

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

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**M.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Harpswell, ME, Employer**

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**Docket No. 11-1917  
Issued: March 26, 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  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

On August 23, 2011 appellant filed a timely appeal of an August 10, 2011 Office of Workers' Compensation Programs' (OWCP) decision denying merit review. The Board docketed the appeal as No. 11-1917.

The Board notes that the most recent merit decision issued by OWCP is a December 3, 2010 decision denying appellant's occupational disease claim impacting his thoracic spine. Appellant requested reconsideration of this decision on February 8, 2011. OWCP did not issue a decision on appellant's request for reconsideration until August 10, 2011, over six 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, OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence 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.”<sup>1</sup>

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<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.9 (May 1996) (this provision was updated on October 2011 and is currently found at Chapter 2.1602.7a (October 2011)).

The Board finds that OWCP's delay of over six months in issuing a decision on appellant's reconsideration request effectively precluded appellant from appealing OWCP's most recent merit decision on her claim to the Board.<sup>2</sup> Had OWCP acted within 90 days, appellant would have been able to seek review of OWCP's December 3, 2010 merit decision before the Board.<sup>3</sup>

Accordingly, the case will be remanded to 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 August 10, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: March 26, 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

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<sup>2</sup> See 20 C.F.R. §§ 501.2(c) and 501.3. For final adverse OWCP decisions issued on or after November 19, 2008 the Board only has jurisdiction to consider an appeal from a final decision of the OWCP filed within 180 days of such OWCP decision. See 20 C.F.R. § 501.3(e).

<sup>3</sup> *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 OWCP delayed issuance of reconsideration decisions.); *C.L.*, Docket No. 10-1483 (issued May 12, 2011).