

**United States Department of Labor  
Employees' Compensation Appeals Board**

\_\_\_\_\_ )  
**T.B., Appellant** )

and )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Miami, FL, Employer** )  
\_\_\_\_\_ )

**Docket No. 07-575**  
**Issued: June 5, 2007**

*Appearances:*  
*Appellant, pro se*  
*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 December 28, 2006 appellant filed a timely appeal of the October 2, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which found that he abandoned his request for an oral hearing. As the most recent merit decision in this case was issued on April 5, 2005, the Board does not have jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether appellant had abandoned his request for a hearing.

**FACTUAL HISTORY**

On July 25, 2003 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that he injured his left knee while bending and twisting to pick up mail during the course of his employment. On September 25, 2003 the Office accepted his claim for a left knee meniscus tear.

On October 23, 2003 appellant filed a Form CA-7, claim for compensation, for leave without pay from October 1 through 23, 2003. On October 27, 2003 he filed a claim for compensation for leave without pay from October 24 through November 8, 2003. On February 27, 2004 appellant filed a claim for compensation for a schedule award.

In a December 10, 2004 letter, appellant notified the Office of a change in his address.

In an April 5, 2005 decision, the Office granted a schedule award for two percent impairment of the left knee. The period of the award ran from November 29, 2004 to January 8, 2005.

On May 2, 2005 appellant requested an oral hearing. The envelope that contained appellant's request listed appellant's new address as the return address. In a March 3, 2006 letter, the Office informed appellant that a hearing was scheduled for April 26, 2006 at 11:00 a.m. The letter listed appellant's previous address. A March 6, 2006 postmarked envelope was returned to the Office marked "return to sender" due to expired forwarding and labeled with appellant's most recent address on the forwarding label.

In an August 11, 2006 letter, the Office informed appellant of his hearing scheduled for September 19, 2006 at 1:45 p.m. The letter listed appellant's most recent address.

In an October 2, 2006 decision, the Office found that appellant abandoned his request for a hearing. The Office noted that appellant failed to appear at the hearing and that the record did not establish that he had contacted the Office either prior or subsequent to the scheduled hearing to explain his failure to appear.

### **LEGAL PRECEDENT**

With respect to abandonment of hearing requests, Chapter 2.1601.6(e) of the Office's procedure manual provides in relevant part:

"(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

"Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [district Office]....

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

"This course of action is correct even if [the Branch of Hearings and Review] can advise the claimant far enough in advance of the hearing that the request is not

approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”<sup>1</sup>

Section 10.617(b) of the Office’s regulation provides that unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>2</sup> The Office has the burden of proving that it mailed the claimant a notice of the date and time of the scheduled hearing.<sup>3</sup>

### ANALYSIS

In finding that appellant abandoned his May 2, 2005 hearing request, the Office noted that a hearing had been scheduled in Fort Lauderdale, FL on September 19, 2006 at 1:45 p.m. The record shows that on August 11, 2006 the Office properly mailed notice of the oral hearing to appellant at his address of record. Appellant did not argue on appeal that he did not receive notification. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.<sup>4</sup> There is evidence in the record that appellant notified the Office of a change in address on December 12, 2004. The record shows that the Office sent notification of the oral hearing on August 11, 2006 to the updated address listing.

Appellant received written notification of the hearing 30 days in advance but he failed to appear for the hearing. The record contains no evidence that he contacted the Office to request postponement of the hearing. Appellant failed to appear at the scheduled hearing or to provide any notification for such failure within 10 days of the scheduled hearing. As this meets the criteria for abandonment specified in the Office’s procedure manual, the Board finds that appellant abandoned his request for an oral hearing before an Office hearing representative.

### CONCLUSION

The Board finds that appellant abandoned his request for an oral hearing.

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<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see also Claudia J. Whitten*, 52 ECAB 483, 484-85 (2001).

<sup>2</sup> 20 C.F.R. § 10.617(b).

<sup>3</sup> *Nelson R. Hubbard*, 54 ECAB 156 (2002). In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient. *Kenneth E. Harris*, 54 ECAB 502, 505 (2003). This presumption is commonly referred to as the mailbox rule. *Id.* It arises when the record reflects that the notice was properly addressed and duly mailed. *Id.*

<sup>4</sup> *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to an appellant, it must be presumed, absent any other evidence, that the claimant received the notice).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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