



In a June 5, 2018 development letter, OWCP informed appellant of the deficiencies in his claim, noting that he had not submitted sufficient evidence to establish that he actually experienced the alleged employment incident.<sup>2</sup> The letter was mailed to the address noted on the Form CA-1.

An August 2, 2018 telephone memorandum (Form CA-110) indicates that appellant notified OWCP that he had moved and provided a new mailing address. He was advised that the June 11, 2018 development letter would be reissued using the new address. In a letter dated August 2, 2018, OWCP requested that appellant submit a written request to change his address. It further issued a new development letter of even date to his updated mailing address.

By decision dated September 5, 2018, OWCP denied appellant's traumatic injury claim, finding that he had not established the factual component of his claim. The decision was mailed to the address previously of record and subsequently returned to OWCP as undeliverable and unable to forward on September 24, 2018. Despite receiving the September 5, 2018 as undeliverable, there is no indication that OWCP attempted to reissue the decision to the correct mailing address.

On October 3, 2019 appellant requested reconsideration of the September 5, 2018 decision. He asserted that he had not received the decision until December 2018 as OWCP mailed it to his old address. Appellant again requested that his mailing address be updated and provided the new address.

By decision dated October 9, 2019, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP regulations provide that a copy of a decision shall be mailed to the employee's last known address.<sup>3</sup> In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient.<sup>4</sup> This presumption is commonly referred to as the "mailbox rule."<sup>5</sup> It arises when the record reflects that the notice was properly addressed and duly mailed.<sup>6</sup> However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.<sup>7</sup> Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.<sup>8</sup>

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<sup>2</sup> On June 11, 2018 OWCP's June 5, 2018 development letter was returned as undeliverable and unable to forward.

<sup>3</sup> *D.C.*, Docket No. 13-1503 (issued December 17, 2013); *J.R.*, Docket No. 13-0313 (issued August 15, 2013); *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

<sup>4</sup> *G.A.*, Docket No. 18-0266 (issued February 25, 2019); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>5</sup> See *J.F.*, Docket No. 19-1893 (issued April 17, 2020); *D.R.*, Docket No. 19-1899 (issued April 15, 2020); *Kenneth E. Harris*, *id.*

<sup>6</sup> *Id.*

<sup>7</sup> *M.C.*, Docket No. 12-1778 (issued April 12, 2013); see *C.O.*, Docket No. 10-1796 (issued March 23, 2011).

<sup>8</sup> *M.C.*, *id.*

OWCP's September 5, 2018 decision was sent to an incorrect address, and returned to OWCP as undeliverable and unable to forward. Thus, appellant could not have timely requested an appeal from an OWCP decision that he did not receive.<sup>9</sup>

As OWCP mailed appellant's decision to an incorrect address, the Board finds that OWCP improperly issued its September 5, 2018 decision.<sup>10</sup> For this reason, the case will be remanded to OWCP for proper issuance of a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the October 9, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 8, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *K.N.*, Docket No 16-1412 (issued December 20, 2016); *E.C.*, Docket No. 11-1174 (issued February 27, 2012).

<sup>10</sup> *See D.C.*, *supra* note 3; *Tammy J. Kenow*, 44 ECAB 619 (1993).