United States Department of Labor Employees' Compensation Appeals Board

M.D., Appellant)	
and) Docket No. 13-1344	12
U.S. POSTAL SERVICE, FALCONFIELD STATION, Mesa, AZ, Employer) Issued: November 7, 202)))	13
Appearances: Alan J. Shapiro, Esq., for the appellant	Case Submitted on the Record	

Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:

COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge ALEC J. KOROMILAS, Alternate Judge

On May 14, 2013 appellant, through counsel, filed a timely appeal from an April 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The Board docketed the appeal as No. 13-1344.

The Board notes that the most recent merit decision issued by an OWCP hearing representative is a February 15, 2012 decision affirming the denial of her claim for a recurrence of disability on and after April 7, 2007 due to her accepted employment injuries. In a letter dated July 30, 2012, appellant's counsel requested reconsideration of the February 15, 2012 decision denying her recurrence claim. By letter dated December 17, 2012, counsel requested that OWCP issue a decision on appellant's reconsideration request. OWCP did not issue a decision on appellant's request for reconsideration until April 12, 2013, more than eight months after the request was made. OWCP's procedures provide:

"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 claimant's reconsideration request."

The Board, having duly considered the matter, finds that OWCP's delay of more than eight months in issuing a decision on appellant's reconsideration request effectively precluded her from appealing OWCP's most recent merit decision to the Board.² Had OWCP acted upon her request within 90 days, she would have been able to seek review of OWCP's February 15, 2012 merit decision before the Board.

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 April 12, 2013 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: November 7, 2013 Washington, DC

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate 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 final adverse OWCP decision issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).