

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY A. RAFFILE and U.S. POSTAL SERVICE,
POST OFFICE, Wallingford, Conn.

*Docket No. 97-1791; Submitted on the Record;
Issued February 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether an overpayment of \$3,062.08 occurred in appellant's case.

On December 15, 1995 appellant sustained an injury while in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for back strain and herniated disc at the L5-S1 level and approved surgery. The Office also accepted a recurrence of disability on January 15, 1996. Effective July 15, 1996, the Office placed appellant on the periodic compensation roll, through which she received regular payments of \$1,595.42.

Appellant returned to work on November 12, 1996. The Office issued two subsequent checks, one for the period November 10 to December 7, 1996 with a payment date of December 7, 1996, the other for the period December 8, 1996 to January 4, 1997 with a payment date of January 4, 1997. On January 13, 1997 appellant telephoned the Office to advise that she had gone back to work but was still receiving checks.

On February 12, 1997 the Office issued a preliminary determination that an overpayment of \$3,062.08 occurred from November 12, 1996 to January 4, 1997 because appellant returned to work on November 12, 1996 and continued receiving compensation for total disability through January 4, 1997.

The record contains a copy of a medical enrollment postcard mailed on November 14, 1995 by the Office to appellant's last known address. The U.S. Postal Service stamped this postcard "return to sender." The Office added a change of address label ostensibly on November 21, 1996 but recorded no address change information in the appropriate section of its Form CA-800, Nonfatal Summary.

In a decision dated March 27, 1997, the Office finalized its preliminary determination.

On appeal appellant states that she moved to the new address on September 1, 1996 and that she assumed that Office knew of her return to work because she did not receive another

check until February 1997. She states that she did receive one check, that she agreed there was an overpayment in that amount and that she would like to make arrangements to make payments on that amount. Appellant stated that she did not know what happened to the other check.

The Board finds that this case is not in posture for a determination of whether an overpayment of \$3,062.08 occurred in appellant's case.

The Office found that an overpayment occurred because appellant returned to work on November 12, 1996 and continued receiving compensation for total disability through January 4, 1997. The evidence of record, however, raises a question whether appellant did in fact receive both of the compensation checks at issue. Appellant states that she received only one check after returning to work and that she received this check in February 1997, which is well after the payment date of the second check. The record shows that appellant did move to a new address and that mail from the Office was misdirected to the old address on November 14, 1996. The record does not disclose whether the checks issued on December 7, 1996 and January 4, 1997 were also misdirected to the old address.

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.¹ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.² 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.³

In the present case, it does not appear from the record whether the Office mailed the checks to appellant's new and proper address. Without such evidence, the presumption of receipt under the mailbox rule does not arise. Although appellant acknowledges receipt of one check in February 1997, the record contains no evidence that she received both and there is no evidence of cancellation to show that both of these checks were cashed and accepted.

The Board will set aside the Office's March 27, 1997 decision finding an overpayment of \$3,062.08 and will remand the case for further development. The Office will attempt to determine the address to which it mailed the two checks in question and whether both of these checks were cashed. After such further development as may be necessary, the Office shall make appropriate findings and issue an appropriate preliminary determination and final decision.

The March 27, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.

¹ *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

² *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

³ *Larry L. Hill*, 42 ECAB 596 (1991); Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

February 17, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member