

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

D.W., Appellant

and

**DEPARTMENT OF THE NAVY, Norfolk, VA,
Employer**

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**Docket No. 12-1361
Issued: February 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 June 11, 2012 appellant filed a timely appeal from two April 2, 2012 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as 12-1361.

By decision dated July 22, 2009, OWCP accepted appellant's claim for bilateral hearing loss. In separate decisions dated October 20, 2009, it granted appellant a schedule award for five percent permanent binaural impairment due to tinnitus and denied appellant's request for hearing aids.

Appellant requested reconsideration on November 4, 2009. Along with this request for reconsideration appellant submitted evidence. By letter dated April 15, 2010, OWCP acknowledged receipt of appellant's November 4, 2009 request for reconsideration. By letter dated April 20, 2010, it informed appellant that his reconsideration request had been received, but that the form was blank. OWCP advised appellant of the evidence needed to substantiate his claim.

Appellant again requested reconsideration of the decision denying hearing aids by letter dated December 29, 2011. He noted that he had initially requested reconsideration on November 4, 2009, that his request was acknowledged as received, and that he had attempted to contact OWCP on numerous occasions but had received no decision. Appellant provided a

summary of the telephone contacts he had attempted with OWCP to resolve the issue. On January 18, 2012 OWCP acknowledged receipt of appellant's request for reconsideration.

OWCP issued two decisions dated April 2, 2012. In the first decision, OWCP found that the request for reconsideration was untimely filed and did not establish clear evidence of error. The second decision dated April 2, 2012 stated that appellant's reconsideration of the denial of hearing aids had been reviewed. Appellant was advised that his letter neither raised substantive legal questions, nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision. This decision further advised appellant that "you are requesting an appeal for which there is no decision. If you would like to request hearing aids, you would need to go through the third[-]party contractor.... Your case remains open and active for additional supplies."

The Board has duly considered the matter and finds that this case is not in posture for decision. The November 4, 2009 submission identified OWCP's file number and the date of the OWCP decision, was timely filed, was acknowledged as received and a development letter was sent to appellant's address of record on April 20, 2010. No final decision was ever issued on that request for reconsideration.

The Board finds that, under the circumstances, the November 4, 2009 letter constituted a timely request for reconsideration.¹ As such, OWCP must evaluate the request under the appropriate standard.² Neither of the decisions issued on April 2, 2012 properly provided appellant a decision under the standard of review for a timely request for reconsideration.

The case will be remanded to OWCP for proper consideration of appellant's timely request for reconsideration of OWCP's October 20, 2009 decision. After such further development as it deems necessary, OWCP should issue an appropriate decision.

¹ See *Vincent P. Taimanglo*, 45 ECAB 504 (1994).

² 20 C.F.R. § 10.138(b)(1).

IT IS HEREBY ORDERED THAT the April 2, 2012 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 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