

FACTUAL HISTORY

On April 28, 2014 appellant, then a 59-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back and right elbow while loading 17 to 20 parcels into the back of the truck on January 7, 2014. He submitted a May 9, 2014 letter from the employing establishment which indicated that he initially reported his absence from work under the Family and Medical Leave Act and had worked for 16 weeks without reporting the injury.

On May 13, 2014 OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical information. Appellant submitted a June 11, 2014 response to OWCP's questionnaire, several medical reports from August 2011 through April 2, 2014, work status reports from January 2012 through June 2014, diagnostic tests, including a magnetic resonance imaging scan report, and x-ray reports, physical therapy reports, a coworker's statement, and a notice of representation of counsel dated June 12, 2014. Counsel's address was noted as being Pioneer Plaza, Suite 910 in Honolulu, HI.

By decision dated June 19, 2014, OWCP denied the claim finding the evidence was insufficient to establish that the medical condition was causally related to the accepted work event(s). Counsel's copy of the decision was sent to Suite 910, Pioneer Plaza, Honolulu, HI.

On July 17, 2014 appellant, through his representative of record, disagreed with the decision and requested an oral hearing before a hearing representative in OWCP's Branch of Hearings and Review. Counsel's letter head and envelope noted his address as Pioneer Plaza, Suite 1120, 900 Fort Street Mall, in Honolulu, HI 96813.

In a January 16, 2015 letter, OWCP notified appellant that a hearing before an OWCP hearing representative was scheduled for February 17, 2015 at 3:00 p.m. Eastern Standard Time. Appellant was provided a toll free number and a pass code to connect to the hearing representative and court reporter. A copy of the letter was sent to him at his address of record and to his counsel at Pioneer Plaza, Suite 910, 900 Fort Street Mall, in Honolulu, HI 96813.

On February 17, 2015 appellant and counsel failed to participate in the telephone hearing.

By decision dated March 12, 2015, an OWCP hearing representative found that appellant failed to appear at the oral hearing and had abandoned his request. He found no evidence that appellant had contacted OWCP prior to or subsequent to the scheduled hearing. A copy of the decision was mailed to appellant's counsel at the Pioneer Plaza, Suite 910, 900 Fort Street Mall, in Honolulu, HI 96813.

LEGAL PRECEDENT

Under FECA 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.² Unless

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

otherwise directed in writing by the claim, the 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 notice of a scheduled hearing to a claimant.⁴

A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁵ 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 OWCP.⁶

ANALYSIS

Appellant asserts on appeal that he did not abandon his hearing as he never received notice of the scheduled hearing. The Board agrees.

On January 16, 2015 OWCP notified appellant and counsel that the hearing was scheduled and on March 12, 2015 it issued its decision finding that appellant had abandoned his request for an oral hearing before an OWCP hearing representative. However, the record reflects that appellant's counsel had indicated in his correspondence requesting an oral hearing on July 17, 2014 a different suite address. OWCP also scanned his envelope which contained the new address. The envelope and letter provided OWCP notice of counsel's last known address. OWCP, however, mailed both the January 16, 2015 hearing notice and the March 12, 2015 decision to counsel's former address at Suite 910. The record establishes that OWCP did not mail the notice of oral hearing to appellant's counsel's correct address which was Suite 1120.⁷ The presumption inherent in the mailbox rule, that a notice mailed to an individual in the ordinary course of business was received by that individual, is rebutted.⁸

The Board finds that the record establishes that the notice of hearing was not properly addressed and mailed to appellant's counsel. OWCP regulations and the Board case law require

³ *Id.* at § 10.617(b).

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

⁵ 20 C.F.R. § 10.622(f); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

⁶ Federal (FECA) Procedure Manual, *id.*

⁷ See *Clara T. Norga*, 46 ECAB 0473 (1995) (where OWCP's finding of abandonment in a case rests on the strength of the presumption that the notice was properly addressed and duly mailed).

⁸ *B.R.*, Docket No. 09-0205 (issued July 23, 2009); see *supra* note 4.

OWCP to send a copy of its decision to the authorized counsel.⁹ The Board has held that a decision under FECA is not properly issued unless both appellant and the authorized counsel have been sent copies of the decision.¹⁰ As the January 16, 2015 notice was not properly addressed to appellant's counsel, OWCP has not met its burden of proof that it mailed appellant notice of the scheduled hearing. Therefore, the case must be remanded to OWCP so that the notice may be properly issued.

CONCLUSION

The Board finds that OWCP did not properly determine that appellant abandoned his hearing request. The case will be remanded to OWCP to schedule a hearing before an OWCP hearing representative with proper notice provided to appellant and his counsel.

⁹ 20 C.F.R. § 10.127 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. *See also M.R.*, Docket No. 11-0632 (issued September 28, 2011). In *George R. Bryant*, Docket No. 03-2241 (issued April 19, 2005), the Board found that OWCP did not properly issue its June 18, 2003 decision when it did not send a copy of that decision to the authorized representative. In *James Consentino*, Docket No. 04-1774 (issued October 21, 2004), the Board found that OWCP improperly issued a decision terminating compensation because it did not mail the decision to appellant's representative and declared the termination decision null and void.

¹⁰ *See R.J.*, Docket No. 12-0174 (issued June 25, 2012); *Travis L. Chambers*, 55 ECAB 138 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for action consistent with this opinion of the Board.

Issued: February 4, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board