

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

M.C., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Saint Cloud, MN, Employer

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**Docket No. 12-1778
Issued: April 12, 2013**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On August 22, 2012 appellant sought appeal from an August 3, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for an oral hearing. The Board assigned Docket No. 12-1778.

The Board has duly considered the matter and finds the case is not in posture for a decision and must be remanded to OWCP. On December 8, 2011 appellant filed a traumatic injury claim alleging a work-related injury on that date. On January 17, 2012 she notified OWCP of her address in Saint Joseph, MN. By decision dated January 26, 2012, OWCP denied appellant's claim. OWCP mailed the decision to Saint Cloud, MN. The decision was returned to OWCP as being unable to forward on February 6, 2012. On June 14, 2012 appellant requested an oral hearing, again noting her address in St. Joseph, MN. By decision dated August 3, 2012, OWCP found that she was not entitled to a hearing as her request for a hearing was not made within 30 days of the issuance of its January 26, 2012 decision.¹

OWCP regulations provide that "A copy of the decision shall be mailed to the employee's last known address."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

¹ OWCP also mailed this decision to an incorrect Saint Cloud, MN, address.

² 20 C.F.R. § 10.127.

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 January 26, 2012 decision to an incorrect address in Saint Cloud, MN and not to appellant's correct home address in St. Joseph, MN. The decision was also returned to OWCP by the postal service as undeliverable. Thus, the Board finds that OWCP did not properly issue its January 26, 2012 decision.⁶ For this reason, the case will be remanded to OWCP for proper issuance of *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 3, 2012 nonmerit 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: April 12, 2013
Washington, DC

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

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

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

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).

⁶ See *Tammy J. Kenow*, 44 ECAB 619 (1993).