United States Department of Labor Employees' Compensation Appeals Board

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J.M., Appellant)
and) Docket No. 12-543) Issued: March 12, 2013
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer)))))))))))))))))))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On January 10, 2012 appellant filed an appeal from July 15 and August 20, 2010 decisions of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 12-543.

On February 17, 2010 appellant filed an occupational disease claim (Form CA-2). On her Form CA-2 she listed her address as 7424 South Indiana Avenue. By decision dated July 15, 2010, OWCP denied appellant's occupational disease claim for failing to establish fact of injury. It mailed her decision to 7424 South Indiana Avenue. On August 5, 2010 appellant requested reconsideration of the OWCP decision. On her appeal request form, appellant noted her address as 7434 South Indiana Avenue.

By decision dated August 20, 2010, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence. It mailed this decision to 7424 South Indiana Avenue.

By letter dated June 19, 2011, appellant informed OWCP that the paperwork was being sent to the wrong address, rendering her unable to respond. She stated that her correct address

¹ The Board finds that as explained below, compelling circumstances exist for the untimely filing of this appeal.

was 7434 South Indiana Avenue and not 7424 South Indiana Avenue. Appellant requested an address change.

By letter dated July 21, 2011, OWCP acknowledged receipt of appellant's address change request.

On January 10, 2012 appellant filed an appeal before the Board contending that OWCP was sending her paperwork to the incorrect address. Appellant reiterated that her correct address was 7434 South Indiana Avenue and not 7424 South Indiana Avenue.

The Board finds that this case should be remanded to OWCP as the August 20, 2010 decision was not properly issued. By motion dated December 18, 2012, the Director of OWCP found that a decision was not deemed to have been issued under the Federal Employees' Compensation Act² (FECA) unless appellant was sent a copy of the decision. The Director also acknowledged that if an OWCP decision was sent to an improper address and was not received by appellant, it was not properly issued.³

OWCP mailed the August 20, 2010 decision to appellant's previous address at 7424 South Indiana Avenue. Appellant's August 5, 2010 appeal request form noted her correct address as 7434 South Indiana Avenue. By letter dated June 19, 2011, appellant informed OWCP that she had not received the decision as it had been mailed to an incorrect address. She again notified OWCP that her correct address of record was at 7434 South Indiana Avenue. By letter dated July 21, 2011, OWCP acknowledged appellant's address change, but did not reissue the August 20, 2010 decision. As the August 20, 2010 decision was sent to an improper address and appellant stated that she never received it, it was not properly issued. Moreover, OWCP failed to provide appellant with a copy of the August 20, 2010 decision even after she notified them of nonreceipt as a result of an improper address.

Under the mailbox rule, 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. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁴ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.⁵ Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.⁶ Thus, appellant could not have timely requested an appeal from an OWCP decision that she did not receive.⁷

² 5 U.S.C. § 8101 et seq.

³ See S.S., Order Remanding Case, Docket No. 12-121 (issued February 14, 2013); see also Carolyn Mobley, Docket No. 03-1411 (issued February 11, 2004); Kathy B. Glauser, Docket No. 97-2857 (issued June 4, 1999); Tammy J. Kenow, 44 ECAB 619 (1993).

⁴ See Michelle Lagana, 52 ECAB 187 (2000).

⁵ See C.O., Docket No. 10-1796 (issued March 23, 2011); M.U., Docket No. 09-526 (issued September 14, 2009).

⁶ See Clara T. Norga, 46 ECAB 473 (1995); W.A., Docket No. 06-1452 (issued November 27, 2006).

⁷ E.C., Docket No. 11-1774 (issued February 27, 2012).

Thus, the case will be remanded to OWCP as the August 20, 2010 decision was not properly issued. Following such further development as OWCP deems necessary, it shall issue an appropriate decision regarding appellant's claim.

IT IS HEREBY ORDERED THAT the August 20 2010 decision of the Office of Workers' Compensation Programs is set aside; the case record is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: March 12, 2013 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board