

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

C.E., Appellant)

and)

DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF INVESTIGATION,)
Indianapolis, IN, Employer)

**Docket No. 12-631
Issued: April 25, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On January 4, 2012 appellant filed a timely appeal from an August 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his emotional condition claim. The Board docketed the appeal as No. 12-631.

The Board has reviewed the record on appeal and finds that the case is not in posture for decision. On prior appeal, in a decision dated November 23, 2010, the Board remanded the case for OWCP to refer appellant for a second opinion examination to determine whether he sustained an emotional condition caused or aggravated by the compensable work factors.¹

¹ Docket No. 10-461. On June 2, 2011 the Board denied appellant's petition for reconsideration of its November 23, 2010 decision. In prior decisions and orders dated June 29, 2004 and September 25, 2006, the Board remanded the case for the employing establishment to respond to appellant's allegations. In a decision dated November 24, 2008, the Board accepted as compensable work factors that appellant's window was broken by a bullet or projectile on March 8, 1978 and that a coworker threatened to break his kneecaps. It also found that the employing establishment erred in investigating him for charges or wrongdoing, issuing disciplinary action, failing to provide a fitness-for-duty physician with complete information and downgrading his 1978 performance appraisal.

On remand, by letter dated December 17, 2010, OWCP referred appellant to Dr. Vahid Osman, a Board-certified psychiatrist, for a second opinion examination.² In a January 12, 2011 e-mail message, an appointment scheduler for OWCP noted that Dr. Osman related that he had “sent the claimant home because he felt that the claimant was a conflict of interest” as he had previously reviewed his medical records.

In a letter dated January 28, 2011, OWCP referred appellant to Dr. Mark E. Reynolds, a Board-certified psychiatrist, for a second opinion examination scheduled for February 18, 2011. The referral letter, however, was misaddressed as it was sent to 150 N instead of 1050 N. On March 9, 2011 Dr. Reynold’s office advised that appellant had not attended the scheduled appointment.

By decision dated August 29, 2011, OWCP denied appellant’s emotional condition claim. It found that it had attempted to further develop the medical evidence by twice scheduling second opinion examinations but that he did not cooperate with the referrals. OWCP determined that appellant failed to attend the examinations scheduled with Dr. Osman and Dr. Reynolds. It further found that the medical evidence that he submitted was insufficient to show an employment-related emotional condition.

On appeal appellant contends that he did not receive the letter referring him to Dr. Reynolds for a February 18, 2011 examination.³ The Board has found that, in the absence of evidence to the contrary, a notice mailed to an individual in the ordinary course of business was received by the individual.⁴ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. However, in the absence of properly addressed correspondence, the presumption cannot arise.⁵ OWCP’s January 28, 2011 letter referring appellant to Dr. Reynolds for a February 18, 2011 examination was incorrectly addressed and thus OWCP cannot presume that it was received. Accordingly, it erred in finding that his failure to appear at the scheduled examination constituted a lack of cooperation with its attempt to develop the medical evidence. Further, contrary to OWCP’s finding in its August 29, 2011 decision, the record supports that appellant attended the examination scheduled with Dr. Osman but was sent home by the physician because of a conflict of interest as the physician had previously reviewed appellant’s records.

Accordingly, the Board finds that OWCP erred in determining that appellant did not cooperate with its attempt to develop the medical evidence as instructed by the Board on prior

² OWCP’s letter referring appellant to Dr. Osman was not properly addressed.

³ On appeal appellant relates that he received a telephone call on an uncertain date regarding the February 18, 2011 examination and informed the individual that he was scheduled for surgery on that date.

⁴ See *W.P.*, 59 ECAB 514 (2008); see also *Michelle R. Littlejohn*, 42 ECAB 463 (1991) (notices not properly addressed do not support the presumption that the notice was received).

⁵ *Id.*

appeal. The case will be remanded for it to refer him for a second opinion examination to evaluate whether he sustained an emotional condition due to compensable work factors.⁶

IT IS HEREBY ORDERED THAT the August 29, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ By letter dated January 28, 2011, OWCP noted that one of appellant's relatives indicated that he had a new address. It informed him that it would use his address of record unless otherwise notified. OWCP sent its August 29, 2011 decision, however, to the new address. Any error by OWCP has not adversely impacted appellant as he timely requested an appeal of the August 29, 2011 decision to the Board.