

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

S.M., Appellant)	
)	
and)	Docket No. 19-1756
)	Issued: May 22, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Commack, NY, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 19, 2019, appellant filed a timely appeal from a July 1, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-1756.

By notice dated April 1, 2019, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that she no longer had residuals or continuing disability from work resulting from the employment injury. OWCP afforded appellant 30 days to provide evidence or argument if she contested the proposed termination of her compensation benefits. The letter was addressed to appellant's last known address of record.

The notice of proposed termination was returned by the U.S. Postal Service on April 22, 2019 as "not deliverable as addressed" and unable to forward.

¹ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

By decision dated July 1, 2019, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits.

OWCP procedures provide that notice is required prior to termination in all cases where benefits are being paid on the periodic rolls and in the case of termination of medical benefits.² The Board has held that OWCP must follow its procedures and provide notice and opportunity to respond prior to the termination of compensation benefits.³

The mailbox rule provides that proper and timely mailing of a document in the ordinary course of business raises a rebuttable presumption of receipt by the addressee.⁴ As a rebuttable presumption, receipt will not be presumed. Rather, when there is evidence of nondelivery, the presumption may also be rebutted by other evidence that supports that the addressee did not receive the correspondence.⁵

The record in this case contains direct evidence of nondelivery of the April 1, 2019 notice of proposed termination.⁶ Although properly addressed to appellant's last known address, the U.S. Postal Service returned the notice to OWCP as undeliverable and unable to forward. Despite receiving the notice as undeliverable, it made no further attempt to reissue the notice of proposed termination prior to issuing its finalized termination decision on July 1, 2019. The Board finds that the returned envelope constitutes evidence of nondelivery sufficient to overcome the presumption of receipt.⁷ Because appellant had not received the April 1, 2019 notice of proposed termination, she was not afforded notice and opportunity to respond prior to the termination of compensation benefits.⁸

As OWCP has not complied with the procedural rights afforded to appellant under its regulations and as required by the Board, it is found that OWCP improperly issued its final termination decision without proper notice.⁹ Accordingly,

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4b (February 2013); see also *Winton A. Miller*, 52 ECAB 405 (2001).

³ *K.S.*, Docket No. 11-2021 (issued August 21, 2012).

⁴ *L.C.*, Docket No. 19-0320 (issued July 26, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁵ *Id.*

⁶ *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

⁷ *V.R.*, Docket No. 18-1117 (issued June 20, 2019); *M.U.*, Docket No. 09-0526 (issued September 14, 2009).

⁸ See *S.B.*, Docket No. 19-0337 (issued February 19, 2020).

⁹ See *L.G.*, Docket No. 17-0004 (issued April 17, 2017).

IT IS HEREBY ORDERED THAT the July 1, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: May 22, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board