

On July 23, 2004 appellant, a 49-year-old rural carrier, filed an occupational disease claim for a lower back injury. She attributed her condition to repetitive lifting of heavy mail tubs and twisting and bending while carrying mail. After further development of the record, the Office denied appellant's claim by decision dated October 12, 2004. The Office found that appellant had not established that she sustained an employment-related injury.

On November 4, 2004 appellant requested an oral hearing. By letter dated December 20, 2004, the Branch of Hearings and Review acknowledged receipt of appellant's hearing request. On June 28, 2005 the Office hearing representative wrote appellant to advise that her hearing was scheduled for July 27, 2005. The notice was addressed to 2601 N. Walker, Leander, TX 78641.¹

In a decision dated August 3, 2005, the Office found that appellant abandoned her request for a hearing. The Office indicated that a hearing had been scheduled for July 27, 2005, appellant was properly notified of the hearing and she failed to appear without explanation. The Office mailed the August 3, 2005 decision to the same address it had previously mailed the June 28, 2005 hearing notice; 2601 N. Walker, Leander, TX 78641.

LEGAL PRECEDENT

Section 10.617(b) of the Office's regulations 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."² The Office has the burden of proving that it mailed the claimant a notice of the date and time of the scheduled hearing.³

ANALYSIS

Appellant argued that she did not receive prior notification that a hearing had been scheduled for July 27, 2005. When she initially filed her claim appellant listed her mailing address as 2601 N. Walker, Leander, TX 78641. However, in her November 4, 2004 hearing request, appellant listed her address as 206 Golden Gate Drive, Leander, TX.⁴ Although the Office mailed its December 20, 2004 acknowledgement letter to appellant's new address, both the June 28, 2005 hearing notice and the August 3, 2005 decision were mistakenly sent to appellant's prior address. As the record fails to demonstrate that the Office properly notified appellant of the scheduled hearing, the case will be remanded to the Office to provide appellant the opportunity for an oral hearing.⁵

¹ This is the mailing address appellant identified on her July 23, 2004 Form CA-2 and the same address where the Office mailed its October 12, 2004 decision.

² 20 C.F.R. § 10.617(b).

³ *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.*

⁴ This new address also appeared on an October 31, 2004 letter appellant sent to the Office.

⁵ The Board notes that for purposes of this appeal appellant identified her current address as 506 Seminole Road, Leander, TX 78641.

CONCLUSION

The Board finds that appellant did not abandon her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further proceedings consistent with this decision.

Issued: February 21, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board