

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

E.K., Appellant)
and) Docket No. 25-0642
DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS AND BORDER PROTECTION,)
Honolulu, HI, Employer)
Issued: August 14, 2025
)
)

Appearances:

Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On June 25, 2025 appellant filed a timely appeal from a January 2, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0642.¹

On September 27, 2024 appellant, then a 52-year-old agriculture specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 26, 2024 she sustained pulled muscles from the left posterior lower back through the left anterior groin area when she lifted and shifted a heavy box in a hamper while in the performance of duty. She did not stop work.

Appellant submitted evidence in support of her claim.

¹ The Board notes that, following the January 2, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

In a development letter dated November 1, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for completion. OWCP afforded appellant 60 days to submit the necessary evidence. It mailed the development letter to her last known address of record.

Thereafter, OWCP received additional evidence in support of appellant's claim.

On December 2, 2024 OWCP received the November 1, 2024 development letter, marked "RETURN TO SENDER" by the U.S. Postal Service and returned to OWCP as undeliverable.

In a follow-up letter dated December 4, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the November 1, 2024 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. It mailed the follow-up letter to appellant's last known address of record.

Thereafter, OWCP received additional evidence in support of appellant's claim.

On December 23, 2024 OWCP received the December 4, 2024 follow-up development letter, marked "RETURN TO SENDER" by the U.S. Postal Service and returned to OWCP as undeliverable.

By decision dated January 2, 2025, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted September 26, 2024 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

The Board, having duly considered this matter, finds that the case is not in posture for decision.

On November 1, 2024 OWCP mailed appellant a properly addressed development letter, and on December 4, 2024 mailed her a properly addressed follow-up development letter. 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.² However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.³ The record in this case contains direct evidence of nondelivery of the November 1, 2024 initial development letter as well as the December 4, 2024 follow-up development letter. Although properly addressed to appellant at her address of record, the U.S. Postal Service returned the letters to OWCP as undeliverable. OWCP received the nondelivered November 1, 2024 development letter on December 2, 2024, and the nondelivered December 4, 2024 follow-up development letter on

² See *James A. Gray*, 54 ECAB 277 (2002).

³ *L.M.*, Docket No. 16-0144 (issued March 22, 2016).

December 23, 2024. Consequently, appellant has rebutted the presumption of receipt of the November 1 and December 4, 2024 development letters under the mailbox rule.⁴

As appellant did not receive the November 1, 2024 development letter and December 4, 2024 follow-up development letter, the case will be remanded to OWCP to issue a new development letter and, if necessary, a new follow-up development letter, followed by a *de novo* decision on appellant's traumatic injury claim.

IT IS HEREBY ORDERED THAT the January 2, 2025 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: August 14, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁴ See *Order Remanding Case, K.C.*, Docket No. 18-0807 (issued April 18, 2019); *Order Remanding Case, G.A.*, Docket No. 18-0266 (issued February 25, 2019) (the Board found that presumption of receipt of a development letter was rebutted when the envelope enclosing the development letter was returned and marked Return to Sender and remanded the case for reissuance of a new development letter).