

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

A.S., Appellant

and

PEACE CORPS, Washington, DC, Employer

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Docket No. 11-1677

Issued: October 26, 2011

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, Judge

COLLEEN DUFFY KIKO, Judge

On July 12, 2011 appellant timely appealed the June 27, 2011 decision of the Office of Workers' Compensations Programs (OWCP), which purportedly denied modification of a May 5, 2008 schedule award decision. The Board docketed the appeal as No. 11-1677.

This case was previously before the Board.¹ Appellant, a 43-year old former Peace Corps volunteer, has an accepted claim for psychosis, depression -- single episode, which arose on or about December 15, 1991.² When the case was previously on appeal, OWCP had denied appellant's claim for a schedule award, which the Branch of Hearings and Review affirmed. By decision dated August 20, 2009, the Board affirmed OWCP's May 5, 2008 schedule award decision, as well as the hearing representative's March 3, 2009 decision. The Board explained that the brain was not included among the list of schedule members under the Federal Employees' Compensation Act or its implementing regulations, and as such, a schedule award for brain damage was not authorized.³ In its latest decision dated June 27, 2011, OWCP

¹ Docket No. 09-1145 (issued August 20, 2009).

² At the time of his injury, appellant was volunteering overseas in Yaoundé, Cameroon.

³ The Board's August 20, 2009 decision is incorporated herein by reference.

purportedly reviewed the merits of the May 5, 2008 schedule award decision based on a request for reconsideration appellant ostensibly submitted on August 20, 2009.⁴

The Board finds OWCP's June 27, 2011 decision internally inconsistent. At one point in the decision, OWCP claimed to have reviewed the merits and denied modification. However, the stated issue was "whether the evidence received ... [was] sufficient to constitute clear evidence of error" in the May 5, 2008 decision. Under the heading "[Requirements of Entitlement]," OWCP explained that in order to reopen the case for reconsideration, the evidence must establish that OWCP erroneously applied or interpreted a point of law in its earlier decision. The June 27, 2011 decision then listed various statements and medical reports that were reportedly received along with appellant's request for reconsideration. Other than noting the dates of the statements and medical reports, OWCP did not address the substance of the evidence submitted. Without explanation or elaboration, OWCP summarily stated that "[u]pon review of the medical and factual evidence of file, there was no evidence presented ... to show that ... [OWCP] erred in the [May 5, 2008] decision..." While acknowledging that the evidence submitted was new to the claim, OWCP indicated this new evidence "had been determined to be insufficient to warrant modification..." OWCP concluded that the evidence received did not support a finding of error and, therefore, appellant's request for reconsideration was denied pursuant to 20 C.F.R. § 10.608(b).

OWCP appears to vacillate between the standard for an untimely request for reconsideration under 20 C.F.R. § 10.607(b) -- clear evidence of error -- and the standard for a timely request for reconsideration under 20 C.F.R. §§ 10.606(b). It repeatedly noted the lack of evidence of "error" with respect to the May 5, 2008 schedule award decision. If appellant timely requested reconsideration as OWCP's June 27, 2011 decision implied, then clear evidence of error is not the appropriate standard. Accordingly, the case shall be remanded for proper adjudication of appellant's request for reconsideration.

The Board further notes that the June 27, 2011 decision is deficient because OWCP failed to comply with 20 C.F.R. § 10.126, which provides that the "decision shall contain findings of fact and a statement of reasons." The mere recitation of the dates of various medical reports and statements will not suffice for purposes of determining whether appellant is entitled to further merit review of his claim for a schedule award.

⁴ On May 19, 2001 OWCP advised appellant that he had submitted an application for reconsideration under 5 U.S.C. § 8128 that warranted merit review. This correspondence did not identify the specific date of appellant's request for reconsideration.

IT IS HEREBY ORDERED THAT the June 27, 2011 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order of the Board.⁵

Issued: October 26, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁵ The Board notes that appellant has requested an oral argument before the Board. Given the disposition of this case, the Board will not grant the request for oral argument.