



## **FACTUAL HISTORY**

On November 28, 2005 appellant, a 59-year-old construction material specialist, filed a traumatic injury claim, Form CA-1, alleging that he pinched a nerve in his right hip when he jammed his foot against the door while exiting the back seat of a rental car on November 23, 2005. He also submitted records from chiropractor, Dr. Cynthia Rait, detailing his treatment from November 25 to 28, 2005 and a coworker statement describing the alleged employment incident. The CA-1 form listed appellant's home mailing address as 4104 Glen Hill Manor, Louisville, Kentucky, 40272.

On December 16, 2005 the Office informed appellant that he had not presented medical opinion evidence establishing that his diagnosed condition was caused by the alleged injury. It noted that, under the Federal Employees' Compensation Act, the medical opinion of chiropractors could only be used to establish spinal subluxation. The letter was misaddressed to 4704 Glen Hill Manor, Louisville, KY 40272.

Appellant responded with a written statement dated December 27, 2005 detailing his treatment since the time of the alleged injury. On December 28, 2005 a Dr. Sorota, a chiropractor, in Louisville, Kentucky, released appellant to normal duties.

By decision dated January 23, 2006, the Office denied appellant's claim for compensation on the grounds that he had submitted no medical evidence establishing that he sustained a medical condition due to the November 23, 2005 accepted incident of jamming his foot while exiting a rental car. The decision was misaddressed to 4704 Glen Hill Manor, Louisville, KY 40272.

On February 11, 2006 appellant requested an oral hearing, using the appeal request form that was attached to the Office's January 23, 2006 decision. On the form, he provided his address as 4104 Glen Hill Manor, Louisville, KY 40272. On March 16, 2006 the Office sent appellant a letter informing him that his hearing request had been received and that, if it determined that his case was in posture, a hearing would be scheduled within six to eight months. The letter was misaddressed to 4704 Glen Hill Manor, Louisville, KY 40272.

On September 21, 2006 the Office issued a notice of hearing stating that appellant's requested oral hearing would be held on October 24, 2006 at the U.S. Federal Building, 600 Martin Luther King, Jr., Place, Room 185C, Louisville, KY 40272 at 12:00 p.m. The notice was misaddressed to 4704 Glen Hill Manor, Louisville, KY 40272.

By decision dated November 17, 2006, the Office found that appellant had abandoned his request for a hearing. It stated that appellant had received written notification of the hearing 30 days in advance of the hearing and had failed to appear. The Office also stated that "there was no indication in the file that [appellant] contacted the Office either prior or subsequent to the scheduled hearing to explain [his] failure to appear." The decision was addressed to 4704 Glen Hill Manor.

## 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.<sup>2</sup> 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.<sup>3</sup>

The Office has the burden of proving that it mailed notice of a scheduled hearing to appellant.<sup>4</sup> 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 only when it appears from the record that the notice was properly addressed and duly mailed.<sup>5</sup>

## ANALYSIS

Appellant challenged the Office's finding that he had abandoned his request for an oral hearing by stating that he had never received notice of the hearing. The issue is whether the Office has met its burden of establishing that notice of the scheduled hearing was mailed to appellant.

The Board finds that the record does not establish that the notice of hearing was properly addressed and mailed to appellant in accordance with Office procedures. The Office mailed its September 21, 2006 notice of hearing to 4704 Glen Hill Manor, Louisville, KY 40272 rather than appellant's actual address of record 4104 Glen Hill Manor, Louisville, KY 40272. Likewise, its November 17, 2006 decision finding that he had abandoned his request for a hearing was misaddressed to 4704 Glen Hill Manor. When a notice is misaddressed, the presumption of receipt by appellant does not arise,<sup>6</sup> regardless of whether he received other misaddressed mailings. The Board finds that the record contains no evidence that appellant was properly notified of the oral hearing scheduled for October 24, 2006. The Board therefore finds that the Office has not met its burden of proof that it mailed appellant notice of the scheduled hearing.

## CONCLUSION

The Board finds that the Office did not properly determine that appellant abandoned his hearing request. The case will be remanded to provide appellant the opportunity for a hearing.

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<sup>2</sup> 20 C.F.R. § 10.616(a).

<sup>3</sup> 20 C.F.R. § 10.617(b).

<sup>4</sup> See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

<sup>5</sup> *Michelle Lagana*, 52 ECAB 187, 189 (2000).

<sup>6</sup> *Nelson R. Hubbard*, 54 ECAB 156 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 17, 2006 is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: June 8, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board