

United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant)

and)

PANAMA CANAL COMMISSION,)
INDUSTRIAL DIVISION, Cristobal, Panama,)
Employer)

Docket No. 11-2004
Issued: July 25, 2012

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
ALEC J. KOROMILAS, Alternate Judge

On September 23, 2011 appellant filed a timely appeal of a May 5, 2011 decision of the Office of Workers' Compensation Programs (OWCP), finding that his request for reconsideration was untimely and failed to show clear evidence of error. The appeal was docketed as No. 11-2004.¹

This case was before the Board on prior appeals. By decision dated August 11, 1999, the Board affirmed a September 16, 1996 OWCP decision denying the recurrence of disability claim.² In a decision dated October 19, 2009, the Board affirmed a September 5, 2008 OWCP decision finding that appellant's application for reconsideration was untimely and failed to show clear evidence of error.³

¹ A duplicative Docket No. 12-02 was also inadvertently created. Any correspondence received pursuant to Docket No. 12-02 was considered by the Board with respect to the current appeal. Docket No. 12-02 will be dismissed on the grounds that it duplicates Docket No. 11-2004.

² Docket No. 97-2880 (issued August 11, 1999).

³ Docket No. 09-449 (issued October 19, 2009). Appellant did not specifically raise this argument on previous appeal.

In the current appeal, appellant argued that he did timely request reconsideration within one year of the Board's August 11, 1999 merit decision, noting the submission of evidence in 2000.⁴ In this regard, the record contains a July 10, 2000 letter from appellant, in Spanish, discussing his claim and referencing the August 11, 1999 Board decision. The letter is date stamped as received by OWCP July 31, 2000. In addition, there were medical reports in Spanish dated June 12, 2000 Dr. Avelino Gutierrez and July 4, 2000 from Dr. Daniel Clua, also received on July 31, 2000.

The May 5, 2011 OWCP decision does not acknowledge that a July 10, 2000 letter and medical evidence were received on July 31, 2000 with respect to this claim.⁵ Pursuant to Board case law, OWCP should have attempted to secure an accurate translation of the evidence if there was a need for clarification.⁶ The case will be remanded to OWCP for a proper determination as to whether the July 10, 2000 letter and accompanying evidence constituted a timely request for reconsideration.⁷ After such further development as OWCP deems necessary, it should issue an appropriate decision.⁸

⁴ A claimant has one year from a merit decision of the Board to timely request reconsideration. *See Eileen A. Nielson*, Docket No. 95-3047 (issued December 23, 1997).

⁵ The May 5, 2011 decision stated that the June 12 and July 4, 2000 medical reports were new to this file and not received until October 26, 2010.

⁶ *See H.S.*, Docket No. 11-1170 (issued December 14, 2011); *Patrick T. Wall*, Docket No. 01-1802 (issued March 26, 2002); *Armando Colon*, 41 ECAB 563 (1990).

⁷ *See Jack D. Johnson*, 57 ECAB 593 (2006) for a discussion as to evidence constituting a request for reconsideration.

⁸ The Board notes that appellant requested an oral argument. Pursuant to 20 C.F.R. § 501.5(a), oral arguments may be held at the discretion of the Board. In view of the Board's findings, oral argument in this appeal would not serve a useful purpose. The issues can be adequately addressed based on the case record as submitted and oral argument is denied.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 5, 2011 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: July 25, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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