



Appellant stopped work on that day and returned on June 27, 2014. On the claim form, he listed his street address.

Appellant submitted June 24, 2014 records and a disability status report from an emergency department which advised that he was able to return to work on June 27, 2014.

By letter dated July 1, 2014, OWCP notified appellant that evidence was insufficient to establish his claim and advised him of the type of evidence needed. The letter was sent to an address with a different street designation than that provided on the notice of traumatic injury.

By decision dated August 4, 2014, OWCP denied appellant's claim because medical evidence did not establish a medical condition diagnosed in connection with the work event. The decision was also sent to an incorrect address.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>2</sup> While a claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>7</sup>

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<sup>2</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>3</sup> *See Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4.c(1) (June 2011).

<sup>5</sup> 20 C.F.R. § 10.121.

<sup>6</sup> *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).

<sup>7</sup> *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.<sup>8</sup>

### **ANALYSIS**

OWCP did not mail its July 1, 2014 development letter and August 4, 2014 decision to the correct address as it appeared on appellant's claim form. It did not use the correct street designation. On appellant's claim form the street designation is listed as "street." However, OWCP mailed correspondence using "avenue" as the street designation.

OWCP did not become aware of the error or change the address in its records before issuing its August 4, 2014 decision. Because 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 his claim without proper notice and 30 days to respond.<sup>9</sup>

Accordingly, the Board finds that this case is not in posture for decision. The Board will set aside OWCP's August 4, 2014 decision denying appellant's claim. The case is remanded for issuance of a development letter to his proper home address and 30 days to submit the required evidence.<sup>10</sup> After such further development as may be necessary, OWCP shall issue a *de novo* decision on appellant's claim.

### **CONCLUSION**

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

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<sup>8</sup> *Larry L. Hill*, 42 ECAB 596 (1991) (the presumption of receipt under the mailbox rule must apply equally to claimants and OWCP alike).

<sup>9</sup> *L.R.*, Docket No. 14-361 (issued June 5, 2014) (remanding the case to OWCP when the development letter was not sent to the address shown on appellant's claim form).

<sup>10</sup> *See id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: May 4, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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