

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of McKINDRA FLETCHER and U.S. POSTAL SERVICE,
RAVENWOOD STATION, Chicago, IL

*Docket No. 00-569; Submitted on the Record;
Issued January 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration on the grounds that his request was untimely and failed to show clear evidence of error.

On February 28, 1977 appellant, then a 44-year-old motor vehicle operator, sustained a left inguinal hernia in the performance of duty.

On November 6, 1997 appellant filed a notice of recurrence of disability alleging that the hernia "came back" on October 10, 1997 and was causally related to his February 28, 1977 employment injury. He included his current address with his recurrence claim and submitted medical evidence in support.¹

By decision dated April 2, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a recurrence of disability on October 10, 1997 causally related to his February 28, 1977 employment injury. On the Office's copy of the April 2, 1998 decision, the Office claims examiner indicated that a decision was originally issued on March 23, 1998 but was sent to appellant at an incorrect address. She indicated that appellant's correct address was unknown and that a copy of the Office's decision was sent to the employing establishment on April 2, 1998.²

¹ Appellant's address was listed as "12717-S-Morgan, Chicago, Illinois 60643."

² The claims examiner noted "address unknown sent to [employing establishment]." The Office's March 23, 1998 decision was not sent to the address provided by appellant in his November 6, 1997 notice of recurrence of disability. It was sent to an old address of record.

By letter dated June 14, 1999, appellant stated that he sent a letter dated March 8, 1998 to the Office responding to its February 5, 1998 request for information³ but had not received any response.

By decision dated August 30, 1999, the Office treated appellant's June 14, 1999 letter as a request for reconsideration of its April 2, 1998 decision and denied the request on the grounds that it was untimely and failed to show clear evidence of error.

The Board finds that this case is not in posture for decision.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.⁴ As appellant filed his appeal with the Board on October 25, 1999 the only decision properly before the Board is the Office's August 30, 1999 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's April 2, 1998 decision denying his claim for a recurrence of disability.

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 the individual.⁵ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁶ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.⁷ Without such evidence, the presumption of receipt under the mailbox rule does not arise.⁸

In this case, the record reflects that on March 23, 1998 the Office sent appellant a decision regarding his November 6, 1997 claim for a recurrence of disability to an incorrect address. In his June 14, 1999 letter, although appellant used the words "reconsider my claim," he did not indicate any awareness that the Office had issued a final decision in his case. He indicated that the purpose of his letter was to provide information regarding his claim which was requested by the Office in its February 5, 1998 letter and he noted that he had received no response to his March 8, 1998 letter to the Office. Thus, appellant's June 14, 1999 letter to the Office was not a request for reconsideration of the Office's April 2, 1998 decision because he never received a copy of that decision.

³ The record shows that the Office sent its February 5, 1998 letter to the correct address provided by appellant in his November 6, 1997 notice of recurrence of disability.

⁴ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

⁵ See *A.C. Clyburn*, 47 ECAB 153, 159 (1995).

⁶ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁷ See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

⁸ See *Kimberly A. Raffile*, 50 ECAB ____ (Docket No. 97-1791, issued February 17, 1999).

On remand the Office should reissue its April 2, 1998 decision to protect appellant's appeal rights and send a copy of the decision to appellant's correct address.

The decision of the Office of Workers' Compensation Programs dated August 30, 1999 is set aside, and the case is remanded for further action consistent with this opinion of the Board.

Dated, Washington, DC
January 12, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member