

Appellant underwent surgery including excision of recurrent trigger finger and excision of ganglion as well as tenotomy and resection of the flexor digitorum superficialis and tenolysis of the flexor digitorum profundus on October 14, 2004. On May 12, 2005 she filed a second claim for traumatic injury noting that she fell in the performance of duty on May 9, 2005 and fractured the ring and small finger of her left hand. On June 8, 2005 appellant underwent closed reduction and immobilization of right ring and small finger proximal phalanx fractures resulting from a fall. The Office accepted her claim for closed fractures of the fourth and fifth fingers of the left hand on May 25, 2005. On December 13, 2005 it entered appellant on the periodic rolls. By decision dated June 21, 2006, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

Appellant's attorney, John Eiler Goodwin, Esquire, requested an oral hearing on June 29, 2006. He asked that the oral hearing be held in Kodiak, Alaska and requested a subpoena. Mr. Goodwin listed his address as: 151 Finch Place, Southwest, Suite H, Bainbridge Island, Washington 98110. In a letter dated October 19, 2006, appellant informed the Office of her new address: 1520 Peregrine Vista Heights, Number 108, Colorado Springs, Colorado 80921. The Office acknowledged appellant's change of address on October 25, 2006. In a letter dated December 10, 2006, appellant's attorney asked that the Branch of Hearings and Review respond to his request for an oral hearing. By letter dated June 1, 2007, the Branch of Hearings and Review informed appellant and her attorney that a telephone hearing would be held on July 11, 2007 at 1:30 p.m. eastern time and provided the toll free number. The Branch of Hearings and Review addressed this letter to appellant at her Colorado Springs address and provided her attorney with a copy at his address of record. In a letter to the Branch of Hearings and Review dated June 24, 2007, Mr. Eiler stated that he no longer represented appellant.

By decision dated July 27, 2007, the Branch of Hearings and Review found that appellant had abandoned her request for an oral hearing as she received notification more than 30 days prior to the scheduled telephone hearing and failed to call at the appointed time. The Branch of Hearings and Review mailed this decision to appellant's Colorado Springs address of record. The Branch of Hearings and Review further found that appellant did not contact the Office either before or after the scheduled date of the oral hearing to explain her failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹ Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.² The Office has the burden of

¹ 20 C.F.R. § 10.616(a).

² 20 C.F.R. § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999). The Office's regulations provide: "If the employee has a designated representative before [the Office], 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." 20 C.F.R. § 10.127.

proving that it mailed to appellant and her representative a notice of a scheduled hearing.³ The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of the Office's daily activities, is presumed to have arrived at the mailing address in due course.⁴ This is known as the "mailbox rule."

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

e. Abandonment of Hearing Requests.

(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, H&R [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 DO [district Office]. In cases involving prerecoupmment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R 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 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.⁵

ANALYSIS

On appeal appellant alleged that she failed to receive notification of the scheduled oral hearing. At oral argument she alleged that she had provided the Office with a second change of address to her current address in Montana in or about January 2007. However, the record before the Board does not contain such a change of address notification from appellant. Appellant's

³ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁴ *W.P.*, 59 ECAB ____ (Docket No. 08-202, issued May 8, 2008); *Jeffrey M. Segracy*, 55 ECAB 724, 728 (2000).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

current address for purposes of this appeal before the Board is: 4753 Sage Street, Missoula, Montana 59808.

The Office issued a decision on June 21, 2006 terminating appellant's compensation benefits on the grounds that she refused an offer of suitable work. Appellant, through her counsel, timely requested an oral hearing with an Office hearing representative regarding this matter on June 29, 2006. In a letter dated October 19, 2006 appellant informed the Office in writing of her change of address to Colorado Springs, Colorado.

By letter dated June 1, 2007, the Office scheduled a telephonic hearing before an Office hearing representative at a specific time on July 11, 2007. The record shows that the Office mailed appropriate notice to appellant at her last known address in Colorado Springs, Colorado as well as to her attorney in Bainbridge Island, Washington in accordance with the "mailbox" rule.⁶ The Board notes that the record does not contain the subsequent change of address to Missoula, Montana as alleged by appellant at oral argument before the Board. Furthermore, the Board notes that appellant stated on appeal that she had received the July 27, 2007 abandonment decision which was also mailed to the Colorado Springs, Colorado address of record.

The record supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office procedure manual, the Board finds that the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.

CONCLUSION

The Board finds that in accordance with the mailbox rule, appellant received appropriate notification of the scheduled telephonic hearing, that she did not request postponement, that she failed to call at the scheduled time and that she failed to provide notification of her failure within 10 days following the scheduled hearing. For these reasons, the Board finds that appellant has abandoned her request for a hearing and the Office's July 27, 2007 decision must be affirmed.

⁶ See *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT July 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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