

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

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| M.B., Appellant                    | ) |                       |
|                                    | ) |                       |
| and                                | ) | Docket No. 24-0608    |
|                                    | ) | Issued: June 25, 2024 |
| DEPARTMENT OF AGRICULTURE, FOREST  | ) |                       |
| SERVICE, Albuquerque, NM, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On May 16, 2024 appellant filed a timely appeal from an April 25, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0608.

On August 30, 2021 appellant, then a 24-year-old forestry technician, filed a traumatic injury claim (Form CA-1) on August 19, 2021 for a back injury sustained while in the performance of duty. OWCP accepted the claim for other intervertebral disc displacement, lumbosacral region and other intervertebral disc degeneration, lumbar region. It paid appellant wage-loss compensation on the supplemental rolls from October 4 through November 6, 2021, on the periodic compensation rolls from November 7 through December 4, 2021, and again on the supplemental rolls from December 5, 2021 through January 1, 2022.

On January 20, 2022 OWCP advised appellant of its preliminary overpayment determination that she received an overpayment of compensation in the amount of \$1,030.35 for the period December 5, 2021 through January 1, 2022 because duplicative payments were erroneously issued during the last payment cycle. It also made a preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request waiver of recovery of the overpayment.

Additionally, it provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a final decision based on the written evidence or a prerecoupment hearing.

On March 1, 2022 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment. She also submitted a completed Form OWCP-20. No financial documentation was submitted.

By decision dated March 18, 2022, OWCP's Branch of Hearings and Review denied appellant's prerecoupment hearing request as it was not made within 30 days of the January 20, 2022 decision and was therefore untimely filed. The case was returned to OWCP for the preliminary overpayment determination to be finalized.

In a March 18, 2024 letter, OWCP advised appellant that it had received her request for waiver regarding the overpayment of \$1,030.35 for the period December 5, 2021 through January 1, 2022 and that the waiver request did not have any supporting financial documentation to show that the amounts listed on the Form OWCP-20 were correct. It afforded appellant 30 days to submit a completed Form OWCP-20 with supporting financial documentation to establish that waiver of recovery of the overpayment should be granted. The letter was addressed to appellant's last known address of record, however, it was returned to OWCP on April 17, 2024 as undeliverable and unable to forward.

An April 19, 2024 memorandum of telephone call (Form CA-110) reflects that OWCP called appellant and left a voice message advising her of the overpayment and requesting her current address so that waiver paperwork could be sent to her.

By decision dated April 25, 2024, OWCP finalized the preliminary overpayment determination finding that appellant received an overpayment of compensation in the amount of \$1,030.35 for the period December 5, 2021 through January 1, 2022 because a duplicative payment was erroneously issued during the last payment cycle. It denied waiver of recovery of the overpayment because there was no evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP also directed that the overpayment be recovered in full. The decision was addressed to the same address as the March 18, 2024 letter, which was returned to OWCP as undeliverable.

The Board has duly considered the matter and concludes that OWCP improperly issued its April 25, 2024 final overpayment decision.

OWCP regulations provide that a copy of the decision shall be mailed to the employee's last known address.<sup>1</sup> 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.<sup>2</sup> However, as a rebuttable presumption, receipt will not be

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<sup>1</sup> 20 C.F.R. § 10.127.

<sup>2</sup> See *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *Michelle Lagana*, 52 ECAB 187 (2000).

assumed when there is evidence of nondelivery.<sup>3</sup> Also, it is axiomatic that the presumption of receipt does not apply when a notice is sent to an incorrect address.<sup>4</sup>

OWCP's March 18, 2024 letter to appellant, which requested that she provide financial documentation supporting her waiver request, was returned to OWCP on April 17, 2024 as undeliverable. OWCP proceeded to issue a final overpayment decision on April 25, 2024, utilizing the same address it had utilized to post the March 18, 2024 letter, which had been returned as undeliverable. Thus, OWCP did not properly issue its April 25, 2024 decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the April 25, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 25, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>3</sup> See *E.L.*, Docket No. 22-0324 (issued September 29, 2022); *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *Order Remanding Case, M.U.*, Docket No. 09-526 (issued September 14, 2009).

<sup>4</sup> See *E.L., id.*; *Order Remanding Case, M.C.*, Docket No. 12-1778 (issued April 12, 2013); *Clara T. Norga*, 46 ECAB 473 (1995); see also *W.A.*, Docket No. 06-1452 (issued November 27, 2006).