

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

S.P., Appellant)	
)	
and)	Docket No. 26-0095
)	Issued: February 24, 2026
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Houston, TX, Employer)	
)	

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

Case Submitted on the Record

ORDER REVERSING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On October 28, 2025, appellant filed a timely appeal from a September 29, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 26-0095.¹

On November 18, 2011, appellant, then a 40-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on November 17, 2011 she injured her right foot and chest when she tripped and fell against an x-ray machine while in the performance of duty.² OWCP accepted the claim for right foot, ankle, and shoulder sprains and chest wall

¹ The Board notes that, following the September 29, 2025 decision, OWCP received additional evidence. 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.*

² OWCP assigned the present case OWCP File No. xxxxxx009. Appellant previously filed a Form CA-1 for an April 24, 2008 injury, which OWCP accepted for lumbar sprain and displacement of lumbar intervertebral disc without myelopathy under OWCP File No. xxxxxx218. OWCP administratively combined OWCP File Nos. xxxxxx009 and xxxxxx218, with the latter serving as the master file.

contusion. It paid appellant wage-loss compensation on the supplemental rolls effective January 6, 2012, and on the periodic rolls from January 7, 2012 through February 28, 2024.

By decision dated November 7, 2024, OWCP suspended appellant's medical benefits pursuant to 5 U.S.C. § 8123(d), effective that date, finding that she failed to attend a scheduled medical examination on October 22, 2024 and had not provided written evidence justifying her failure to attend or cooperate with the examination. It mailed the November 7, 2024 decision to her last known address of record in Santa Barbara, California.

On November 25, 2024, OWCP received the November 7, 2024 decision, marked "RETURN TO SENDER" by the U.S. Postal Service and returned to OWCP as undeliverable.

On August 19, 2025, appellant provided an updated address in Ventura, California.

On August 21, 2025, OWCP inquired as to whether appellant had received the November 7, 2024 decision. She indicated that she had not received the decision.

On August 25, 2025, OWCP forwarded the November 7, 2024 decision to appellant's Ventura, California address.

On September 15, 2025, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 29, 2025, OWCP denied appellant's request for a review of the written record, finding that the request was not made within 30 days of the November 7, 2024 decision and, therefore, was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

The Board, having duly considered this matter, finds that OWCP improperly denied appellant's request for a review of the written record.

On November 7, 2024, OWCP mailed appellant a properly addressed decision, which suspended her medical benefits pursuant to 5 U.S.C. § 8123(d), effective that date. 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.³ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.⁴ The record in this case contains direct evidence of nondelivery of the November 7, 2024 decision. On November 25, 2024, OWCP received the November 7, 2024 decision, marked "RETURN TO SENDER" by the U.S. Postal Service and returned to OWCP as undeliverable. Consequently, presumption of receipt under the mailbox rule is rebutted.

On August 19, 2025, appellant notified OWCP of her new address in Ventura, California, and, on August 21, 2025, confirmed that she had not received the November 7, 2024 decision. On

³ See *James A. Gray*, 54 ECAB 277 (2002).

⁴ *L.M.*, Docket No. 16-0144 (issued March 22, 2016).

August 25, 2025 OWCP forwarded a copy of the November 7, 2024 decision to appellant at her new address of record in Ventura, California. The Board therefore finds that the date of issuance for purposes of determining whether appellant's request for review of the written record was timely filed, pursuant to section 8124(b)(1), was August 25, 2025. As her request was made on September 15, 2025, less than 30 days after the August 25, 2025 date of issuance, the Board finds that it was timely filed.

IT IS HEREBY ORDERED THAT the September 29, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 24, 2026
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board