

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CECILIA ACEVEDO and SOCIAL SECURITY ADMINISTRATION,  
HUMAN RESOURCE CENTER, Richmond, CA

*Docket No. 01-1401; Submitted on the Record;  
Issued May 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant abandoned her April 26, 2000 request for a hearing before a hearing representative of the Office of Workers' Compensation Programs.

The Board finds that appellant abandoned her request for an oral hearing.

On February 5, 1988 appellant, then a 39-year-old service representative, filed a CA-1 claim for traumatic injury, alleging that she became entangled in a telephone cord and fell. In a January 10, 1989 decision, the Office accepted appellant's claim for a fractured wrist and later for a ganglion cyst.

Appellant received total temporary disability until April 13, 2000 when the Office reduced her wages after conducting a loss of wage-earning capacity determination.

In an April 26, 2000 letter, appellant requested a hearing before an Office hearing representative. The return address on her envelope was P.O. Box 827 Globe, AZ 85501. In a June 13, 2000 letter, appellant notified the Office of a change of address to 668 South East St #6, Globe, AZ 85501. In a letter dated September 2, 2000, the Office notified appellant the hearing was scheduled for October 25, 2000. The letter, sent to 668 South East Street #6, Globe AZ 85501, was returned with a stamp from the Post Office affixed to the envelope indicating appellant's new address was 8105 E. Remington Road Globe, AZ 85501. A handwritten note in the file indicates the Office mailed on September 21, 2000 the notice of the hearing to both the 8105 E. Remington Road, Globe, AZ and the P.O. Box 827, Globe, AZ addresses. There is no indication in the record either of the letters was returned.

Appellant did not appear for the hearing. In a November 9, 2000 decision, mailed to P.O. Box 827, Globe AZ, the Office found appellant abandoned her hearing request.

In a letter dated November 13, 2000, but stamped as received by the Office on December 28, 2000, appellant requested payment for emergency dental services and indicated

that she had not received any notice of the hearing. She also indicated her address was 629 N. Hill Street #B, Globe, AZ 85501. On April 20, 2001 appellant appealed to the Board.

The only decision before the Board is the issue of hearing abandonment. Because more than one year has elapsed between the issuance of the Office's April 13, 2000 decision and April 18, 2001, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the April 13, 2000 decision.<sup>1</sup> The Office's November 9, 2000 decision, which found appellant abandoned her hearing request, was issued within a year prior to appellant's filing of her claim with the Board and, therefore, this decision is within the Board's jurisdiction.

The legal authority governing abandonment of hearings now rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.”

Each of these conditions are present in the present case; appellant did not request postponement, she did not appear at the hearing and she has not provided notification why she failed to appear.

The Board notes that, in her November 13, 2000 letter requesting the Office pay for dental services, appellant suggests she did not receive notice of the 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.<sup>2</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>3</sup> 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.<sup>4</sup> The Office's finding of abandonment in this case rests on the strength of this presumption. The Office's September 2, 2000 notice, which advised appellant of the time and place of the hearing was addressed and mailed to three different addresses, including 668 South East Street #6, Globe AZ, that appellant provided as her address on June 13, 2000, the 8105 E. Remington Road, Globe AZ, that the Post Office, at appellant's request, provided as appellant's new address in September and at P.O. Box 827, Globe, AZ, an address where previous mail had

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<sup>1</sup> See 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> *George F. Gidicsin*, 36 ECAB 175, 178 (1984).

<sup>3</sup> *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

<sup>4</sup> *Larry L. Hill*, 42 ECAB 596, 600 (1991).

been sent. Therefore, it may be presumed the letter was sent to at least one proper address for appellant. Nothing in the record rebuts the presumption that at least one of the addresses used by the Office was a proper address.

After the issuance of the Office's November 9, 2000 decision, appellant through her letter dated November 13, 2000 but received on December 28, 2000 has alleged that she did not receive a copy of the notification of the date and place of the scheduled hearing. However, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision and the Board may, therefore, not consider whether appellant's explanation is sufficient to rebut the presumption of receipt raised by the "mailbox rule." When the Office issued its November 9, 2000 decision, the record contained no explanation for appellant's failure to appear. The Office's decision, therefore, was proper.

The November 9, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
May 22, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member