

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

B.C., Appellant)	
)	
and)	Docket No. 13-1824
)	Issued: May 16, 2014
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	
Chicago, IL, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On August 1, 2013 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) March 18, 2013 nonmerit decision denying her request for reconsideration and May 7, 2013 nonmerit decision denying her request for an oral hearing. The Board assigned Docket No. 13-1824.

This case has previously been before the Board with respect to the termination of appellant's medical benefits.¹ In a May 9, 2008 decision, the Board affirmed OWCP's January 18 and November 15, 2007 decisions which terminated appellant's medical benefits related to her May 7 and July 24, 1985 work injuries and found that she did not have any continuing employment-related residuals after January 18, 2007.²

¹ Docket No. 08-571 (issued May 9, 2008).

² In an August 21, 2013 decision, OWCP denied appellant's June 12, 2013 request for reconsideration of the May 9, 2008 termination decision on the grounds that it was not timely filed and failed to establish clear evidence of error of the prior decision. It is well established that the Board and OWCP may not have concurrent jurisdiction over the same issue in a case. Consequently, any decision by OWCP on an issue pending before the Board is null and void. *Douglas E. Billings*, 41 ECAB 880, 895 (1990). As OWCP issued the August 21, 2013 decision after appellant filed her August 1, 2013 Board appeal and, as it is on the same issue pending before the Board, *i.e.*, whether appellant's request for reconsideration of the termination decision was timely filed or established clear evidence of error, it is null and void. *See* 20 C.F.R. § 501.2(c)(2).

By letter dated September 20, 2012, appellant requested reconsideration “for the termination of my claim on January 18, 2007 for no residual of ongoing disability” and submitted evidence.

In the March 18, 2013 decision, OWCP failed to address the proper issue on reconsideration. OWCP stated that the request for reconsideration concerned whether appellant had sustained a recurrence of disability; yet the issue on reconsideration clearly was the termination of medical benefits.

The Board has duly considered the matter and finds that OWCP failed to address the relevant issue in this case. Appellant specifically requested reconsideration of OWCP’s decision terminating her medical benefits as of January 18, 2007 on the grounds that she no longer had any employment-related residuals or disability. Therefore, the decision is void *ab initio*, that is, void from its inception and of no force and effect³. OWCP should have adjudicated the issue of whether appellant’s September 20, 2012 request for reconsideration of the termination of her medical benefits was timely filed or established clear evidence of error. The Board finds that the case must be remanded to OWCP for a proper decision on this issue.⁴ Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision on appellant’s September 20, 2012 request for reconsideration.

³ Cf. *Donald E. Buckles*, 43 ECAB 707 (1992), in which the Board found that its prior order remanding case was void *ab initio* where the Board had no authority, due to lack of jurisdiction, to issue the order at the time of issuance. In the instant case, OWCP improperly adjudicated a recurrence issue when appellant had requested reconsideration of the termination of her medical benefits. OWCP’s actions precluded appellant from a proper adjudication of her reconsideration request and, as such, it acted outside its authority when issuing the March 18, 2013 decision on the recurrence issue.

⁴ In light of the disposition of this case, the Board finds that the May 7, 2013 OWCP decision denying an oral hearing is moot.

IT IS HEREBY ORDERED THAT the March 18, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this order.

Issued: May 16, 2014
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