

employment injury. OWCP subsequently denied modification by decisions dated May 27, 2009 and October 6, 2010. In both instances, it continued to find the medical evidence insufficient to establish a causal relationship between appellant's claimed recurrence of disability and her accepted employment injury.

The record reflects that until March 4, 2011, appellant has been represented by Dean E. Wanderer, Esq. By letter received on March 4, 2011 appellant authorized Alan J. Shapiro to represent her before OWCP.

On July 14, 2011 counsel requested reconsideration of the May 27, 2009 decision and submitted additional medical evidence not previously considered by OWCP.³ On February 8, 2012 he reminded OWCP of his July 14, 2011 request for reconsideration and asked that a decision be rendered.

On March 23, 2012 OWCP asked appellant to clarify whether Mr. Shapiro represented her. Appellant confirmed Mr. Shapiro's representation by letter dated March 29, 2012, which OWCP received on April 9, 2012.⁴

By letter dated April 18, 2012, OWCP acknowledged Mr. Shapiro as appellant's authorized representative. However, it did not address the July 14, 2011 request for reconsideration.

On January 15, 2013 counsel again reminded OWCP of the pending request for reconsideration he filed on July 14, 2011. OWCP took no action in response to his January 15, 2013 correspondence.

On January 17, 2014 counsel asked OWCP to immediately process the request for reconsideration filed on July 11, 2011. He noted that he previously submitted follow-up requests on February 8, 2012 and January 15, 2013, but OWCP had yet to provide him with a decision or a response. With his latest reminder, counsel resubmitted Dr. Ghazal March 21, 2011 report.

On February 12, 2014 OWCP acknowledged receipt of appellant's "petition dated [January 17, 2014] requesting reconsideration...."

By decision dated April 15, 2014, OWCP denied reconsideration of its October 6, 2010 merit decision. It noted it received counsel's letter on January 21, 2014, which was more than a year after the October 6, 2010 decision. Consequently, OWCP considered the request untimely. It also found that appellant had not established clear evidence of error.⁵

³ Counsel submitted a March 21, 2011 report from Dr. Talal M. Ghazal, a Board-certified anesthesiologist with a subspecialty in pain medicine.

⁴ OWCP also received an April 2, 2012 letter from appellant's prior counsel, Mr. Wanderer advising that he no longer represented her.

⁵ The Board notes that OWCP's April 15, 2014 decision did not reference any evidence received since the October 16, 2010 decision, including Dr. Ghazal's March 21, 2011 report.

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁶ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁷ One such limitation is that the application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁸ When a request for reconsideration is untimely, OWCP will undertake a limited review to determine whether the application presents clear evidence of error on the part of OWCP in its most recent merit decision.⁹

Contrary to OWCP's finding, appellant timely requested reconsideration on July 14, 2011, which OWCP received on July 18, 2011. At the time, counsel also submitted additional medical evidence not previously considered by OWCP. The January 17, 2014 correspondence, which OWCP mischaracterized as a request for reconsideration, was counsel's third reminder to OWCP of the outstanding request for reconsideration filed in July 2011. Accordingly, clear evidence of error was not the appropriate standard of review. The case shall be remanded to OWCP for proper consideration of appellant's July 14, 2011 request under 20 C.F.R. §§ 10.606, 10.608 and 10.609.¹⁰

⁶ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.” 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.607 (2012).

⁸ *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of the OWCP decision for which review is sought for merit decisions issued on or after August 29, 2011. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System. *Id.* at Chapter 2.1602.4b.

⁹ *Id.* at § 10.607(b).

¹⁰ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(2). When a timely application for reconsideration meets at least one of the above-noted requirements, OWCP will reopen the case for merit review and determine whether modification of the prior decision is appropriate. 20 C.F.R. §§ 10.608(a) and 10.609.

IT IS HEREBY ORDERED THAT the April 15, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

Issued: November 6, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board