

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

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**M.U., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 09-526  
Issued: September 14, 2009**

*Appearances:*

*Jerry M. Anderson, for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On December 15, 2008 appellant filed for review from a November 17, 2008 decision of the Office of Workers' Compensation Programs, which found that he abandoned his request for an oral hearing. The appeal was docketed as No. 09-526.

The Board has duly considered the matter. The Office's determination that appellant abandoned his request is premised on the finding that he received the June 24, 2008 letter notifying him of the oral hearing scheduled for July 28, 2008 in San Francisco. The evidence of record does establish that notice was sent to appellant's address of record.

The mailbox rule provides that proper and timely mailing of a document raises a rebuttable presumption of receipt by the addressee. The Board has applied the mailbox rule to claimants under the Federal Employees' Compensation Act and to the Office when it is established that the mailing was in the ordinary course of the sender's business practices.<sup>1</sup> It serves as a tool for determining in the face of inconclusive evidence, whether or not receipt has actually been accomplished. It is to facilitate the fact finder in determining whether receipt of a

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<sup>1</sup> *Kenneth E. Harris*, 54 ECAB 502, 505 (2003). *See also Nelson R. Hubbard*, 54 ECAB 156 (2002); *Dorothy Yonts*, 48 ECAB 549 (1997); *Larry L. Hill*, 42 ECAB 596 (1991); *Jeff Minico*, 39 ECAB 617 (1988).

document has occurred. However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.

In the record on appeal, there is direct evidence of nondelivery of the notice of oral argument to appellant. Although properly addressed to his address of record, the notice was returned to the Office as undelivered by the post office. It noted on the envelope: "return to sender ... attempted -- not known ... unable to forward." Receipt of the returned notice in the Kentucky Central Mailroom was on July 28, 2008, the same day as the hearing before the Office hearing representative scheduled in San Francisco.<sup>2</sup>

On November 17, 2008 appellant was found to have abandoned his hearing request. He contends that he never received notice of the oral argument to be held on July 28, 2008. This is evidenced by the failed delivery of the Office's June 24, 2008 notice. In light of the returned envelope, which evidences nondelivery, the mailbox presumption does not apply. Appellant did not receive notice of the hearing scheduled for July 28, 2008. The case will be remanded to the Office's Branch of Hearings and Review.

**IT IS HEREBY ORDERED THAT** the November 17, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office's Branch of Hearings and Review for further action in conformance with this order.

Issued: September 14, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>2</sup> The Office hearing representative heard oral argument in other pending claims. Appellant's representative on appeal appeared before her on July 28 and 30, 2008 in representation of other federal employees. On appeal, he contends that he also represented appellant at that time and was never notified of any hearing. However, there is no record of any authorization of his representation by appellant before the Office in the record.