

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

C.L., Appellant)
)
 and) **Docket No. 10-1483**
) **Issued: May 12, 2011**
 PEACE CORPS, SANTO DOMINGO,)
 Dominican Republic, Employer)
)

Appearances:
 Mark Freeman, for the appellant
 Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
 RICHARD J. DASCHBACH, Chief Judge
 ALEC J. KOROMILAS, Judge
 COLLEEN DUFFY KIKO, Judge

On May 3, 2010 appellant filed an application for review of a November 2, 2009 decision denying her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The appeal was docketed as No. 10-1483.¹

The Board notes that the most recent merit decision issued by the Office is a December 8, 2008 decision. In the instant case, appellant requested reconsideration in January 6 and 9, 2009 letters containing extensive argument. She also submitted medical evidence in support of her request. The Office did not issue a decision on appellant's request for reconsideration until November 2, 2009, almost 10 months after the request was made. Its procedure manual provides: "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, the [Office] should conduct a merit review. That is, the basis of the original decision and any new evidence

¹ The Office accepted that in mid 1972 appellant, then a 34-year-old volunteer, sustained a fracture of her left femur, shortening of her left leg, left cox vara (115 degrees varus deformity of her left hip/femoral neck), left leg gait abnormality, left-sided myalgia and myositis and generalized abnormality of osteoarthritis of her left leg/hip. Appellant raised issues concerning pay rates for disability and schedule award compensation, periods of disability compensation, inclusion of accepted employment-related conditions and payments for housing modifications and the Office addressed these matters in several decisions.

should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared.”²

The Board finds that the Office’s delay of almost 10 months in issuing a decision on appellant’s reconsideration request effectively precluded appellant from appealing the Office’s most recent merit decision on her claim to the Board.³ Had the Office acted upon appellant’s request within 90 days, appellant would have been able to seek review of the Office’s December 8, 2008 merit decision before the Board.⁴

Accordingly, the case will be remanded to the Office 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 November 2, 2009 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded to the Office for further action consistent with this order.

Issued: May 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees’ Compensation Appeals Board

Alec J. Koromilas, Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (June 2002).

³ *See* 20 C.F.R. §§ 501.2(c) and 501.3. For Office decisions issued on or after November 19, 2008, the Board only has jurisdiction to consider an appeal from a final decision of the Office that is filed within 180 days of such Office decision.

⁴ *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992); *Carlos Tola*, 42 ECAB 337 (1991) (remanding cases for merit review where the Office delayed issuance of reconsideration decisions).