

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

N.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Billings, MT, Employer**

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**Docket No. 11-1399
Issued: January 12, 2012**

Appearances:

*Alan J. Shapiro, Esq., 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 27, 2011 appellant, through her attorney, filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs (OWCP) dated April 14, 2011 that denied her request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error.¹ The Board docketed the appeal as No. 11-1399.

The Board has reviewed the record on appeal and finds that the case must be remanded to OWCP for application of the appropriate standard of review to appellant's timely request for reconsideration. By its April 14, 2011 decision, OWCP stated that appellant requested reconsideration of an April 10, 2009 decision, in a letter dated March 17, 2011. A review of the case record indicates that there is no OWCP decision dated April 10, 2009. Rather, on April 10, 2009 the Board issued a merit decision.² In a letter dated March 23, 2010, received by OWCP on March 25, 2010, appellant, through counsel, requested reconsideration of the April 10, 2009 decision. By letter dated March 30, 2010, OWCP informed appellant's counsel that if he

¹ This case has previously been before the Board. In an April 10, 2009 decision, Docket No. 08-2051, the Board found that OWCP properly found that appellant had no disability or residuals due to the accepted April 30, 2007 employment injury accepted for closed dislocations of the sacrum and lumbar vertebra. The law and the facts of the previous Board decision are incorporated herein by reference.

² *Id.*

disagreed with a decision, he should follow the appeal rights attached to that decision and that “no action will be taken in the absence of your full and proper completion and submission of the Appeal Request Form that was attached to the relevant decision.” On March 17, 2011 appellant, through her attorney, again requested reconsideration and submitted additional medical evidence.³ The attorney asserted that he had previously timely requested reconsideration, but the request was not processed. By decision dated April 14, 2011, OWCP denied appellant’s request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error.

OWCP regulations provide that an application for reconsideration must be submitted in writing.⁴ There is nothing in the regulations that state that an appeal request form must be submitted, and the Board has held that no formal application for reconsideration is required.⁵ Moreover, a review of OWCP’s procedure manual indicates that a claimant has the right to reconsideration within one year of any merit decision, whether issued by OWCP, its Branch of Hearings and Review or the Board.⁶

As appellant’s March 23, 2010 reconsideration request was made within one year of the Board’s merit decision dated April 10, 2009, the Board concludes that the request was timely. In its April 14, 2011 decision denying appellant’s reconsideration request, OWCP applied the clear evidence of error legal standard. This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.⁷ Since OWCP erroneously reviewed the evidence submitted by appellant in support of her reconsideration request under the clear evidence of error standard, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(2).⁸

³ This evidence consisted of a May 26, 2008 treatment note from Randy N. Glaser, a physician’s assistant; treatment notes dated June 25 to December 17, 2008 from Dr. Steven J. Rizzolo, a Board-certified orthopedic surgeon; a January 28, 2009 treatment note from Dr. Alan K. Dacre, a Board-certified orthopedic surgeon; an April 10, 2008 magnetic resonance imaging study of the lumbar spine; a June 19, 2008 tomographic study of the pelvis, cervical spine, thoracic spine, and lumbar spine; and a procedure note for a right sacroiliac joint injection performed by Dr. Anne Giuliano, a Board-certified radiologist, on December 8, 2008.

⁴ 20 C.F.R. § 10.606(1).

⁵ *D’Wayne Avila*, 57 ECAB 642 (2006).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (October 2011).

⁷ *See Donna M. Campbell*, 55 ECAB 241 (2004).

⁸ Section 10.606(b)(2) provides that an application for reconsideration must show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or include the submission of relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(2).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 14, 2011 is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 12, 2012
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