

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

---

**C.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bronx, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 16-0250  
Issued: May 2, 2016**

*Appearances:*  
*Stephen Larkin, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

On November 29, 2015 appellant, through her representative, filed a timely application for review of an October 28, 2015 decision of the Office of Workers' Compensation Programs (OWCP), which denied her request for reconsideration without conducting a merit review. In its October 28, 2015 decision, OWCP found that appellant's reconsideration request, received on March 17, 2015, was insufficient to warrant a merit review of the claim.

The Board notes that most recent merit decision in this case is OWCP's February 5, 2015 decision. On March 17, 2015 OWCP received appellant's reconsideration request. It did not issue a decision on appellant's request for reconsideration until October 28, 2015, over seven months after the request was made. The Board finds that appellant is entitled to a merit review of her case. 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.<sup>1</sup> Appellant had 180 days, or until August 4, 2015, to appeal OWCP's February 5, 2015 merit decision to the Board.<sup>2</sup> The Board finds that OWCP's delay of over seven months in issuing a decision on appellant's reconsideration request effectively precluded

---

<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7.a (October 2011).

<sup>2</sup> See 20 C.F.R. § 501.3(e).

appellant from appealing OWCP's most recent merit decision on her claim to the Board. Had OWCP acted upon appellant's request within 90 days, appellant would have been able to seek review of OWCP's February 5, 2015 merit decision before the Board.<sup>3</sup>

Accordingly, the Board will set aside OWCP's October 28, 2015 decision and remand the case for 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 October 28, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.

Issued: May 2, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

---

<sup>3</sup> See *Geoma R. Munn*, 50 ECAB 242 (1999); *Joseph L. Cabral*, 44 ECAB 152 (1992); *Debra E. Stoler*, 43 ECAB 561 (1992); *Carlos Tola*, 42 ECAB 337 (1991) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).