United States Department of Labor Employees' Compensation Appeals Board

C.A., Appellant)
,) Dealest No. 12 922
and	Docket No. 12-833Issued: May 24, 2012
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Rapid City, SD, Employer)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER GRANTING REMAND

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

On March 5, 2012 appellant filed a timely appeal from a December 8, 2011 decision of the Office of Workers' Compensation Programs (OWCP). By that decision, OWCP denied appellant's request for reconsideration of the merits of its October 25, 2011 decision. OWCP found that appellant had not provided "clear evidence that [it] erred in issuing the prior decision dated October 25, 2011."

On April 10, 2012 the Director filed a motion requesting the Board to set aside the December 8, 2011 decision and remand the case for further specified development. He acknowledged that appellant timely filed a request for reconsideration of OWCP's October 25, 2011 decision and, as such, OWCP should have reviewed said request "with regard to standards set forth ... in 20 C.F.R. § 10.606(b)(2)." However, the Director further acknowledged that, instead, OWCP's claims examiner mentioned "the standard reserved for untimely requests,

¹ Appellant alleged that he injured his left knee in the performance of duty as a forestry technician. OWCP denied his claim on October 25, 2011 on the grounds that, although the August 3, 2011 incident occurred as alleged, he failed to establish that he sustained a medical condition resulting from the accepted incident.

² 20 C.F.R. § 10.606(b)(2)(i)-(iii) of OWCP's regulations provides that an application for reconsideration must be in writing and set forth arguments and contain evidence that either: "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; (ii) Advances a relevant legal argument not previously considered by OWCP; or (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."

namely, whether appellant's application presented clear evidence of error in OWCP's prior decision." He concluded that "this higher standard of review is not warranted" under the circumstances in this case. On remand, the Director stated that OWCP will review appellant's request for reconsideration under the proper standard of review for timely reconsideration requests. Following this and any necessary further development, he stated that OWCP will issue a "merit reconsideration decision pursuant to 20 C.F.R. § 10.606."

The Clerk of the Board served appellant with a copy of the Director's motion to remand.

On April 17, 2012 appellant advised the Board, *inter alia*, that he wished to pursue reconsideration before OWCP at this time and did not want his appeal processed.

The Board has duly considered the matter and concludes that, as the Director has acknowledged that OWCP applied the incorrect standard for review to appellant's timely reconsideration request and as on remand OWCP will apply the proper standard for review and issue a merit reconsideration decision following any necessary further development, the Director's motion to remand should be granted. Accordingly,

IT IS HEREBY ORDERED THAT the motion to remand filed by the Director of the Office of Workers' Compensation Programs is granted. The decision of OWCP dated December 18, 2011 is set aside; the case is remanded for further proceedings consistent with this order.

Issued: May 24, 2012 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

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³ See 20 C.F.R. § 10.607(b).