

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

L.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Palatine, IL, Employer**

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**Docket No. 14-361
Issued: June 5, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2013 appellant filed a timely appeal from the September 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her disability claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's disability from June 3 to 10, 2013 was causally related to an accepted medical condition.

FACTUAL HISTORY

On June 27, 2003 appellant, a 47-year-old mail processing clerk, filed an occupational disease claim alleging that her right shoulder condition was causally related to lifting tubs of

¹ 5 U.S.C. § 8101 *et seq.*

mail at work. OWCP accepted her claim for the right rotator cuff tear and right shoulder tendinitis.²

In a December 23, 2009 decision, OWCP found that appellant's recent wages as a modified mail processing clerk fairly and reasonably represented her wage-earning capacity. As her actual earnings met or exceeded the current wages of the job she held when injured, it found that she was not entitled to compensation for wage loss caused by the accepted employment injury.

On June 21, 2013 appellant filed a claim for wage-loss compensation from June 3 to 10, 2013.³ A June 3, 2013 disability slip from Dr. Anatoly M. Rozman, the attending Board-certified physiatrist, listed that appellant was unable to work from June 3 to 10, 2013.

On July 11, 2013 OWCP wrote to appellant to advise that there was no medical evidence to support total disability for the hours claimed. "You must provide objective medical evidence of a material change or worsening of your condition or proof of a medical or physical therapy appointment on those dates." It advised appellant that she must submit within 30 days medical evidence to support total disability for the entire day on the dates noted or compensation may be denied. OWCP did not send this development letter to the address shown on appellant's claim for wage-loss compensation. A few days later, it received a direct deposit form showing the same address as appellant's claim for wage-loss compensation.

On July 19, 2013 Dr. Rozman advised that appellant was able to return to work on June 13, 2013, but mild pain and some restrictions were noted. He observed that the accepted condition was calcifying tendinitis of right shoulder/rotator cuff sprain of the right shoulder and bursa tendinitis. Dr. Rozman noted that appellant had a problem on the left side as well. He related her findings. It was his recommendation that the left shoulder condition be accepted as part of the claim.

On August 5, 2013 appellant wrote to OWCP to advise that she never received the July 11, 2013 letter. "I was told you need more medical information to pay me. I hope this is the information that is needed." She provided her new mailing address and submitted a June 17, 2013 progress note from Dr. Rozman noting that she was back to work since June 13, 2013.

In a decision dated September 25, 2013, OWCP denied appellant's claim for wage loss. It noted that it had requested additional medical evidence in the July 11, 2013 development letter. OWCP found that Dr. Rozman's report did not provide a well-reasoned explanation based on current objective findings that appellant was totally disabled for the period claimed. Dr. Rozman did not provide objective findings that her condition had materially changed or worsened. OWCP mailed this decision to appellant's new mailing address.

² Under OWCP File No. xxxxxx121, OWCP accepted left-hand extensor tendinitis and ganglion cyst. Under OWCP File No. xxxxxx344, it accepted cervical strain, left shoulder tendinitis and left rotator cuff tear.

³ The time analysis form indicated that appellant took 10 hours of leave without pay on June 4, 7, 8, 10 and 11, 2013 for a total of 50 hours.

Appellant argues that she never received OWCP's July 11, 2013 correspondence. "It was to be remailed to my new address and was not." She adds that she nonetheless submitted medical information to support her claim, which OWCP received on August 19, 2013.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.⁴ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁵

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁶

In administering FECA, OWCP must attempt to obtain any evidence which is necessary for the adjudication of the case which is not received when the notice or claim is submitted. To adjudicate claims promptly and manage them effectively, it should choose the most efficient, direct, and proactive approach, given the individual circumstances of a claim and the nature of injury. OWCP must provide information to the claimant about the procedures involved in establishing a claim, including instructions for developing the required evidence.⁷

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, it will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required.⁸

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.⁹ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹⁰

⁴ 5 U.S.C. § 8102(a).

⁵ 20 C.F.R. § 10.5(f).

⁶ See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4.c(1) (June 2011).

⁸ 20 C.F.R. § 10.121.

⁹ *George F. Gidicsin*, 36 ECAB 175 (1984) (when OWCP sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

¹⁰ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the sender, will raise a presumption that the original was received by the addressee. This is known as the mailbox rule.¹¹

OWCP has a responsibility to keep the claimant's mailing address current.¹²

ANALYSIS

When OWCP sent its July 11, 2013 development letter to appellant, it did not mail the letter to the address shown on her disability claim form. It mailed its development letter to a previous address of record.

A few days after OWCP mailed this development letter, it received another form showing appellant's new home address. As appellant did not explicitly notify OWCP that her address had changed, it appears it did not take note. It was only after she wrote on August 5, 2013 to advise that she never received its July 11, 2013 letter and to submit a progress note from her physiatrist, Dr. Rozman, that OWCP recognized the new address.

Rather than re-mail the development letter to appellant's new address, ensuring that she understood the specific medical evidence necessary to address the deficiency in her claim, OWCP issued a final decision denying the claim. As the record shows that OWCP did not mail its development letter to appellant's current home address, the presumption of receipt under the mailbox rule did not arise. It effectively denied her claim without proper notice and 30 days to respond.

Accordingly, the Board finds that this case is not in posture for decision. Further development is warranted. The Board will set aside OWCP's September 25, 2013 decision denying appellant's disability claim. The case is remanded for issuance of a development letter to her proper home address and 30 days to submit the required evidence. After such further development as may be necessary, OWCP shall issue a *de novo* decision on appellant's disability claim.

CONCLUSION

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

¹¹ *Larry L. Hill*, 42 ECAB 596 (1991) (the presumption of receipt under the mailbox rule must apply equally to claimants and OWCP alike). See generally Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.3.d(3) (January 2001) (describing the major responsibilities of OWCP in computing and paying compensation).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: June 5, 2014
Washington, DC

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

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

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