United States Department of Labor Employees' Compensation Appeals Board

J.P., Appellant)	
J.I., Appenant)	
and)	Docket No. 13-1395
DEPARTMENT OF THE TREASURY,)	Issued: April 23, 2014
INTERNAL REVENUE SERVICE, Fresno, CA, Employer)	
)	
Appearances:		Case Submitted on the Record
Alan J. Shapiro, Esq., for the appellant		
Office of Solicitor, for the Director		

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge MICHAEL E. GROOM, Alternate Judge JAMES A. HAYNES, Alternate Judge

On May 28, 2013 appellant, through her attorney, filed a timely appeal from a February 1, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The Board docketed the appeal as No. 13-1395.

The Board notes that the most recent merit decision issued by OWCP is an August 9, 2012 decision denying modification of the denial of appellant's claim for a recurrence of disability due to appellant's accepted employment-related injury. By letter dated September 27, 2012, appellant's attorney requested reconsideration of the August 9, 2012 decision denying her recurrence claim. OWCP did not issue a decision on appellant's request for reconsideration until February 1, 2013, more than four months after the request was made. Its 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

¹ OWCP accepted appellant's occupational disease claim for a right shoulder and upper arm strain resulting from her duties as a tax technician.

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 OWCP's receipt of the claimant's reconsideration request."²

The Board, having duly considered the matter, finds that OWCP's delay of more than four months in issuing a decision on appellant's reconsideration request effectively precluded her from appealing OWCP's most recent merit decision to the Board.³ Had OWCP acted upon her request within 90 days, she would have been able to seek review of its August 9, 2012 merit decision before the Board.⁴

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 February 1, 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: April 23, 2014 Washington, DC

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

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

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (October 2011).

³ See 20 C.F.R. §§ 501.2(c) and 501.3. For final adverse OWCP decisions 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).

⁴ See Geoma R. Munn, 50 ECAB 242 (1999); Debra E. Stoler, 43 ECAB 561 (1992) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).