United States Department of Labor Employees' Compensation Appeals Board

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J.H., Appellant)
and) Docket No. 12-562
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Saint Rose, LA, Employer) Issued: January 30, 2013))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

<u>Before:</u> SCHBACH. (

RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On January 17, 2012 appellant filed a timely appeal of the January 3, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which denied his reconsideration request as untimely.

OWCP had issued a merit decision on September 27, 2011 denying appellant's claim that he suffered a recurrence of disability beginning June 27, 2011. The attached notice of appeal rights advised that any request for reconsideration had to be received within one calendar year of the date of the decision.

Appellant requested reconsideration of the September 27, 2011 decision on October 19, 2011. OWCP received his request on October 25, 2011. It also received an October 10, 2011 report from Dr. John B. Logan, a Board-certified orthopedic surgeon, who reviewed his treatment of appellant and who addressed the questions posed by OWCP in its

¹ Appellant, a 48-year-old screening manager, sustained a traumatic injury on December 27, 2005 when he loaded a heavy piece of luggage onto a cart and felt a pop in his back. OWCP accepted his claim for thoracic back sprain and neck sprain. It would later accept brachial neuritis or radiculitis not otherwise specified and thoracic spondylosis without myelopathy. OWCP accepted a recurrence of disability on October 18, 2006.

July 19, 2011 recurrence development letter. It was his opinion that appellant's condition had progressed to the point that he was no longer able to work in the capacity required of his position and that the medical record offered appropriate substantiation of his difficulties.

In a January 3, 2012 decision, OWCP denied appellant's reconsideration request. It found the request untimely and further found that appellant did not present clear evidence of error in the September 27, 2011 decision.

The Board has duly considered the matter and finds that OWCP's January 3, 2012 decision denying appellant's reconsideration request must be set aside.

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁵

As the statement of appeal rights attached to OWCP's September 27, 2011 decision advised, appellant had one calendar year, or until September 27, 2012, to deliver any reconsideration request to OWCP. OWCP received his request within a month. The Board therefore finds that his request was timely and subject to the standard of review in 20 C.F.R. § 10.606(b)(3). The Board will remand the case for an application of the proper standard of review.

² 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606.

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608.

IT IS HEREBY ORDERED THAT the January 3, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: January 30, 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