

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

M.B., Appellant)	
)	
and)	Docket No. 22-1244
)	Issued: November 27, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
JERRY L. PETTIS MEMORIAL VETERANS')	
HOSPITAL, Loma Linda, CA, Employer)	
)	

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 August 12, 2022 appellant filed a timely appeal from a July 22, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1244.

On December 5, 2020 appellant, then a 68-year-old hospital housekeeping management employee, filed an occupational disease claim (Form CA-2) alleging that he contracted clostridium difficile while working in a palliative care unit at the employing establishment due to factors of his federal employment. He indicated that he first became aware of his condition on January 15, 2020 and realized its relationship to his federal employment on January 17, 2020.¹ Appellant initially stopped work on August 18, 2020.²

¹ On March 5, 2021 appellant filed an additional Form CA-2 alleging that he believed that he contracted a clostridium difficile infection while working as a housekeeping aide due to factors of his federal employment. In his March 5, 2021 CA-2 form, he indicated that he first became aware of his conditions and realized their relation to his federal employment on January 15, 2020.

² Appellant later returned to work, but subsequently stopped again on December 5, 2020.

By decision dated February 22, 2021, OWCP denied appellant's occupational disease claim, finding that he had not submitted sufficient evidence to establish the implicated factors of his federal employment. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On March 24, 2021 appellant requested reconsideration of the February 22, 2021 decision.

By decision dated April 5, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

On July 20, 2022 appellant requested reconsideration of the February 22, 2021 decision and provided an updated mailing address.

By decision dated July 22, 2022, OWCP denied appellant's request for reconsideration of its February 22, 2021 decision, finding that the request was untimely filed and failed to demonstrate clear evidence of error. It mailed the decision to an incorrect address.

The July 22, 2022 decision was returned to OWCP by the United States Postal Service on August 19, 2022 as undeliverable.

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

OWCP regulations provide that a copy of the decision shall be mailed to the employee's last known address.³ 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.⁴ However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.⁵ Also, it is axiomatic that the presumption of receipt does not apply when a notice is sent to an incorrect address.⁶

On July 20, 2022 appellant filed a request for reconsideration and provided an updated address. By decision dated July 22, 2022, OWCP denied his request for reconsideration and mailed the decision to an incorrect address. On August 19, 2022 the decision was returned to OWCP as undeliverable. Thus, the Board finds that OWCP did not properly issue its July 22, 2022

³ 20 C.F.R. § 10.127.

⁴ See *S.S.*, Docket No. 23-0086 (issued May 26, 2023); *Michelle Lagana*, 52 ECAB 187 (2000).

⁵ See *E.L.*, Docket No. 22-0324 (issued September 29, 2022); *C.O.*, Docket No. 10-1796 (issued March 23, 2011); *M.U.*, Docket No. 09-526 (issued September 14, 2009).

⁶ See *E.L., id.*; *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *Clara T. Norga*, 46 ECAB 473 (1995); *W.A.*, Docket No. 06-1452 (issued November 27, 2006).

decision.⁷ For this reason, the case will be remanded to OWCP for proper adjudication to include the issuance of an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the July 22, 2022 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: November 27, 2023
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

⁷ See *Order Remanding Case, E. W.*, Docket No. 20-0357 (issued December 8, 2020); *Order Remanding Case, C.C.*, Docket No. 14-0745 (issued July 29, 2014); *Tammy J. Kenow*, 44 ECAB 619 (1993).