United States Department of Labor
Employees' Compensation Appeals Board

B.R., Appellant	)	
and	)	**Docket No. 09-205**
	)	**Issued: July 23, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Appellant, 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 October 27, 2008 appellant filed a timely appeal of a January 24, 2008 decision of the Office of Workers' Compensation Programs denying his claim for compensation and a July 24, 2008 decision of an Office hearing representative finding that he had abandoned his 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 appellant abandoned his request for a hearing before an Office hearing representative; and (2) whether appellant met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 28, 2007 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he sustained cervical sprain and lumbar strain from casing and carrying mail. He stopped work on October 12, 2005 and returned to work on November 16, 2005. Appellant provided his return address.

In support of his claim, appellant submitted reports dated October 30 and November 21, 2007 from Dr. Neal Taub, a Board-certified physiatrist, who diagnosed chronic lumbar syndrome and noted that appellant's duties as a mail carrier aggravated his back condition. In a June 22, 2007 report, Dr. Surendrapal Singh Mac, a Board-certified orthopedic surgeon, diagnosed resolved cervical sprain, resolved lumbar strain and degenerative arthritis with degenerative disc disease of the lumbar spine. He indicated that on October 12, 2005 appellant probably had a temporary aggravation of his back condition resulting in increased symptoms.

On December 5, 2007 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence.

Appellant submitted a January 3, 2008 statement noting that, while delivering mail on November 12, 2005, he felt severe pain and aggravation in his lower back and legs. He asserted that his job duties consisting of casing mail and curb line delivery, which required twisting and turning his body, aggravated his back condition. In an undated statement, appellant provided a detailed description of his job duties and the amount of time per day spent performing each duty. He noted that casing and delivering mail consisted of constant turning and twisting of his body as well as bending, stooping and lifting.

Appellant subsequently submitted several reports from Dr. Taub dated between April 25 and December 28, 2007 diagnosing chronic lumbar syndrome.

By decision dated January 24, 2008, the Office denied appellant's claim for compensation finding that the evidence was insufficient to establish that the events occurred as alleged. It also found that the medical evidence did not establish a work-related condition.[1] The decision listed an erroneous address as a vowel was misentered.

Appellant requested an oral hearing on February 23, 2008. Both the appeal request form and the envelope bearing the postmark properly listed appellant's address. On June 2, 2008 the Office issued a notice to appellant informing him that a telephone hearing was scheduled for July 8, 2008 at 9:00 a.m. It provided him with a telephone number and a pass code to use to access the hearing representative. The Office's notice again erroneously listed appellant's street address.

By decision dated July 24, 2008, the Office found that appellant had abandoned his request for an oral hearing as he received proper notice of the scheduled hearing but did not appear. It advised that he did not contact it prior to or subsequent to the scheduled hearing to explain his failure to appear.

On appeal, appellant asserts that he did not receive written notification that the hearing was scheduled for July 8, 2008.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act and its implementing regulations, a claimant who has received a final adverse decision by the Office is entitled to receive a hearing

[1] The Office noted that, on July 12, 2007, it denied ongoing benefits for a back condition resulting from the April 21, 2003 work injury. This pertains to a separate claim that is not before the Board.

upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.[2] Unless otherwise directed in writing by the claimant, the 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.[3] The Office has the burden of proving that it mailed notice of a scheduled hearing to a claimant.[4]

The authority governing abandonment of hearings rests with the Office's procedure manual, which provides as follows:

> "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, [the 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 [district Office]."[5]

ANALYSIS

Appellant asserts on appeal that he did not abandon his hearing as he never received notice of the scheduled hearing. The Board finds that the record establishes that the notice of hearing was not properly addressed and mailed to appellant. As the notice was not properly addressed, there is not a presumption that appellant received notice of his scheduled hearing.[6]

Appellant provided his return address on correspondence to the Office, including his Form CA-2, the February 23, 2008 appeal request form and on the postmarked envelope containing the February 23, 2008 hearing request. However, the Office misaddressed notice of oral hearing.[7] As the Office did not use the correct spelling of appellant's address it did not properly address the notice of hearing.[8] The record establishes that the Office did not mail the notice of oral hearing to appellant at his correct address. The presumption inherent in the

---

[2] *See* 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

[3] 20 C.F.R. § 10.617(b).

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

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearing and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999); *see R.C.*, 59 ECAB ___ (Docket No. 08-132, issued May 9, 2008).

[6] *See Michelle R. Littlejohn*, *supra* note 4 (where the Board found that a notice of hearing sent to an incomplete address did not constitute proper notice, and therefore, appellant's failure to appear did not constitute abandonment of her hearing request).

[7] The record reflects that appellant had received some mail from the Office listing the misspelled address. However, this is insufficient to establish that all correspondence sent by the Office to the improper address reached appellant.

[8] *See Clara T. Norga*, 46 ECAB 473 (1995) (where the Office's finding of abandonment in a case rests on the strength of the presumption that the notice was properly addressed and duly mailed).

mailbox rule, that a notice mailed to an individual in the ordinary course of business was received by that individual, is rebutted.[9]

The Board finds that the record does not establish that appellant was properly notified of the oral hearing scheduled for July 8, 2008. Therefore, 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 the Office to schedule a hearing before an Office hearing representative with proper notice provided to appellant.[10]

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2008 decision is set aside and the case is remanded to the Office for action consistent with this opinion of the Board.

Issued: July 23, 2009
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

[9] *See Littlejohn*, *supra* note 4.

[10] In light of the Board's decision, the merit issue is moot.