

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

E.C., Appellant)

and)

DEPARTMENT OF THE ARMY,)
INSTALLATION MANAGEMENT)
COMMAND, Fort Belvoir, VA, Employer)

**Docket No. 11-1774
Issued: February 27, 2012**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On July 26, 2011 appellant sought appeal from a June 21, 2011 decision of the Office of Workers' Compensation Programs (OWCP) which found that he abandoned his request for an oral hearing. On appeal appellant stated that he did not receive the letter from OWCP providing the hearing date as it was sent to the wrong address. The Board assigned Docket No. 11-1774.

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP.

On December 23, 2010 appellant, then a 54-year-old supply technician, filed a traumatic injury claim (Form CA-1) alleging that he fell from his chair and injured his knees, left elbow and chest in the performance of duty on December 20, 2010. By decision dated February 8, 2011, OWCP denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish fact of injury. On March 3, 2011 appellant requested an oral hearing, indicating an address in Fredericksburg, Virginia. In a letter dated April 29, 2011 OWCP notified appellant that an oral hearing was scheduled for June 6, 2011 at 12:00 p.m. in Washington, DC. OWCP mailed the letter to a similar address in Stafford, Virginia. By decision dated June 21, 2011, an OWCP hearing representative found that appellant abandoned his

request for a hearing as he received written notification of the hearing 30 days in advance and he failed to appear.

Section 10.617(b) of OWCP's regulations require OWCP to mail a notice of the time and place of the hearing to appellant at least 30 days before the scheduled date.¹ OWCP has the burden of proving that it mailed a notice of a scheduled hearing to appellant.² Under the mailbox rule, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.³ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.⁴ Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.⁵ OWCP mailed the April 29, 2011 letter notifying appellant of the time and place of the hearing to an incorrect address in Stafford, Virginia and not to appellant's correct home address in Fredericksburg, Virginia. Thus, the Board finds that OWCP did not meet its burden of proof to establish that it mailed a notice of a scheduled hearing to appellant. For this reason, the case will be remanded to OWCP for proper adjudication of appellant's request for an oral hearing before an OWCP hearing representative. Following this and any necessary further development, OWCP shall issue a *de novo* decision. Accordingly,

¹ 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).

² See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

³ See *Michelle Lagana*, 52 ECAB 187 (2000).

⁴ See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

⁵ See *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

IT IS HEREBY ORDERED THAT the June 21, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: February 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board