

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

S.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Harrisonville, MO, Employer**

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**Docket No. 12-734
Issued: September 13, 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
PATRICIA HOWARD FITZGERALD, Judge

On February 16, 2012 appellant filed a timely appeal of a January 25, 2012 Office of Workers' Compensation Programs' (OWCP) decision denying merit review. The Board docketed the appeal as No. 12-734.

The Board notes that the most recent merit decision issued by OWCP is a February 10, 2011 decision denying appellant's occupational disease claim. Appellant requested reconsideration of this decision on March 5, 2011. OWCP did not issue a decision on his request for reconsideration until January 25, 2012, over 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, 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."¹

¹ 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 10 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.² Had OWCP acted within 90 days, appellant would have been able to seek review of OWCP's February 20, 2011 merit decision before the Board.³

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 January 25, 2012 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: September 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

² 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).

³ *C.L.*, Docket No. 10-1483 (issued May 12, 2011); *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.).