

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

L.M., Appellant)	
)	
and)	Docket No. 24-0023
)	Issued: February 22, 2024
U.S. POSTAL SERVICE, FREDERICK POST OFFICE, Frederick, MD, Employer)	
)	

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 10, 2023 appellant filed a timely appeal from an August 29, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0023.

On February 10, 2000 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 10, 2000 she pulled a back muscle when she lifted a tub of flats from the floor while in the performance of duty. She did not initially stop work and began to work part-time, limited duty for four hours per day beginning February 24, 2001. OWCP accepted appellant's claim for lumbar sprain, thoracic or lumbosacral radiculitis, and lumbar intervertebral disc disorder with myelopathy. It paid wage-loss compensation for her loss of wage-earning capacity, effective February 24, 2001, and placed her on the periodic rolls, effective December 28, 2001. By decision dated February 12, 2002, OWCP expanded the acceptance of appellant's claim to include herniated disc at L5-S1.

On March 15, 2023 appellant notified OWCP of her change of address to Newnan, GA by telephone. In correspondence dated March 20, 2023, OWCP acknowledged receipt of the change of address.

In an April 26, 2023 letter, OWCP referred appellant for a second opinion examination on June 5, 2023 with Dr. Daniel Schlatterer, an osteopathic physician Board-certified in orthopedic surgery, regarding her continuing disability and medical residuals due to the accepted February 10,

2000 employment injury. The letter informed appellant of her obligations to attend and cooperate with the examination and explained that her compensation benefits would be suspended for failure to report to, or for obstruction of, the examination, pursuant to 5 U.S.C. § 8123(d). The letter also contained the date, time, and location of her appointment and was mailed to her last known address of record in Newnan GA.

On June 5, 2023 the medical scheduler advised OWCP that appellant did not attend the examination scheduled for June 5, 2023.

In a notice dated July 3, 2023, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for June 5, 2023. It afforded her 14 days to respond to the notice in writing with an explanation as to why she did not attend the examination with Dr. Schlatterer. OWCP advised appellant that, if good cause was not established, her compensation benefits would be suspended pursuant to 5 U.S.C. § 8123(d) until she attended and fully cooperated with the examination. It instructed her to contact OWCP immediately if she intended to report to a rescheduled examination with Dr. Schlatterer. The notice was mailed to appellant's last known address in Newnan, GA. By decision dated August 1, 2023, OWCP finalized the proposed suspension. The decision was mailed to the Newnan, GA address.

On August 4, 2023 the notice of proposed suspension dated July 3, 2023 was returned as undeliverable. The U.S. Postal Service markings on the envelope indicated that it was unable to forward. By decision dated August 11, 2023, OWCP again finalized the proposed suspension. The decision was mailed to the Newnan, GA address.

By decision dated August 29, 2023, OWCP suspended appellant's wage-loss compensation and medical benefits, effective that date, pursuant to 5 U.S.C. § 8123(d), due to her failure, without good cause, to attend the medical examination scheduled for June 5, 2023. This decision was mailed to the Newnan, GA address.

The Board finds that OWCP improperly suspended appellant's wage-loss compensation and medical benefits, pursuant to 5 U.S.C. § 8123(d), for failing to attend a scheduled medical appointment.

As noted above, OWCP's procedures provide that, before OWCP may invoke the provisions of 5 U.S.C. § 8123(d) and 20 C.F.R. § 10.323, the employee is to be provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.¹ On July 3, 2023 OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for June 5, 2023. It addressed the notice to appellant's last known address in Newnan, GA. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.² This presumption is commonly referred to as the "mailbox rule."³ It arises

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.13d (September 2010).

² *J.H.*, Docket No. 20-0785 (issued October 23, 2020); *M.R. (T.R.)*, Docket No. 18-0480 (issued March 22, 2019); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

³ *Id.*

when the record reflects that the notice was properly addressed and duly mailed.⁴ The presumption is rebutted where there is evidence of non-delivery or other evidence that supports that the addressee did not receive the correspondence.⁵

In this case, the July 3, 2023 notice of proposed suspension was mailed to appellant's last known address in Newnan, GA and returned as undeliverable. As appellant did not receive the July 3, 2023 notice of proposed suspension, she was not afforded the opportunity to provide a written explanation within 14 days of the proposed suspension.⁶ The Board finds, therefore, that OWCP erred in suspending her right to compensation benefits because she did not receive the appropriate 14-day notice in accordance its procedures. Consequently, the Board will reverse OWCP's August 29, 2023 decision.⁷ The case will be returned to OWCP for reinstatement of appropriate compensation benefits. Accordingly,

IT IS HEREBY ORDERED THAT the August 29, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 22, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁴ *Id.*

⁵ *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

⁶ *See L.C., Order Reversing Case*, Docket No. 11-1344 (issued December 16, 2011) (the Board reversed January 31 and March 7, 2022 OWCP decisions suspending a claimant's compensation benefits for obstructing a medical examination pursuant to 5 U.S.C. § 8123(d) because it found that appellant had not received proper notice regarding the alleged obstruction of the June 5, 2023 appointment); *see also J.C.*, Docket No. 09-609 (issued January 5, 2010).

⁷ *See Mazie M. Thompson*, Docket No. 04-0821 (issued June 15, 2004).