United States Department of Labor Employees' Compensation Appeals Board

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| D.C., Appellant |) | |
| and |) | Docket No. 11-920 Issued: October 26, 2011 |
| DEPARTMENT OF LABOR, OCCUPATIONAL HEATH & SAFETY ADMINISTRATION, |) | 155404. 000001 20, 2011 |
| Boston, MA, Employer |) | |
| Appearances: Appellant, pro se Office of Solicitor, for the Director | | Case Submitted on the Record |

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge ALEC J. KOROMILAS, Judge COLLEEN DUFFY KIKO, Judge

On March 2, 2011 appellant filed a timely appeal from a February 16, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as it was untimely filed and failed to establish clear evidence of error. The Board docketed the appeal as No. 11-920.

The Board finds that appellant timely requested reconsideration. This case has previously been before the Board. In a decision dated November 10, 2010, the Board affirmed October 1 and November 20, 2009 decisions denying her claim that she sustained an injury to her knees on April 3, 2008 in the performance of duty. On December 18, 2010 appellant requested reconsideration. In a decision dated February 16, 2011, OWCP denied her request for reconsideration of its November 20, 2009 merit decision after finding that it was untimely filed and did not show clear evidence of error.

The Board has duly considered the matter and notes that a right to reconsideration within one year, however, accompanies any merit decision on the issues, including a decision by the

¹ Docket No. 10-567 (issued November 10, 2010).

Board.² Appellant's December 18, 2010 request for reconsideration was within one year of the Board's November 10, 2010 decision. As her request was timely, OWCP improperly denied her request by applying the legal standard reserved for cases where reconsideration is requested more than one year after the last merit decision. The Board will set aside the February 16, 2011 decision and remand the case for consideration of appellant's reconsideration request under the standard for timely reconsideration requests.³ After such further development as OWCP deems necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the February 16, 2011 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: October 26, 2011 Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, Reconsiderations, Chapter 2.1602.3(b)(1) (January 2004); Robert F. Stone, 57 ECAB 292 (2005); Larry J. Lilton, 44 ECAB 243 (1992).

³ See 20 C.F.R. § 10.606(b).