

On April 6, 2012 an OWCP claims examiner advised appellant and his representative that on October 22, 2008 OWCP issued a reconsideration denial following a merit review of the

claim. The claims examiner noted that appeal rights were issued with the denial and if appellant disagrees with that decision, he should request an appeal.

On May 15, 2012 appellant filed a notice of appeal to the Board contesting OWCP's April 6, 2012 letter which refused to reopen his claim. Appellant's representative argued that on October 26, 2011 and March 19, 2012, appellant requested that his claim be reopened, submitting new evidence and argument, but OWCP improperly refused. He cited OWCP's clear evidence of error standard as a basis for reopening appellant's claim.¹

The Board finds that appellant's October 26, 2011 letter, submitted with new medical evidence and argument, was a request for reconsideration.² On March 19, 2012 he submitted a letter pertaining to the status of his reconsideration request. In its April 6, 2011 letter, OWCP effectively denied review of appellant's reconsideration request. The Board considers the claims examiner's April 6, 2012 action a final, adverse decision subject to review under 20 C.F.R. §§ 501.2(c) and 501.3(a).

When an application for review is untimely, OWCP undertakes a limited review to determine whether the application presents clear evidence that OWCP's final merit decision was in error.³ Its procedures state that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's application for review shows clear evidence of error on the part of OWCP.⁴ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁵

OWCP's procedure manual provides that, if clear evidence of error has not been presented, OWCP should deny the application by letter decision, which includes a brief evaluation of the evidence submitted and a finding that clear evidence of error has not been shown.⁶ In this case, the record contains evidence that appellant filed an untimely request for reconsideration on October 26, 2011 following OWCP's October 22, 2008 merit decision. There is no evidence of record, however, that the OWCP claims examiner conducted a limited review of the claim. Thus, OWCP failed to follow its own procedures and there remains an outstanding request for reconsideration that must be considered.⁷

¹ 20 C.F.R. § 10.607(b).

² While no special form is required, a reconsideration request must be in writing, identify the decision and specific issue(s) for which reconsideration is being requested, and be accompanied by relevant and pertinent new evidence or argument not previously considered. The application need not contain the word reconsideration. *Gladys Mercado*, 52 ECAB 255 (2001); *Vincente P. Taimanglo*, 45 ECAB 504 (1994).

³ *A.F.*, 59 ECAB 714 (2008).

⁴ *E.R.*, Docket No. 09-599 (issued June 3, 2009). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (January 2004).

⁵ *D.G.*, 59 ECAB 455 (2008).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(b) (October 2011).

⁷ *Id.* at Chapter 2.1602.5.

The Board finds that this case is not in posture for a decision, as there exists an outstanding request for reconsideration. The case will be remanded for a proper response to appellant's request. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the April 6, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: November 26, 2012
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