

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

D.C., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer

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**Docket No. 13-1503
Issued: December 17, 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

JURISDICTION

On June 11, 2013 appellant sought a timely appeal from a nonmerit April 16, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying reconsideration. The Board assigned Docket No. 13-1503.

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 February 23, 2012 appellant, a motor vehicle operator, filed a traumatic injury claim (Form CA-1) for a right ankle injury sustained on February 17, 2012 in a motor vehicle accident while in the performance of duty. By decision dated April 11, 2012, OWCP denied appellant's claim. It mailed this decision to him at an incorrect address (to apartment 14 rather than 1H). In an April 4, 2013 letter, appellant requested reconsideration. He asserted that he had not received the April 11, 2012 decision as OWCP had sent it to the wrong address. Appellant noted the correct address. By decision dated April 16, 2013 OWCP denied reconsideration. This decision was sent to the correct address.

OWCP regulations provide that a copy of a 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

¹ 20 C.F.R. § 10.217.

contrary, that a notice properly mailed to an individual in the ordinary course of business was received by that individual. This presumption arises where it appears from the 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 address⁴

The April 11, 2012 OWCP's decision, as explained, was sent to an incorrect address. Thus, the Board finds that OWCP did not properly issue its April 11, 2012 decision.⁵ For this reason, the case will be remanded to OWCP for proper issuance of a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 16, 2013 nonmerit decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: December 17, 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 *J.R.*, Docket No. 13-313 (issued August 15, 2013); *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

³ *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *see C.O.*, Docket No. 10-1796 (issued March 23, 2011).

⁴ *M.C.*, *id.*

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