

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

R.C., Appellant)	
)	
and)	Docket No. 08-132
)	Issued: May 9, 2008
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, New Orleans, LA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 16, 2007 appellant filed a timely appeal from the December 26, 2006 decision of an Office of Workers' Compensation Programs' hearing representative finding that she had abandoned her hearing. The most recent merit decision in the case is the January 20, 2005 decision of the Office denying her emotional condition claim. Because appellant filed her appeal more than one year after this merit decision, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has no jurisdiction over the merits of this case. The only decision properly before the Board is the nonmerit decision finding that she abandoned her oral hearing.

ISSUE

The issue is whether the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative. On appeal, appellant contends that she did not receive notice of the hearing.

FACTUAL HISTORY

On August 11, 2004 appellant, then a 41-year-old mail processor, filed an occupational disease claim, Form CA-2, alleging that she developed post-traumatic stress syndrome as a result of constant harassment from management about her attendance. On the CA-2 form she provided a home address in Gretna, Louisiana.

On September 3, 2004 the Office requested additional factual and medical information about the claim. On September 23, 2004 appellant responded with a written statement alleging a variety of improper actions on the part of the employing establishment.

By decision dated January 20, 2005, the Office denied appellant's claim on the grounds that she had identified no compensable factors of employment and had not adequately supported her claims of harassment.

On February 17, 2005 appellant requested an oral hearing.¹ On the appeal form, she provided a new mailing address in New Orleans, Louisiana. The Office did not acknowledge receipt of this request.

On December 30, 2005 appellant notified the Office by telephone that she had been displaced by Hurricane Katrina. She indicated that she was now in Las Vegas, New Mexico and provided a new address. Appellant also requested information about the status of her oral hearing.

Appellant telephoned the Office again on June 15, 2006 to check the status of her case.

On October 30, 2006 the Office hearing representative notified appellant that an oral hearing on her claim would be held on December 7, 2006 in New Orleans, Louisiana. The letter was mailed to the address in New Orleans that appellant had provided in February 2005. On November 15, 2006 the letter was returned as undeliverable.

On November 28, 2006 the Office hearing representative placed a memorandum in the file noting that she had telephoned the employing establishment to determine appellant's current address. She was notified that appellant had moved from New Mexico to Los Angeles, California, but that a new street address was not available. The Office hearing representative called the numbers listed for appellant and discovered that they were all disconnected.

By decision dated December 26, 2006, the Office hearing representative found that appellant had abandoned her request for a hearing. She noted that an oral hearing had been scheduled for December 7, 2006. The Office hearing representative stated that appellant had "received written notification of the hearing 30 days in advance" of December 7, 2006, but had not appeared. She stated that there was no evidence that appellant had contacted the Office prior to or after the hearing to explain her failure to attend. The Office hearing representative mailed

¹ The Board notes that, in addition to checking the line for "Hearing – Oral," appellant checked the line for "Reconsideration." However, in the attached letter, she explicitly stated that she wanted an oral hearing.

the decision to appellant's New Orleans address. On January 4, 2007 the letter was returned as undeliverable.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act and its implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.² 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.³ The Office has the burden of proving that it mailed notice of a scheduled hearing to appellant.⁴

The authority governing abandonment of hearings rests with the Office's procedure manual,⁵ which provides as follows:

"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]."⁶

ANALYSIS

Appellant challenged the Office's finding that she had abandoned her request for an oral argument on the basis that she did not receive the notice of hearing.

The Board finds that the record does not establish that the notice of hearing was properly addressed and mailed to appellant. On December 30, 2005 appellant informed the Office that she was no longer living in New Orleans and provided an address in Las Vegas, New Mexico. However, on October 30, 2006, the Office did not mail the notice of hearing to that address. Instead, the notice was mailed to the New Orleans address that appellant provided with her February 15, 2005 request for hearing. Although the Office hearing representative made efforts to notify appellant of the hearing after the notice was returned as undeliverable, she did not

² 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

³ 20 C.F.R. § 10.617(b).

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁵ See *Claudia J. Whitten*, 52 ECAB 483 (2001).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

resend the notice to appellant's last known address. As the record demonstrates that the Office did not mail the notice of oral hearing to appellant at her last known address, the presumption inherent in the "[m]ailbox [r]ule," that a notice mailed to an individual in the ordinary course of business was received by that individual is rebutted.⁷ Thus, the Board finds that the record contains no evidence that appellant was properly notified of the oral hearing scheduled for December 7, 2006. Therefore, the Office has not met its burden of proof that it mailed appellant notice of the scheduled hearing.

CONCLUSION

The Board finds that the Office did not properly determine that appellant abandoned her hearing request. The case will be remanded to provide appellant the opportunity for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 26, 2006 is set aside and the case is remanded for action consistent with this decision.

Issued: May 9, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ See *Joseph R. Giallanza*, 55 ECAB 186, 191 (2003); see also *Samuel R. Johnson*, 51 ECAB 612 (2000).