

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>RODGERICK C. HOLMES, SR., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-683</b>
	)	<b>Issued: July 8, 2004</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL INSTITUTION, Yazoo City, MS, Employer</b>	)	
	)	

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*Appearances:*  
*Rodgerick C. Holmes, Sr., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On January 16, 2004 appellant filed a timely appeal from the September 18, 2003 merit decision of the Office of Workers' Compensation Programs, which denied his claim alleging that he sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this Office decision.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On March 21, 2003 appellant, then a 41-year-old lieutenant correctional services supervisor, filed a claim alleging that his depression was a result of his federal employment. He noted prior employment injuries on January 31 and November 14, 2002 and explained that he had exhausted his leave because of these injuries. Appellant stated that he was offered a

temporary alternative-duty assignment as a telephone monitor in the Control Center, an area where all staff entering the institution could observe him. He wanted to return to limited duty in his usual job as lieutenant, but his request was denied. Feeling pressured to accept the assignment because appellant was given little time to decide, he returned to work on January 21, 2003 which also happened to be his first day of physical therapy for a previous injury. His therapy lasted over an hour per session, three days a week. In addition, appellant had to commute an hour to and from his place of employment. He summarized his claim as follows:

“This burden has placed a great deal of stress and strain not to mention the amount of pain endured from the injuries I sustained. Since my return to work, working 8 hours per day, therapy and the 2 hour commute to and from work, it has taken its toll on me, mentally as well as physically. I am deeply depressed.”

Appellant noted that in his previous claim the Office had denied compensation for 13 hours of leave without pay and that this loss made him delinquent in paying his monthly bills.

In a letter dated May 20, 2003, the Office requested that appellant submit additional information to support his claim. On or about June 5, 2003 this letter was returned to the Office as undeliverable.

In a decision dated September 18, 2003,<sup>1</sup> the Office denied appellant’s claim for compensation. The Office found no compensable factors of employment. The Office found that being assigned a limited-duty position visibly answering telephones and not being assigned work in his prior work area did not arise in the performance of his duties, nor did having to commute two hours to and from work, having to report for physical therapy three times a week or having no paid leave. The Office indicated that the action of appellant’s supervisor was an administrative function and was not covered by workers’ compensation in the absence of evidence that the employing establishment acted unreasonably in handling the matter.

Explaining the basis of its decision, the Office stated as follows: “On May 20, 2003 this office advised you of the deficiencies of your claim and afforded you with 30 days to submit additional evidence to support your claim, in which you alleged that you sustained an emotional condition in the performance of your duties.” The Office advised that it was denying appellant’s claim “based on the fact that the evidence of records [sic] does not support that you have sustained an emotional condition in the performance of your duties.”

### **LEGAL PRECEDENT**

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his emotional condition was caused or adversely affected by his federal employment.<sup>2</sup> This burden includes the submission of a detailed description of the employment

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<sup>1</sup> Although the cover letter is dated September 18, 2003, the Office appears to have issued the decision on December 18, 2003; the decision was entered into the record on December 18, 2003 and this date is more consistent with appellant’s assertion on appeal that the decision was postmarked on December 24, 2003. Nonetheless, for the purposes of this appeal, the Board will refer to this decision as the Office’s September 18, 2003 decision.

<sup>2</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

factors that he believes caused or adversely affected the condition for which he claims compensation.<sup>3</sup> He must also submit a well-reasoned medical opinion establishing that he has an emotional or psychological disorder and that such disorder is causally related to the identified compensable factors of employment.<sup>4</sup>

The Office is not a disinterested arbiter, however, but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.<sup>5</sup> While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>6</sup> It must obtain any evidence that is necessary for the adjudication of the case which is not received when the notice or claim is submitted. The Office is responsible for providing the claimant information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence and upon initial examination of the case should request all evidence necessary to adjudicate the case.<sup>7</sup>

### ANALYSIS

In this case, the Office did not discharge its responsibility for the initial development of the evidence. After receiving his claim form, the Office mailed a letter on May 20, 2003 requesting that appellant submit additional information to support his claim. 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>8</sup> This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.<sup>9</sup> 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>10</sup>

No such presumption of receipt arises in this case for two reasons. First, the record shows that the Office misaddressed its May 20, 2003 initial development letter. The Office

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<sup>3</sup> *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (one of the essential elements of a claim is that the claimant specify factors of his employment that he believes caused an injury, such as an emotional or hypertensive condition).

<sup>4</sup> *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>5</sup> *Thomas M. Lee*, 10 ECAB 175, 177 (1958).

<sup>6</sup> *Mary A. Barnett (Frederick E. Barnett)*, 17 ECAB 187, 189 (1965).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).

<sup>8</sup> *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).

<sup>9</sup> *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>10</sup> *Larry L. Hill*, 42 ECAB 596 (1991) (the presumption of receipt under the mailbox rule must apply equally to claimants and the Office alike). See generally Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4<sup>th</sup> 476, 481 (1986).

mailed the letter to “709” Towery Court, Ridgeland, MS while appellant’s last known address – as it appeared on his March 21, 2003 claim form and in a letter dated April 23, 2003 – was “706” Towery Court, Ridgeland, MS. Second, the record shows that the May 20, 2003 letter was returned to the Office as undeliverable. The Office had appellant’s correct address,<sup>11</sup> but made no further attempt to provide him information about the procedures involved in establishing his claim or to request all evidence necessary to adjudicate his case. The Office must afford appellant this notice and an opportunity to respond before issuing a final decision on his claim.<sup>12</sup>

**CONCLUSION**

The Board finds that this case is not in posture for decision. The Board will remand the case to the Office for proper development of the evidence. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant’s claim for compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2003 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: July 8, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>11</sup> Indeed, the Office mailed its September 18, 2003 decision to appellant’s correct address.

<sup>12</sup> See *Marie L. Kepping (Edwin O. Kepping)*, 12 ECAB 304 (1961) (the better administrative practice is to advise the claimant specifically of the need for supporting medical opinion with rationale prior to issuing a compensation order rejecting the claim).