United States Department of Labor
Employees' Compensation Appeals Board

YOSHICA D. POINDEXTER, Appellant	)	
and	)	**Docket No. 06-1012**
	)	**Issued: July 18, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Anchorage, AK, Employer	)	

Appearances:
Yoshica D. Poindexter, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 27, 2005 denying her claim that she sustained an emotional condition in the performance of duty and a nonmerit decision dated November 21, 2005 finding that she abandoned her request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly determined that appellant abandoned her request for a hearing; and (2) whether appellant established that she sustained an emotional injury in the performance of duty.

FACTUAL HISTORY

On January 12, 2005 appellant, a 30-year-old security screener, filed a notice of occupational disease claim alleging that her emotional condition was a result of her federal

employment. She claimed that she experienced anxiety and stress due to harassment on the part of her supervisors and coworkers. Appellant alleged that her supervisors called her at home when she failed to report to work; overlooked her for bonuses; questioned her about the length of bathroom breaks; joked about her medications in front of coworkers; confronted her about talking on her cellular phone in view of the public; inappropriately reprimanded her in front of passengers; and criticized her for the way she wore her hair. She claimed that a coworker "slugged" her on the arm, after grabbing a passenger's wallet while she assisted him. Appellant made numerous complaints of discriminatory treatment, including being denied the same training offered employees on other shifts.

Appellant submitted a March 2, 2005 attending physician's report bearing an illegible signature, indicating that appellant suffered from a major depressive disorder, recurring, severe and chronic post-traumatic stress disorder (PTSD), which had been exacerbated by stress in the workplace.

On March 14, 2005 the Office informed appellant that the information submitted was insufficient to establish her claim and advised her to provide details of the incidents that allegedly caused her condition, as well as a comprehensive medical report supporting a causal relationship between her diagnosed condition and the alleged factors of employment.

Appellant submitted a March 9, 2005 duty status report bearing an illegible signature indicating that she suffered from "symptom[-]exaggerated PTSD and depressive syndrome." A February 8, 2005 psychiatric assessment bearing an illegible signature reflected the author's belief that appellant's perception that she was being harassed on the job was accurate.

In a March 25, 2005 interoffice memorandum, Glenn Muilenburg of the employing establishment stated that appellant had not been to work since December 16, 2004 and that every time management tried to contact her, she interpreted the call as harassment. He controverted appellant's claims, indicating that she had been treated fairly and in the same fashion as the other screeners; that there had been no unreasonable demands made on appellant; and that appellant had been the subject of disciplinary action, due to her excessive absenteeism and inability to conform to the employment establishment's policies.

By decision dated May 27, 2005, the Office denied appellant's claim, finding that she had failed to establish any compensable factors of employment.

On June 6, 2005 appellant requested a telephone hearing. On her request, appellant listed her address as 4000 Spenard Road, Unit A, Anchorage, Alaska 99517. Appellant alleged that the employing establishment subjected her to an extremely hostile and abusive environment, including verbal abuse. Appellant submitted an unsigned narrative statement indicating that she received a telephone call from James Nagel on January 7th informing her in a rude, condescending tone, that she would be considered a "no-show," even though she had informed Human Resources of her emotional condition. When she complained that she was being harassed, she was informed by Laura Takagaa that her supervisors were required to call her and that "things [did not] look good for [her]."

By letter dated July 19, 2005, the Office acknowledged receipt of appellant's request for an oral hearing. The acknowledgement was mailed to appellant at 4000 Spenard Road, Unit A, Anchorage, Alaska 99517.

By notice dated September 29, 2005, the Office informed appellant that an informal telephone conference would be held on November 8, 2005 at 12:00 p.m. The notice further informed her of the procedure to follow on the date of the hearing and of her rights regarding the hearing. The notice was mailed to appellant at P.O. Box 91951, Anchorage, Alaska 99591.

By letter dated October 19, 2005, the Office advised appellant that the notice of the November 8, 2005 hearing had been returned due to an incorrect address and that it was resending the notice to the correct address on Spenard Road. The record contains a copy of a returned envelope postmarked October 3, 2005, bearing the notation "moved, left no address."

By decision dated November 21, 2005, the Office determined that appellant had abandoned her request for a hearing. The Office confirmed that appellant had failed to appear at the telephone hearing on November 8, 2005 and noted that there was no indication in the file that appellant had contacted the Office either prior or subsequent to the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date-of-the decision, for which a hearing is sought.[1] Unless otherwise directed in writing by the claimant, the Office 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.[2]

The Office has the burden of proving that it mailed to appellant and her representative a notice of a scheduled hearing.[3] Under the mailbox rule, 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 when it appears from the record that the notice was properly addressed and duly mailed.[4]

[1] 20 C.F.R. § 10.616(a).

[2] 20 C.F.R. § 10.617(b).

[3] *See Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

[4] *Michelle Lagana*, 52 ECAB 187, 189 (2000).

The authority governing abandonment of hearings 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.
>
> Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]."[5]

ANALYSIS

The Board finds that the Office improperly found that appellant abandoned her request for an oral hearing.

In this case, appellant made a timely request for an oral hearing. Accordingly, the Office had the burden of proving that it mailed to appellant a notice of a scheduled hearing at least 30 days before the scheduled date.[6] 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.[7] However, in this case, the record reflects that the original notice, dated September 29, 2005 and postmarked October 3, 2005, was not properly addressed to appellant and that, due to the incorrect address, the notice was returned to the Office as undeliverable. In appellant's request for a hearing, she listed her address as 4000 Spenard Road, Unit A, Anchorage, Alaska 99517. On July 19, 2005 the Office mailed an acknowledgement of the receipt of her request to appellant at the Spenard Road address. The record shows that the notice of the November 8, 2005 hearing was mailed to appellant at P.O. Box 91951 in Anchorage, Alaska and contains a copy of the returned envelope postmarked October 3, 2005 bearing the notation "moved, left no address." Moreover, the Office acknowledged that it sent the original notice of hearing to the wrong address.

When the Office advised appellant that the notice of the November 8, 2005 hearing had been returned due to an incorrect address and resent the notice to the correct address on October 19, 2005, it provided appellant with less than 30 days notice of her scheduled hearing.

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[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, Hearings and Reviews of the Written Record, Chapter 2.1601.6(e) (January 1999).

[6] *Supra* note 2.

[7] *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

The Board finds that the Office failed to give appellant proper notice of her hearing under 20 C.F.R. § 10.617(b). Thus, the case must be returned to the Office for the proper scheduling of another hearing for appellant.[8]

CONCLUSION

As the Office failed to provide proper notification to appellant of the hearing scheduled for November 8, 2005, the case is remanded to the Office for a hearing to be scheduled before an Office hearing representative with proper notice provided to all parties. The Board finds that this case is not in posture for a decision on the issue of whether appellant sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 21, 2005 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[8] As the case must be remanded to the Office for scheduling of a second hearing and other appropriate development, the Board finds that the case is not in posture for a decision on the second issue.