



September 18, 2009. By letter dated October 14, 2009, OWCP informed appellant that a telephone hearing was scheduled for 9:00 a.m. on November 19, 2009. Appellant submitted nothing further and did not telephone the Office at the appointed time. On March 22, 2010 an OWCP hearing representative found that appellant abandoned the hearing request and finalized the overpayment decision. He found that appellant was not at fault in the creation of the overpayment but that he was not entitled to waiver because he provided no financial information to justify waiver. The hearing representative ordered repayment of the overpayment in full.

Appellant asserts on appeal that because he was deployed at sea from September 16, 2009 until April 16, 2010, he was not informed of the hearing scheduled for November 19, 2009 and, therefore, he did not abandon his hearing request. The Board has duly considered the matter and finds that the case is not in posture for decision as the evidence supports that appellant did not receive the October 14, 2009 letter informing him of the date and time of the scheduled hearing.

The mailbox rule provides that proper and timely mailing of a document in the ordinary course of business raises a rebuttable presumption of receipt by the addressee.<sup>2</sup> As a rebuttable presumption, receipt will not be presumed, however, when there is evidence of nondelivery, and the presumption may also be rebutted by other evidence that supports that the addressee did not receive the correspondence. In this case, the nurse assigned to appellant's case informed OWCP on September 15, 2009 that he was leaving for an overseas deployment on September 18, 2009. OWCP did not inform him of the scheduled hearing until October 14, 2009, after his deployment. This evidence supports his contention that, as he was deployed out of the country for seven months as of September 18, 2009, he did not receive hearing notice advising him of the date and time of his requested hearing.

The Board concludes that, under circumstances such as these where a claimant, such as appellant, timely requested a precoupment hearing within 30 days of the July 17, 2009 preliminary overpayment notice and did not receive notice of the hearing, he was not provided the opportunity to present testimonial evidence regarding the overpayment. The case must therefore be remanded to OWCP to consider the request for a hearing.<sup>3</sup> The Board will set aside the March 22, 2010 decision and remand the case for proceedings consistent with this order of the Board.

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<sup>2</sup> See *M.U.*, Docket No. 09-526 (issued September 14, 2009).

<sup>3</sup> *Willie C. Howard*, 55 ECAB 564 (2004).

**IT IS HEREBY ORDERED THAT** the March 22, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office.

Issued: June 14, 2011  
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