

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR RICHARDS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 00-2288; Submitted on the Record;
Issued September 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a hearing.

On January 25, 1999 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging physical and mental stress due to his federal employment. Appellant submitted a March 17, 1999 medical report from Dr. Alan J. Ward, a clinical psychologist, which diagnosed post-traumatic stress disorder and single episode major depression. Dr. Ward addressed appellant's difficulties with his former supervisor and noted appellant exhibited the shakes, nausea, light-headedness, diarrhea and sleeplessness. He also submitted a leave analysis, position description and list of job responsibilities.

Appellant provided a statement in which he addressed his work history, noting that his former supervisor, Emma J. Coaston, had treated him in a harsh manner and threatened to fire him. He alleged that his supervisor's loud and abusive behavior created a hostile work environment and that she verbally attacked him while on the work floor. Appellant stated that on December 8, 1998, while on his postal route, he requested additional time to stay out and deliver the mail to finish his route. He indicated that Ms. Coaston and another supervisor came out on his route, climbed into his truck and began to threaten him in a loud and abusive manner. Appellant indicated that he began to have chest pains and felt dizzy and weak.

In an April 9, 1999 response, Ms. Coaston stated that she requested reassignment from the employing establishment because appellant had threatened her. She alleged that appellant told her he was a Vietnam veteran and that he had been trained to kill. Ms. Coaston noted that she became fearful of appellant as she was 5'2" and weighed 110 pounds while appellant was 6 feet tall and weighed over 200 pounds. She indicated that appellant bided to work at the station to which she was reassigned as station manager and that she tried to avoid personal contact with him. Ms. Coaston directed his inquiries to Mr. Berry, the tour supervisor and denied any abusive statements alleged to her. She denied knowledge of the alleged December 8, 1998 incident,

noting that appellant's supervisor had informed her that appellant was to receive retraining because of demonstrated poor performance.

In a September 17, 1999 decision, the Office denied appellant's claim finding that there was insufficient evidence to establish his allegations as factual.

By letter dated October 15, 1999, appellant requested an oral hearing.¹

By letter dated November 2, 1999, the Office Branch of Hearings and Review advised appellant that it was processing his hearing request.² In a November 30, 1999 response, appellant requested a subpoena of a witness, noting he also had an affidavit. By letter dated December 6, 1999, the Office denied appellant's subpoena request, noting that appellant had a signed affidavit from the witness and that appellant had not explained why the presence of the witness was relevant to the issue at hand.

On January 7, 2000 the Office issued a notice that an oral hearing was scheduled for February 23, 2000. The notice of hearing was addressed to appellant's former post office box in Chicago, Illinois. The letter indicates, by handwritten note, that the letter was remailed to appellant on January 14, 2000 to 138 West Brayton, Chicago, Illinois.

In a March 8, 2000 decision, the Office found that appellant abandoned his request for a hearing finding that he failed to appear at the February 23, 2000 hearing or contact the Office either prior to or after the hearing date to explain his failure to appear.

The Board finds that the Office improperly found that appellant abandoned his request for a hearing.

Section 10.617(b) of the Office's implementing federal regulations provides that, unless otherwise directed in writing by the claimant, "the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date."³ With regard to a notice of hearing issued by the Office Branch of Hearings and Review, the Board has held that the mailbox rule may apply, stating:

"The Office has the burden of proving that it mailed to a claimant notice of the scheduled hearing. 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. The presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed."⁴

¹ Appellant's return address was listed 138 W. Brayton in Chicago, Illinois.

² This letter was addressed to 138 W. Brayton in Chicago, Illinois.

³ 20 C.F.R. § 10.617(b).

⁴ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

In this case, however, the record does not support that the notice of hearing was properly addressed and mailed to appellant in accordance with the Office's procedures. The January 7, 2000 typewritten notice of hearing was formally addressed to appellant at a prior post office box address. The Board notes that earlier communication from the Office Branch of Hearings and Review, specifically the December 6, 1999 letter denying appellant's request for a subpoena, was properly addressed. The handwritten correction noted on the January 7, 2000 notice, marking "remailed January 14, 2000" does not constitute adequate evidence of proper mailing. The mailbox presumption of receipt by appellant does not arise in this case.⁵ As the record fails to demonstrate that appellant was properly notified of the scheduled hearing, the case will be remanded to the Office to provide appellant the opportunity of a hearing.

The January 7, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action in conformance with this decision.

Dated, Washington, DC
September 21, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ See *Newton D. Lashmett*, 45 ECAB 181 (1993).