

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

A.H., Appellant)	
)	
and)	Docket No. 13-1594
)	Issued: January 30, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Louis, MO, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On June 26, 2013 appellant sought appeal from a January 14, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration without conducting a merit review. The Board assigned Docket No. 13-1594.

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. OWCP accepted appellant's claim for right chest wall sprain. On July 9 and September 2, 2011 appellant filed notices of recurrence of disability on those dates. The recurrence claims noted her current address. By decision dated October 13, 2011, OWCP denied appellant's claim for a recurrence. The decision was mailed to an incorrect address and, on October 25, 2011, the October 13, 2011 decision was returned to OWCP as unable to forward. In an October 31, 2011 telephone call memorandum, OWCP was advised by appellant that the decision was sent to an incorrect address. It advised her that a copy of the decision would be mailed to the correct address. No new decision was issued. In a telephone call memorandum dated September 20, 2012, OWCP was again contacted by appellant who provided her correct address and requested a copy of appeal rights from the October 13, 2011 decision. In a letter dated October 5, 2012, which was received on October 16, 2012, appellant requested reconsideration. In a January 14, 2013 decision, OWCP denied her request for reconsideration finding that it was not timely filed and failed to present clear evidence of error.

OWCP regulations provide that a copy of its decision shall be mailed to the employee's last known address.¹ Under the mailbox rule, it is presumed, in the absence of

¹ 20 C.F.R. § 10.127.

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 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 October 13, 2011 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 October 13, 2011 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 January 14, 2013 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: January 30, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate 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 *M.C.*, Docket No. 12-1778 (issued April 12, 2013).