

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

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| S.S., Appellant                   | ) |                      |
|                                   | ) |                      |
| and                               | ) | Docket No. 23-0086   |
|                                   | ) | Issued: May 26, 2023 |
| U.S. POSTAL SERVICE, TEMPE APACHE | ) |                      |
| POST OFFICE, Tempe, AZ, Employer  | ) |                      |
|                                   | ) |                      |

*Appearances:*  
David G. Miller, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 27, 2022 appellant, through his representative, filed a timely appeal from a July 8, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated March 2, 2021, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

## FACTUAL HISTORY

On January 22, 2021 appellant, then a 29-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2021 he sustained injuries to his neck, jaw, and shoulders when his postal vehicle was stopped at a traffic light and was rear-ended by another vehicle while in the performance of duty. He stopped work on January 21, 2021.

Appellant submitted medical evidence from Dr. Robert I. Hepburn, an osteopath and Board-certified emergency medicine specialist, along with a January 20, 2021 duty status report (Form CA-17), a January 20, 2021 authorization of examination and/or treatment (Form CA-16), and a January 20, 2021 work release form. He also submitted unsigned January 20, 2021 patient information and signature sheets, and a January 21, 2021 collision information sheet.

In a January 28, 2021 development letter, OWCP notified appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. OWCP afforded both parties 30 days to respond. The case record reflects that appellant's address was incomplete on the January 28, 2021 letter, as the city was missing.

On February 25, 2021 OWCP received an undated statement in which an employing establishment official provided additional information about the circumstances of appellant's claimed January 20, 2021 employment incident. The employing establishment submitted two undated statements in which employees detailed appellant's discussions with them regarding the claimed January 20, 2021 employment incident shortly after its alleged occurrence.

By decision dated March 2, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition from a qualifying physician in connection with the accepted January 20, 2021 employment incident. The case record reflects that appellant's address was incomplete on the March 2, 2021 decision, as the city was missing.

Appellant subsequently submitted additional reports from health care providers.

On June 1, 2022 appellant requested reconsideration of the March 2, 2021 decision. He asserted that he received neither the January 28, 2021 development letter nor the March 2, 2021 decision, and alleged that he only became aware of their existence after he sought assistance with his claim from his union representative.

By decision dated July 8, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

## LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>3</sup> This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>4</sup> Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).<sup>5</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>6</sup> OWCP may not deny a request for reconsideration solely because it was untimely filed. When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error.<sup>7</sup> If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review.<sup>8</sup>

OWCP regulations provide that a copy of a decision shall be mailed to the employee's last known address.<sup>9</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>10</sup> This presumption is commonly referred to as the "mailbox rule."<sup>11</sup> It arises when the record reflects that the notice was properly addressed and duly mailed.<sup>12</sup> However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.<sup>13</sup> Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.<sup>14</sup>

---

<sup>3</sup> *Id.* at § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.607(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

<sup>6</sup> *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>7</sup> *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

<sup>8</sup> *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b).

<sup>9</sup> *See E.W.*, Docket No. 20-0357 (issued December 8, 2020); *D.C.*, Docket No. 13-1503 (issued December 17, 2013); *J.R.*, Docket No. 13-0313 (issued August 15, 2013).

<sup>10</sup> *G.A.*, Docket No. 18-0266 (issued February 25, 2019); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>11</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.*; *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

<sup>12</sup> *See J.F., id.*; *D.R., id.*; *Kenneth E. Harris, id.*

<sup>13</sup> *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *see C.O.*, Docket No. 10-1796 (issued March 23, 2011).

<sup>14</sup> *M.C., id.*

### ANALYSIS

The Board has considered the matter and finds that this case is not in posture for decision.

The Board notes that the January 28, 2021 development letter, instructing appellant regarding evidence needed to establish his claim, and the March 2, 2021 decision denying his claim were sent to an incorrect address. The address to which these documents were mailed did not contain a city.

Because these documents were sent to an incorrect address, appellant was effectively denied an opportunity to file a timely reconsideration request. For this reason, the case will be remanded to OWCP for proper issuance of a *de novo* decision.<sup>15</sup>

### CONCLUSION

The Board finds that this case is not in posture for decision.

### ORDER

**IT IS HEREBY ORDERED THAT** the July 8, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: May 26, 2023  
Washington, DC

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

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

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

---

<sup>15</sup> See *id.*