

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

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A.M., Appellant)	
)	
and)	
)	Docket No. 24-0152
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: February 23, 2024
St. Louis, MO, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On December 8, 2023 appellant filed a timely appeal from two different November 24, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0152.

On July 19, 2022 appellant, then a 46-year-old vehicle operations assistant, filed a traumatic injury claim (Form CA-1) alleging that he sustained an emotional condition on July 2, 2022 when a gun was fired at him as he drove an employing establishment vehicle in the performance of duty. The employing establishment indicated that appellant was injured in the performance of duty. Appellant stopped work that same day.

By decision dated August 31, 2022, OWCP denied the claim, finding that the evidence was not sufficient to establish that the events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

In an August 14, 2023 report, Dr. John Burroughs, Board-certified in family practice, noted that appellant was off work from July 2 to September 10, 2022, due to a shooting incident at work and was diagnosed with post-traumatic stress disorder (PTSD). The report was mailed to appellant at an address in Gladstone, Missouri, 64118.

On August 28, 2023 appellant's representative requested reconsideration and submitted additional evidence.

In a letter dated August 30, 2023, OWCP acknowledged receipt of the request for reconsideration. The OWCP letter was mailed to appellant's address of record in Kearney, Missouri. It was returned to OWCP as undeliverable on September 6, 2023.

On October 25, 2023 OWCP referred appellant for a second opinion evaluation with Dr. Sanford Pomerantz, Board-certified in psychiatry. The OWCP letter was mailed to appellant's address of record in Kearney, Missouri.

In a letter dated November 9, 2023, OWCP notified appellant that it proposed to suspend appellant's wage-loss compensation and medical benefits, as he failed to attend the second opinion medical examination scheduled for November 8, 2023. It afforded him 14 days to respond in writing with an explanation as to why he did not attend the examination with Dr. Pomerantz. The OWCP letter was mailed to appellant at his address of record in Kearney, Missouri.

By decision dated November 24, 2023, OWCP suspended appellant's wage-loss compensation and medical benefits, effective that date, pursuant to 5 U.S.C. § 8123(d), due to his failure without good cause to attend the medical examination scheduled for November 8, 2023. The decision was mailed to an address in Gladstone, Missouri.

In a separate decision also dated November 24, 2023, OWCP denied appellant's claim. It accepted that the work incident occurred as alleged; however, it found that he failed to establish that his medical condition was causally related to the accepted work incident. OWCP explained that appellant was referred to Dr. Pomerantz for an examination on November 8, 2023, but appellant failed to appear for the examination.

On November 27, 2023 the notice of proposed suspension dated November 9, 2023 was returned to OWCP as undeliverable. The U.S. Postal Service markings on the envelope indicated that it was unable to forward the notice of proposed suspension.

The Board, having duly considered the matter, 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 November 9, 2023 OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as she failed to attend the medical examination scheduled for November 8, 2023. It mailed the notice of proposed suspension to her address of record in Kearney, Missouri. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of

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

business was received in due course by the intended recipient.² This presumption is commonly referred to as the “mailbox rule.”³ It arises 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 November 9, 2023 notice of proposed suspension was mailed to appellant’s address of record in Kearney, Missouri, but was returned as undeliverable. As appellant did not receive the November 9, 2023 notice of proposed suspension, he was not afforded the opportunity to provide a written explanation within 14 days of the proposed suspension. The Board finds, therefore, that OWCP erred in suspending his right to compensation benefits because he did not receive the appropriate 14-day notice in accordance its procedures. Consequently, the Board will reverse OWCP’s November 24, 2023 suspension decision. The case will be returned to OWCP. Accordingly,

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.*

⁴ *Id.*

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

IT IS HEREBY ORDERED THAT the November 24, 2023 suspension decision of the Office of Workers' Compensation Programs is reversed. In light of the Board's disposition of the November 24, 2023 suspension decision, it is premature to address the November 24, 2023 disability decision of the Office of Workers' Compensation Programs; therefore, it is set aside as moot.

Issued: February 23, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board