



## **FACTUAL HISTORY**

On March 14, 2012 appellant, then a 32-year-old police officer, filed an occupational disease claim (Form CA-2) for neurological and respiratory disorders, which he attributed to exposure to chemical agent resistant coating (CARC).<sup>3</sup> The alleged CARC paint exposure began in October 2007. At the time, appellant was a general equipment mechanical helper temporarily assigned to Building 499. He claimed to have worked around CARC paint for several weeks before receiving personal protective equipment (PPE). Appellant indicated that he first became aware of his illness on October 17, 2007. But it was not until October 14, 2011 that he first realized his illness was caused or aggravated by his employment. Appellant stated that his symptoms were present shortly after working around CARC paint in 2007. In 2008, he worked approximately six weeks as a sandblaster before assuming his current duties as a police officer.

OWCP initially denied the claim on the basis that appellant did not establish fact of injury. In its April 23, 2012 decision, it found that appellant had not factually established his claimed occupational exposure. OWCP also found that the medical evidence did not contain a diagnosis related to appellant's claimed occupational exposure.

By decision dated August 1, 2012, the Branch of Hearings and Review set aside OWCP's April 23, 2012 denial. The hearing representative remanded the case for further development regarding the issue of whether appellant timely filed his claim.

In an August 31, 2012 sworn statement, appellant indicated that he advised his supervisors around late November or early December 2007 that he was having breathing problems and sores/rashes on his lower leg while working in Building 499. According to him, his supervisors advised him they would place his health concerns in his file.

In a November 15, 2012 decision, OWCP denied appellant's claim because he had not filed in a timely manner. The Branch of Hearings and Review affirmed OWCP's decision on May 1, 2013. The hearing representative found that the employing establishment did not have reasonable notice of an on-the-job injury, noting that appellant's employer "states unequivocally that [he] did not tell them about the exposure...." Additionally, the hearing representative found that appellant believed at the time that his 2007 health problems were work related. Consequently, the hearing representative found that appellant's March 2012 CA-2 form was untimely because he had not filed within three years of his claimed exposure.

In April 2014, appellant submitted a packet of documents to OWCP that included employee medical records from January 2008 and a March 26, 2014 letter from the Office of Personnel Management (OPM) advising appellant that he had been approved for disability retirement. OPM found appellant was disabled due to dementia secondary to CARC. Appellant's employee health records from January 22, 2008 noted that he had been painting the past three months and did not know how long he would be loaned out. The treatment records also noted a history of allergies and asthma, as well as headache, dizziness, and light-headedness. Appellant was identified as a loan painter and there was a notation of prior respirator use at work.

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<sup>3</sup> Other claimed conditions included skin problems, a liver condition, decreased testosterone, and an eye problem.

On June 6, 2014 appellant telephoned OWCP regarding the status of the 25 plus pages of documents he submitted in April 2014. OWCP acknowledged having received the documents on April 29, 2014, but explained there was no clear indication of appellant's intent with respect to reconsideration. It further explained the appeal rights associated with the hearing representative's May 1, 2013 decision. That same afternoon, appellant faxed a handwritten note requesting reconsideration, which he dated April 25, 2014. OWCP's June 6, 2014 telephone call notes (Form CA-110) acknowledged receipt of appellant's April 25, 2014 request for reconsideration.

In a June 19, 2014 decision, OWCP denied appellant's April 25, 2014 request for reconsideration. The claims examiner noted that appellant requested reconsideration, but presented no new evidence or argument. She reiterated that "No additional evidence was received...."

### **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>4</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>5</sup> One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>6</sup> A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>8</sup>

### **ANALYSIS**

Appellant argued that he submitted new evidence to OWCP in April 2014, which it failed to consider in its June 19, 2014 decision. He also noted that his then-supervisor, David F.

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<sup>4</sup> This section provides in pertinent part: "[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>5</sup> 20 C.F.R. § 10.607.

<sup>6</sup> 20 C.F.R. § 10.607(a). 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 OWCP's decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.606(b)(2).

<sup>8</sup> *Id.* at §§ 10.607(b), 10.608(b).

McCluskey, has not provided a statement on the record regarding whether appellant previously reported his 2007 health concerns.

The Board agrees and finds that the case is not in posture for decision. Because Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.<sup>9</sup> In this instance, OWCP failed to consider the 25 plus pages of documents appellant submitted on or about April 25, 2014. OWCP's June 19, 2014 decision incorrectly indicated that that "No additional evidence was received...." The June 6, 2014 CA-110 notes clearly reflect appellant's intent, as well as OWCP's understanding that the packet of documents received on April 29, 2014 were associated with appellant's request for reconsideration. In light of OWCP's failure to address all relevant evidence before it at the time, the case shall be remanded for a proper review of the evidence and issuance of an appropriate final decision.<sup>10</sup>

### CONCLUSION

The case is not in posture for decision.

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<sup>9</sup> *Id.* at § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990). Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered. *Willard McKennon*, 51 ECAB 145 (1999).

<sup>10</sup> Although the case was previously remanded for further development, it is noteworthy that OWCP did not send appellant's August 31, 2012 sworn statement to the employing establishment for comment. To date, appellant's then-supervisor, Mr. McCluskey, has not been asked whether appellant specifically advised him of his health concerns in 2007-08. Appellant bears the burden of establishing entitlement under FECA; however, OWCP shares responsibility in the development of the evidence. *Richard F. Williams*, 55 ECAB 343, 346 (2004). Once OWCP undertakes development of the record it must do a complete job in procuring evidence that resolves the relevant issue(s) in the case. *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 19, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: April 14, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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