

On remand, OWCP scheduled a telephone hearing to be held on May 18, 2012 at 9:00 a.m. eastern time. The record reflects that on April 12, 2012 OWCP mailed a notice of the hearing to appellant at his address in West Germany. Appellant failed to contact OWCP at the appointed time.

By decision dated August 29, 2012, OWCP found that appellant had abandoned his request for a prerecoupment hearing, as he failed to appear for the hearing of which he was properly notified, and that there was no indication in the file that he had contacted OWCP either prior or subsequent to the scheduled hearing to explain his failure to appear. It also found that appellant was at fault in the creation of an overpayment in the amount of \$1,701.28. On appeal, appellant contends that he did not receive notice of the prerecoupment hearing.

Appellant had notified OWCP in writing, by letter dated January 20, 2010, of his proper address, which was to Germany. The record reflects that by letter dated March 10, 2010, received by OWCP on March 19, 2010, appellant reiterated that he had not been receiving correspondence from OWCP that had been incorrectly addressed. He informed OWCP that all correspondence should be addressed to him at Deutschland. Appellant requested: "Please make sure my address is as listed above. There is no East Germany anymore, and that seems to be a sensitive issue with the Post." He also indicated that OWCP's March 5, 2010 letter, acknowledging appellant's change of address, was the first communication he had received from OWCP in over six months, noting that mail addressed to him "winds up being returned."

The recipient of an alleged overpayment may present evidence in response to OWCP's preliminary notice, either in writing or at a prerecoupment hearing requested within 30 days.² Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.³ OWCP has the burden of proving that it mailed to appellant a notice of a scheduled hearing.⁴ It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁵ However, absent evidence of a properly addressed notice, the presumption cannot arise.⁶

The Board finds that OWCP overlooked appellant's March 10, 2010 letter in which he informed OWCP of his correct address. The April 12, 2012 notification letter was sent to an incorrect address, West Germany instead of to appellant's correct address of record. Although the address to which the notice was sent was similar to the correct address, appellant had made

² 20 C.F.R. § 10.432.

³ *Id.* at § 10.617(b). Office procedure also provides that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(a) (January 1999).

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991).

⁵ *Newton D. Lashmett*, 45 ECAB 181 (1993); *Michelle R. Littlejohn, Id.*

⁶ *Id.*

clear the fact that any East or West Germany distinction was cause for the postal service to return mail. Careful attention to detail was required in this case, given the fact that appellant resides overseas. The Board finds that the evidence is insufficient to establish that the April 12, 2012 notice was properly addressed. Therefore, the presumption of receipt under the mailbox rule does not arise. The record does not demonstrate that appellant was notified of the scheduled hearing and appellant was denied a hearing to which he was entitled. As he was not given notice of the hearing, OWCP improperly determined that appellant abandoned his hearing request. Therefore, this case must be remanded for appellant to be given the opportunity for his requested hearing.⁷

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 29, 2012 decision be set aside and the case remanded for further development consistent with this order of the Board.

Issued: April 12, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁷ Because of the Board's disposition of the procedural issue, it is premature for the Board to address the overpayment issue.