United States Department of Labor Employees' Compensation Appeals Board

F.H., Appellant)
and) Docket No. 13-966
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA, Employer) Issued: August 12, 2013)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

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

PATRICIA HOWARD FITZGERALD, Judge

On March 18, 2013 appellant filed a timely appeal from a December 11, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. The Board docketed the appeal as No. 13-966.

The Board notes that the most recent decision issued by OWCP is a June 7, 2012 decision terminating appellant's compensation and authorization for medical treatment on the grounds that he had no further employment-related disability or condition causally related to his June 5, 2001 employment injury. By an Appeal Request Form dated July 3, 2012, received by OWCP on July 10, 2012, appellant requested reconsideration of the June 7, 2012 termination decision. OWCP did not issue a decision on appellant's request for reconsideration until December 11, 2012, five months after the request was made. OWCP's procedures manual provides:

"When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board, OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared. There is no obligation to conduct a

merit review on insufficient evidence if the maximum 180-day time limit for requesting review by the Board will have expired within the 90-day period following the OWCP's receipt of the claimants' reconsideration request...."

The Board finds that OWCP's delay of five months in issuing a decision on appellant's reconsideration request effectively precluded him from appealing OWCP's most recent merit decision to the Board.² Had OWCP acted upon his request within 90 days, he would have been able to seek review of OWCP's June 7, 2012 merit decision before the Board.³

Accordingly, the case will be remanded to OWCP to issue an appropriate decision on the merits of the claim in order to preserve appellant's appeal rights.

IT IS HEREBY ORDERED THAT the December 11, 2012 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: August 12, 2013 Washington, DC

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (October 2011).

² See 20 C.F.R. §§ 501.2(c) and 501.3. For OWCP decision issued on or after November 19, 2008, the Board has jurisdiction to consider an appeal form a final decision of OWCP that is filed within 180 days of such OWCP decision.

³ See Geoma R. Munn, 50 ECAB 242 (1999); Debra E. Stoler, 43 ECAB 561 (1992) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).