



pain when walking an unfamiliar route on uneven surfaces while in the performance of duty.<sup>2</sup> He stopped work on August 27, 2022 and returned to work on September 17, 2022

In an October 7, 2022 development letter, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed to establish his claim, including a narrative medical report from a treating physician, containing a detailed description of findings and a diagnosis, explaining how his work activities caused, contributed to, or aggravated his medical conditions. OWCP provided a questionnaire for his completion and afforded appellant 30 days to respond.

In reports dated August 29, September 13, and November 8, 2022, Dr. Ketan D. Shah, a podiatrist, diagnosed plantar fascial fibromatosis, tinea pedis, and generalized hyperhidrosis. He recounted that appellant walked extensively for work and had pain.

Appellant responded to OWCP's development questionnaire on October 7 and November 11, 2022 and asserted that on August 27, 2022 he was performing a 2.5-hour pivot on an additional route beginning between 5:00 to 5:30 p.m. and twisted his foot experiencing a sharp pain while delivering the mail.

By decision dated November 17, 2022, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the August 27, 2022 employment incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. OWCP mailed the decision to appellant's last known address of record.

In a memorandum of telephone call (Form CA-110) dated February 1, 2023 appellant requested a copy of the November 17, 2022 decision.

On February 13, 2023 appellant requested reconsideration of the November 17, 2022 decision through the appeal request form which had accompanied that decision. No additional evidence or argument was submitted.

By decision dated February 21, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In a March 6, 2023 statement, appellant reiterated that he twisted his ankle while working a pivot on an unfamiliar route with uneven surfaces. He alleged that he aggravated a preexisting condition of plantar fasciitis as he was already fatigued and was overworked.

A November 21, 2023 Form CA-110 noted that appellant explained that he was injured while working on his usual route, but he was injured on an unfamiliar route, while fatigued.

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<sup>2</sup> Appellant subsequently filed an occupational disease claim (Form CA-2) alleging that he had developed plantar fasciitis due to factors of his federal employment, including excessive walking and standing. OWCP accepted this claim for bilateral plantar fascial fibromatosis. It assigned this claim OWCP File No. xxxxxx796. On March 1, 2024 OWCP administratively combined the current file, OWCP File No. xxxxxx497, and OWCP File No. xxxxxx796, with the latter serving as the master file.

On December 4, 2023 appellant requested reconsideration of the November 17, 2022 decision. He asserted that he had never received that decision as it was improperly mailed to his postal box rather than his home address. Appellant also submitted a written change to his mailing address of record.

By decision dated March 1, 2024, 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> To be entitled to a merit review of an OWCP decision, a request for reconsideration must be received by OWCP 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 is indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS).<sup>5</sup> The Board has found that the 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 request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether the request demonstrates clear evidence of error.<sup>7</sup> OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.<sup>8</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit, and it must manifest on its face that OWCP committed an error.<sup>9</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>10</sup> This entails a limited review by

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<sup>3</sup> 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>4</sup> 20 C.F.R. § 10.607(a).

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

<sup>6</sup> *G.G.*, Docket No. 18-1074 (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> 20 C.F.R. § 10.607(b); *T.C.*, Docket No. 19-1709 (issued June 5, 2020); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (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 id.* at § 10.607(b); *supra* note 5 at Chapter 2.1602.5a (September 2020).

<sup>9</sup> 20 C.F.R. § 10.607(b); *B.W.*, Docket No. 19-0626 (issued March 4, 2020); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

<sup>10</sup> *See G.B.*, Docket No. 19-1762 (issued March 10, 2020); *Leona N. Travis*, 43 ECAB 227, 240 (1991).

OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record, and whether the new evidence demonstrates clear evidence of error on the part of OWCP. The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>11</sup> The Board notes that clear evidence of error is intended to represent a difficult standard.<sup>12</sup> Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>13</sup>

OWCP regulations provide that a copy of a decision shall be mailed to the employee's last known address.<sup>14</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>15</sup> This presumption is commonly referred to as the "mailbox rule."<sup>16</sup> It arises when the record reflects that the notice was properly addressed and duly mailed.<sup>17</sup> However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.<sup>18</sup> Also, it is axiomatic that the presumption of receipt does not apply where a notice is sent to an incorrect address.<sup>19</sup>

### ANALYSIS

The Board finds that OWCP properly determined that appellant's December 4, 2023 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

As noted above, OWCP's regulations establish a one-year time limit for requesting reconsideration, which begins on the date of the most recent merit decision. Herein, the most recent merit decision was dated November 17, 2022. As OWCP received appellant's request for reconsideration on December 4, 2023, more than one year after the November 17, 2022 decision,

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<sup>11</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020); *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Matthews*, 44 ECAB 765, 770 (1993).

