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

W.H., Appellant	)
and	) Docket No. 14-92 ) Issued: April 28, 2014
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, White City, OR, Employer	)   155ucu. April 26, 2014 
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

## ORDER REMANDING CASE

## Before:

RICHARD J. DASCHBACH, Chief Judge ALEC J. KOROMILAS, Alternate Judge MICHAEL E. GROOM, Alternate Judge

On October 22, 2013 appellant filed a timely appeal from the April 29, 2013 decision of the Office of Workers' Compensation Programs<sup>1</sup> (OWCP). The Board assigned Docket No. 14-92.

In its April 29, 2013 decision, OWCP refused to reopen appellant's case for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error. It indicated that her request for reconsideration of an April 4, 2012 OWCP decision denying her work-related emotional condition claim<sup>2</sup> was

<sup>&</sup>lt;sup>1</sup> Appellant inadvertently indicated that she was appealing an April 22, 2013 decision of OWCP, but the record contains a "corrected" version of that decision dated April 29, 2013. OWCP issued the corrected version on April 29, 2013 because it wanted to correct a statement in the earlier decision indicating that her reconsideration request was received on April 3, 2013, rather than on April 4, 2013.

<sup>&</sup>lt;sup>2</sup> On September 14, 2010 appellant, then a 46-year-old social worker, filed an occupational disease claim alleging that she sustained an emotional condition due to harassment from supervisors and coworkers.

untimely filed because it was received on April 4, 2013 and therefore was not received within one year of April 4, 2012.<sup>3</sup>

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP. To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision. The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought for merit decisions issued on or after August 29, 2011. However, OWCP may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, it must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."

In its April 29, 2013 decision, OWCP improperly determined that appellant filed an untimely request for reconsideration of its April 4, 2012 decision. Appellant's reconsideration was received by OWCP on April 4, 2013, a period of 365 days after its April 4, 2012 decision. Therefore, it was received precisely within one year. Because OWCP improperly determined that her reconsideration request was untimely, it improperly applied the clear evidence of error standard for reconsideration requests. The April 29, 2013 decision of OWCP must be set aside and the case remanded to OWCP in order to perform a review of appellant's reconsideration request under the standards for timely reconsideration requests, to be followed by the issuance of an appropriate decision.

<sup>&</sup>lt;sup>3</sup> Appellant's reconsideration request was entered into the Integrated Federal Employees' Compensation System on April 4, 2013 and therefore is considered to have been received on that date. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (October 2011).

<sup>&</sup>lt;sup>4</sup> Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

<sup>&</sup>lt;sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>&</sup>lt;sup>6</sup> *Id.* at § 10.607(a).

<sup>&</sup>lt;sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, Reconsiderations, Chapter 2.1602.4 (October 2011).

<sup>&</sup>lt;sup>8</sup> See 20 C.F.R. § 10.607(b); Charles J. Prudencio, 41 ECAB 499, 501-02 (1990).

**IT IS HEREBY ORDERED THAT** the April 29, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 28, 2014 Washington, DC

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

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

> Michael E. Groom, Alternate Judge Employees' Compensation Appeals Board