

burden of proving that it mailed a notice of a scheduled hearing to appellant.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 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 On January 18, 2015 OWCP's January 8, 2015 letter advising appellant of the date and time of the telephonic oral hearing was returned as undeliverable. Thus, the Board finds that the mailbox rule does not apply and that OWCP did not provide appellant sufficient notice of the scheduled telephonic hearing.⁵ For this reason, the case will be remanded to OWCP for scheduling of another hearing before an OWCP hearing representative with proper notice provided to all parties. Following this and any necessary further development, OWCP shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the March 3, 2015 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: September 13, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² See *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

³ See *Michelle Lagana*, 52 ECAB 187 (2000).

⁴ See *M.C.*, Docket No. 15-0479 (issued April 21, 2015); *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-0526 (issued September 14, 2009).

⁵ *Id.*