

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

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**S.P., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, East Orange, NJ, Employer**

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**Docket No. 14-1309  
Issued: October 21, 2014**

*Appearances:*  
*James D. Muirhead, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On May 19, 2014 appellant, through her representative, filed a timely application for review of the April 11, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied reconsideration. She argued that OWCP's delay in denying her request jeopardized her right to appeal the merits of her case to the Board.

The most recent merit decision in this case is OWCP's October 11, 2013 decision finding that the medical opinion evidence was insufficient to establish continuing residuals from the accepted medical conditions.<sup>1</sup> On November 19, 2013 OWCP received appellant's reconsideration request of the same date.

The Board finds that appellant is entitled to a merit review of her case. When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's

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<sup>1</sup> On May 17, 2011 a patient stepping off an examination table stumbled and fell into appellant's left side as she sat at her desk. OWCP accepted her claim for aggravation of lumbar disc displacement with myelopathy and aggravation of lumbar postlaminectomy syndrome. Effective March 11, 2012, OWCP terminated benefits on the grounds that the weight of the medical evidence established that appellant had returned to her preinjury status. Thereafter, appellant filed several reconsideration requests seeking to reestablish benefits for the accepted aggravations.

right to review of the merits of the case by the Board, OWCP should conduct a merit review.<sup>2</sup> Appellant had 180 days, or until April 9, 2014, to appeal OWCP's October 11, 2013 merit decision to the Board.<sup>3</sup> OWCP received her reconsideration request within 39 days but did not issue its denial until April 11, 2014, two days after her appeal right had expired. Thus, OWCP's delay jeopardized, indeed denied, appellant's right to appeal the merits of her case.

Accordingly, the Board will reverse OWCP's April 11, 2014 decision and remand the case for a merit review and an appropriate final decision on appellant's claim for continuing benefits.<sup>4</sup>

**IT IS HEREBY ORDERED THAT** the April 11, 2014 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action.

Issued: October 21, 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

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7.a, (October 2011).

<sup>3</sup> 20 C.F.R. § 501.3(e).

<sup>4</sup> *E.g., Joseph L. Cabral*, 44 ECAB 152 (1992) (remanding the case for a merit decision where OWCP delayed more than 10 months in denying reconsideration).