

On appeal, appellant contends that she did not receive a copy of OWCP's August 20, 2013 decision and was advised by OWCP that the decision would be reissued, allowing her to have 30 days from that date to request an oral hearing, but on October 30, 2013 denied her hearing request as untimely.

FACTUAL HISTORY

On May 2, 2013 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a lower back and left leg injury in the performance of duty on March 22, 2013 as the result of lifting a heavy load.

Appellant submitted an April 3, 2013 report from Dr. Robert G. Liss, a Board-certified orthopedic surgeon, who diagnosed sciatica and indicated that the date of injury was March 27, 2013. Dr. Liss restricted appellant to modified duty with restrictions as of April 3, 2013 and anticipated her return to full duty effective April 11, 2013.

In a May 4, 2013 statement, Marty Stewart, appellant's supervisor, indicated that he had no knowledge of the injury appellant sustained in Monroeville and that she never reported the injury to him. He came to work one morning and there was a CA-1 form on his desk with instructions to give it to appellant. Mr. Stewart advised that appellant did not miss any work due to an injury until her last day on April 9, 2013.

In a May 13, 2013 letter, OWCP notified appellant of the deficiencies of her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant submitted a May 17, 2013 narrative statement that she immediately reported her injury to the employing establishment.

In a May 28, 2013 report, Dr. Liss obtained a history that appellant hurt her back lifting a dolly out of a truck in February 2013. Appellant experienced some clicking and popping in the right side of her low back. It was injured again on March 22, 2013 when she was lifting a hopper. The pain in appellant's back and left buttock and leg worsened. She worked until April 10, 2013. Dr. Liss diagnosed a lumbar strain with left radicular symptoms and referred appellant for physical therapy and for a magnetic resonance imaging (MRI) scan of the lumbar spine. On June 18, 2013 he reported that appellant's MRI scan was normal and that she was still having pain in her low back with some occasional radiation down the left leg.

By decision dated August 20, 2013, OWCP denied appellant's claim. It found that the evidence submitted failed to establish that the injury occurred at the time, place and in the manner alleged.

In an August 27, 2013 telephone call memorandum, appellant notified OWCP that she had not received the August 20, 2013 decision in her claim. Rather, she received an August 20, 2013 decision concerning a claimant under File No. xxxxxx260. OWCP advised that it would send appellant a correct copy of the August 20, 2013 decision for her case.

In an appeal request form postmarked September 23, 2013, appellant requested an oral hearing before an OWCP hearing representative. She submitted a September 23, 2013 narrative statement and an April 3, 2013 report from Dr. Ravindra Vajjhala, a Board-certified emergency

medicine physician, who diagnosed back pain with sciatica. Dr. Vajjhala listed the date of injury as March 30, 2013 and appellant stated that her pain started with a clicking or popping noise from her right leg and complained of left-sided back pain with numbness.

By decision dated October 30, 2013, OWCP denied appellant's request for an oral hearing finding that it was untimely because it was not made within 30 days of the August 20, 2013 decision. It exercised its discretion and further denied the request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [his or her] claim before a representative of the Secretary."³

Section 10.615 of Title 20 of the Code of Federal Regulations provide: "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."⁴ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁵ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.⁶ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁷

20 C.F.R. § 10.127, effective as of January 4, 1999, provides:

"A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision will also be mailed to the representative. A copy of the decision will also be sent to the employer."⁸

ANALYSIS -- ISSUE 1

In this case, OWCP issued a decision on August 20, 2013. Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616.

⁶ *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

⁷ *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

⁸ 20 C.F.R. § 10.127; *see also Diane M. Redden*, Docket No. 04-558 (issued May 12, 2004).

ordinary course of business was received by that individual.⁹ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.¹⁰ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of OWCP itself, will raise the presumption that the original was received by the addressee.¹¹ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.¹² The presumption of receipt does not apply where a notice is sent to an incorrect address.¹³

In this case, the presumption of receipt is rebutted by evidence in the record that appellant did not receive a copy of OWCP's August 20, 2013 decision pertaining to her claim. In an August 27, 2013 telephone call memorandum, appellant notified OWCP that she did not receive an August 20, 2013 decision in her case but an August 20, 2013 decision regarding another claimant under File No. xxxxxx260. OWCP advised that it would send her a correct copy of the August 20, 2013 decision in her claim, but did not reissue the August 20, 2013 decision. This evidence is sufficient to rebut the presumption that appellant was properly sent a copy of the August 20, 2013 decision.¹⁴

The Board has held that a decision under FECA is not deemed to have been issued unless appellant has been sent a copy of the decision.¹⁵ The record on appeal indicates that OWCP's August 20, 2013 decision was not properly issued. OWCP's failure to timely notify appellant of the decision denied her the opportunity to exercise her appeal rights in a timely fashion, including the right to request a hearing within 30 days of the date of the decision.

The case will be remanded to OWCP as the August 20, 2013 decision was not properly issued.

CONCLUSION

The Board finds that OWCP's August 20, 2013 decision was not properly issued. This case will be remanded to OWCP for proper reissuance of the August 20, 2013 decision to protect appellant's appeal rights.¹⁶

⁹ See *George F. Gidicsin*, 36 ECAB 175 (1984) (when OWCP sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

¹⁰ See *Michelle Lagana*, 52 ECAB 187 (2000).

¹¹ See *Larry L. Hill*, 42 ECAB 596 (1991).

¹² See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

¹³ See *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

¹⁴ See *E.C.*, Docket No. 11-1774 (issued February 27, 2012).

¹⁵ See *Belinda J. Lewis*, 43 ECAB 552 (1992); *Thomas H. Harris*, 39 ECAB 899 (1988); see also *Diane M. Redden*, *supra* note 8.

¹⁶ In light of the Board's resolution of the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the October 30 and August 20, 2013 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: July 1, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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