

By decision dated July 9, 2013, OWCP denied appellant's claim finding that the evidence of record failed to establish fact of injury. The decision was addressed to the previous address of record.

In a telephone call dated August 7, 2013, a claims examiner advised appellant that her case had been denied and advised her to follow her appeal rights.

By letter dated August 7, 2013, appellant informed OWCP that she had not received her decision. She further noted her new address.

On October 7, 2013 appellant requested review of the written record before the Branch of Hearings and Review, again noting her new address.

By decision dated November 29, 2013, the Branch of Hearings and Review denied appellant's request for a review of the written record finding that her request was not made within 30 days of the July 9, 2013 OWCP decision. This decision was also mailed to her previous address of record.

On December 30, 2013 the November 29, 2013 decision was returned to OWCP as being nondeliverable and unable to forward.

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 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 July 9 and November 29, 2013 decisions to an incorrect address. Appellant had requested her address be changed, prior to the issuance of the July 9, 2013 decision, and again noted her new address on August 7 and October 7, 2013, yet the November 29, 2013 decision was again mailed to the incorrect address. Thus, appellant could not have timely requested an appeal from an OWCP decision that she did not receive.⁵

As OWCP mailed appellant's decisions to an incorrect address, the Board finds that OWCP did not properly issue its July 9, 2013 decision.⁶ As the July 9, 2013 decision was

¹ 20 C.F.R. § 10.127.

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 *E.C.*, Docket No. 11-1774 (issued February 27, 2012).

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

improperly issued, appellant could not have timely requested an appeal for review of the written record which was denied by OWCP in its November 29, 2013 decision. For these reasons, the case will be remanded to OWCP for proper issuance of a *de novo* decision.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the November 29, 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: July 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁷ *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *J.M.*, Docket No. 12-543 (issued March 12, 2013).