

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLYN MOBLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Jacksonville, FL

*Docket No. 03-1411; Submitted on the Record;  
Issued February 11, 2004*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after October 17, 2000 causally related to her March 8, 2000 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

Appellant, a 42-year-old distribution clerk, filed a notice of traumatic injury on March 10, 2000 alleging that on March 8, 2000 she injured her right shoulder when her supervisor pushed her in the right shoulder. The Office accepted appellant's claim for a right shoulder contusion. Appellant was released to light duty on March 10, 2000 and returned to regular work on June 6, 2000. She filed a notice of recurrence of disability on March 15, 2002 alleging that she experienced continuous pain since the initial injury and now had tendinitis. The date of the recurrence was noted as being October 17, 2000. Appellant has not stopped work.

In a letter dated May 20, 2002, the Office requested additional factual and medical evidence. A July 11, 2002 report from Dr. May Montrichard, a Board-certified family practitioner, was received along with objective testing of appellant's right shoulder. By letter dated July 31, 2002, the Office requested that Dr. Montrichard submit medical rationale explaining how he believed appellant's current shoulder condition was related to the March 8, 2000 injury.

On September 6, 2002 the Office spoke to the employing establishment and was advised that appellant had a new address. After confirming the address with appellant, the Office resent its development letter of May 20, 2002 and the copy of its July 31, 2002 letter to Dr. Montrichard to appellant at "4455 SW, 34<sup>th</sup> Street, Apt R94, Gainesville, FL 32608."

By decision dated October 10, 2002, and sent to appellant at 1015 NW, 21<sup>st</sup> Avenue 24, Gainesville, FL 32609, the Office denied appellant's claim finding that she failed to establish the

necessary relationship that her present shoulder condition on or after October 17, 2000 was caused or aggravated by the accepted work injury.

The October 10, 2002 decision was returned to the Office. An October 18, 2002 notation on the envelope advised to return to sender as the forward time had expired for “Mobley, 4455 SW, 34<sup>th</sup> Street Apt R94, Gainesville, FL 32608-6549.”

On November 15, 2002 the Office received a change in address form from appellant effective November 8, 2002. Appellant’s new address was noted as being “5333 SW, 75 Street Apt GG197.”

On November 19, 2002 the Office received a November 13, 2002 letter from appellant requesting an oral hearing. She stated that she received notification of the October 10, 2002 decision on November 9, 2002 and it was impossible for her to request an oral hearing in time. The record contains a copy of a handwritten envelope from the Office addressed to appellant at a “5333 SW, 75 Street, Apt. GG197 Gainesville, FL 32608” bearing a November 9, 2002 postmark.

By decision dated January 29, 2003, the Office denied appellant’s request for an oral hearing, finding that the request was filed more than 30 days after the issuance of the October 10, 2002 decision. The hearing representative further found that the case could be equally addressed by requesting reconsideration from the Office and submitting evidence not previously considered, which established that disability claimed on or after October 17, 2000 was related to the March 8, 2000 employment injury.

The Board finds that this case is not in posture for a decision.

The Board notes that on September 6, 2002, the Office was advised of appellant’s new address at 4455 SW, 34<sup>th</sup> Street, Apt R94, Gainesville, FL 32608 and had sent appellant information at such address. The Office sent the October 10, 2002 decision to appellant’s original address of 1015 NW, 21<sup>st</sup> Ave 24, which was subsequently returned to the Office on October 21, 2002 as the forwarding time had expired for appellant’s 4455 SW, 34<sup>th</sup> Street, Apt R94 address. Appellant eventually received the October 10, 2002 decision, but only after she informed the Office of her second new address.

Section 10.127 of the regulations states: “A copy of the decision shall be mailed to the employee’s last known address.”<sup>1</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. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.<sup>2</sup> In this case, appellant received a copy of the October 10, 2002 decision, but not to the last known address at the time the decision was issued. The record clearly indicates that the Office sent the October 10, 2002 decision to appellant’s original address after being informed about appellant’s new address on 4455 SW, 34<sup>th</sup> Street, Apt

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<sup>1</sup> 20 C.F.R. § 10.127; *see also Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>2</sup> *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

R94. Accordingly, pursuant to the regulation and case law, the presumption that appellant received the October 10, 2002 decision at the proper mailing address is rebutted because the decision was not mailed to appellant's last known address. On remand the Office shall reissue, by a *de novo* decision, the subject matter of the October 10, 2002 decision. The time limitation provisions under the Act concerning appellant's right to appeal, request a hearing or request reconsideration of that decision will commence with the issuance of the Office's *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated January 29, 2003 and October 10, 2002 are hereby set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
February 11, 2004

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member