

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

D.C., Appellant

and

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

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**Docket No. 13-334
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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On November 27, 2012 appellant sought appeal from a November 8, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied his request for a review of the written record. The Board assigned Docket No. 13-334.

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 June 5, 2012 appellant filed a claim for a schedule award. In an August 22, 2012 decision, OWCP awarded 17 percent permanent impairment of the left leg. It mailed the decision to an incorrect address. In an August 31, 2012 telephone call memorandum, OWCP noted that the employing establishment had contacted it regarding appellant's schedule award check being sent to the wrong address. The August 22, 2012 decision was returned to OWCP as being unable to forward on September 4, 2012. On October 3, 2012 appellant requested a review of the written record. By decision dated November 8, 2012, OWCP found that he was not entitled to review of the written record as his request was not made within 30 days of the issuance of its August 22, 2012 decision.

OWCP regulations provide that "A copy of the decision shall be mailed to the employee's last known address."¹ 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

¹ 20 C.F.R. § 10.127.

record that the notice was properly addressed and duly mailed.² However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.³ Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.⁴ OWCP mailed the August 22, 2012 decision to an incorrect address and it was returned as OWCP as being unable to forward on September 4, 2012. Thus, the Board finds that OWCP did not properly issue its August 22, 2012 decision.⁵ For this reason, the case will be remanded to OWCP for proper adjudication to include the issuance of *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the November 8, 2012 decision of OWCP 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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

² See *Michelle Lagana*, 52 ECAB 187 (2000).

³ See *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

⁴ See *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

⁵ See *Tammy J. Kenow*, 44 ECAB 619 (1993).