<sup>12</sup> *R.K.*, Docket No. 19-1474 (issued March 3, 2020).

<sup>13</sup> *U.C.*, Docket No. 19-1753 (issued June 10, 2020).

<sup>14</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>15</sup> *G.A.*, Docket No. 18-0266 (issued February 25, 2019); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

<sup>16</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).

<sup>17</sup> *See J.F., id.*; *D.R., id.*; *Kenneth E. Harris, id.*

<sup>18</sup> *M.C.*, Docket No. 12-1778 (issued April 12, 2013); *see C.O.*, Docket No. 10-1796 (issued March 23, 2011).

<sup>19</sup> *M.C., id.*

the Board finds that the request was untimely filed.<sup>20</sup> Consequently, appellant must demonstrate clear evidence of error by OWCP in denying his claim for compensation.<sup>21</sup>

The Board further finds that appellant has not demonstrated clear evidence of error on the part of OWCP in its March 1, 2024 decision. The underlying issue is whether appellant met his burden of proof to establish the August 27, 2022 employment incident occurred, as alleged. He contended in his March 6, 2023 statement and a Form CA-110 dated November 21, 2023, that he twisted his ankle while working a pivot on an unfamiliar route with uneven surfaces. He alleged that he aggravated a preexisting condition of plantar fasciitis as he was already fatigued and was overworked. This additional evidence did not manifest error in the November 17, 2022 decision by establishing that the August 27, 2022 employment incident occurred, as alleged.<sup>22</sup> It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>23</sup>

In support of his request for reconsideration, appellant asserted that he had not received the November 17, 2022 decision. However, the record reflects that the November 17, 2022 notice of decision was mailed to the last known address of record and was not returned as undeliverable.<sup>24</sup> The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received.<sup>25</sup> This is known as the “mailbox rule.”<sup>26</sup> The presumption is rebutted where there is evidence of nondelivery or other evidence that supports that the addressee did not receive the correspondence.<sup>27</sup> The record establishes that OWCP’s November 17, 2022 decision was properly sent to appellant’s address of record and there is no indication that it was returned as undeliverable. Furthermore, he utilized the appeal request form from the November 17, 2022 decision to file his February 13, 2023 request for reconsideration. Accordingly, without evidence to the contrary, the November 17, 2022 notice of decision is presumed to have arrived at appellant’s mailing address.

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<sup>20</sup> *D.B.*, Docket No. 19-0648 (issued October 21, 2020); *R.T.*, Docket No. 20-0298 (issued August 6, 2020).

<sup>21</sup> *Id.*

<sup>22</sup> *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *see M.M.*, Docket No. 20-0961 (issued December 9, 2020).

<sup>23</sup> *W.R.*, *id.*; *U.C.*, Docket No. 19-1753 (issued June 10, 2020). *But see C.H.*, Docket No. 21-0264 (issued June 22, 2021).

<sup>24</sup> *K.G.*, Docket No. 24-0396 (issued May 30, 2024); *A.S.*, Docket No. 19-1689 (issued February 21, 2020); *K.F.*, Docket No. 18-0839 (issued November 19, 2018).

<sup>25</sup> *V.M.*, Docket No. 24-0151 (issued March 25, 2024); *J.B.*, Docket No. 23-0591 (issued August 29, 2023); *W.R.*, Docket No. 22-1016 (issued September 30, 2022); *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022).

<sup>26</sup> *N.B.*, Docket No. 23-1157 (issued March 12, 2024); *L.L.*, *id.*; *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

<sup>27</sup> *L.M.*, Docket No. 24-0023 (issued February 22, 2024); *J.B.*, Docket No. 17-1164 (issued September 11, 2017).

As noted, clear evidence of error is intended to represent a difficult standard.<sup>28</sup> The Board finds that appellant's request for reconsideration did not show on its face that OWCP committed an error in denying his traumatic injury claim.<sup>29</sup> Thus, the evidence is insufficient to demonstrate clear evidence of error.<sup>30</sup>

Accordingly, the Board finds that OWCP properly denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

**CONCLUSION**

The Board finds that OWCP properly determined that appellant's December 4, 2023 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 26, 2024  
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

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<sup>28</sup> *E.L.*, Docket No. 22-0631 (issued October 31, 2022).

<sup>29</sup> *Id.*

<sup>30</sup> *W.R.*, Docket No. 24-0244 (issued May 22, 2024); *B.C.*, Docket No. 24-0022 (issued April 25, 2024); *J.J.*, Docket No. 23-0155 (issued October 5, 2023).