

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

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C.R., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Milwaukee, WI, Employer** )

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**Docket No. 15-1409  
Issued: December 9, 2015**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

On June 16, 2015 appellant filed a timely appeal from a May 26, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which found that he abandoned his request for an oral hearing. The Board docketed the appeal as No. 15-1409.

The Board has duly considered the matter and finds that the case is not in posture for decision. On October 14, 2014 OWCP denied appellant's traumatic injury claim. Appellant requested a telephonic oral hearing before the Branch of Hearings and Review on October 16, 2014. He indicated his street address as 10350 Plumtree Circle. On March 25, 2015 OWCP issued a notice of hearing, stating that the hearing would be held on May 5, 2015. It mailed the notice to a differently numbered street address. Appellant did not appear at the hearing, and on May 26, 2015 OWCP found that he abandoned his request for a hearing.

The record evidence reveals that OWCP's March 25, 2015 notice of hearing was not sent to appellant's proper address. Section 10.617(b) of OWCP's regulations requires OWCP to mail

a notice of the time and place of the hearing to appellant at least 30 days before the scheduled date.<sup>1</sup> OWCP has the burden of proving that it mailed a notice of a scheduled hearing to appellant.<sup>2</sup> Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice properly mailed to an individual in the ordinary course of business was received by that individual. This presumption arises where it appears from the record that the notice was properly addressed and duly mailed.<sup>3</sup> The presumption of receipt does not apply where a notice is sent to an incorrect address.<sup>4</sup> In the instant case, the notice of hearing was sent to an incorrect address. Accordingly, the Board finds that appellant was not provided proper notice of his hearing under OWCP's regulations.<sup>5</sup> The case will be remanded to OWCP for rescheduling of the requested oral hearing.

**IT IS HEREBY ORDERED THAT** the May 26, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

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<sup>1</sup> 20 C.F.R. § 10.617(b). Under the Federal Employees' Compensation Act and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought. 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a).

<sup>2</sup> See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>3</sup> See *M.U.*, Docket No. 09-526 (issued September 14, 2009).

<sup>4</sup> *Id.*

<sup>5</sup> 20 C.F.R. *supra* note 1; *N.W.*, Docket No. 11-1026 (issued November 25, 2011).

Issued: December 9, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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