacobs at the last known address at the time which was (5301 Wisconsin Avenue, #500 Washington, D.C. 20015). The office of Workers' Compensation did not receive a return to sender mail receipt, so the assumption was that the Memorandum of Informal Conference was received.

The Order was sent to Employer Counsel's new address.

Employer appealed. Employer argues that it did not receive the recommendation as OWC sent the document to Employer's Counsel old address, even after a change of address was provided to the Claims Examiner. Employer further argues:

Proper service on the opposing party is fundamental to our system of jurisprudence. It is impossible to have due process without it. In this case, despite being informed of a change of address almost 6 weeks before its decision, OWC failed to send copies of the memorandum of informal conference to the correct address thus making it impossible for the petitioner to respond to the memorandum and request a formal hearing. OWC had both Sedgwick and Miller and Long's address but failed to provide copies to either party as required by 7 DCMR 219.19.

Employer's argument at 6.

Claimant opposes the appeal. Claimant argues as Employer failed to file a change of address/mail forwarding request with the United States Post Office and as the Employer failed to provide,

...reliable corroborating evidence to show that is properly notified OWC of its change of address; i.e., post office return receipt, post office certification of

mailing, email receipts, fax cover sheets, a sworn notarized affidavit or an OWC stamp on the change of address copy indicating that it was actually sent to OWC and received.

Claimant's argument at 2.

ANALYSIS

Because the Order under review is not based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the Claim Examiner in OWC is whether the decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. See 6 STEIN, MITCHELL & MEZINES, *Administrative Law*, § 51.03 (2001).

We address first Employer argument that the parties were not properly served pursuant to 7 DCMR § 219.19 which states:

Copies of the Memorandum of Informal Conference shall be sent by certified mail to the parties and their representatives.

We agree. We take administrative notice that the Application for Informal Conference included not only the name and address of Employer's representative, but also the name and addresses of the Employer and Carrier. The Memorandum of Informal Conference was only sent to Employer's representative and not to the Employer or Carrier, the interested parties, in violation of 7 DCMR § 219.19.

Furthermore, we also take administrative notice that contrary to what was stated in the Memorandum of Informal Conference, that OWC did in fact receive Employer's Counsel's letter of September 11, 2014 providing OWC with his new address on September 16, 2014, as revealed in the administrative file. Thus, prior to the Memorandum of Informal Conference being issued, OWC did have the change of address letter from Employer's representative and failed to send the memorandum to the correct address.

As proper service was not effectuated on all interested parties, we are forced to vacate the Final Order and remand the case to OWC with instructions to re-issue the Memorandum of Informal Conference with service to all listed parties and their representatives.

CONCLUSION AND ORDER

The June 22, 2016 Final Order is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law and is VACATED. The Office of Workers' Compensation is ordered to re-issue the Memorandum of Informal Conference with service to all interested parties and their representatives.

So ordered.