

respiratory disorders, which he attributed to exposure to chemical agent resistant coating (CARC) paint. He indicated that he first became aware of his illness on October 17, 2007, but it was not until October 14, 2011 that he first realized his illness was caused or aggravated by his employment.

By decision dated April 23, 2012, OWCP denied the claim because appellant had not factually established his claimed occupational exposure.³ However, the Branch of Hearings and Review set aside the April 23, 2012 decision and remanded the case to OWCP for further development regarding whether appellant timely filed his claim. In a November 15, 2012 decision, OWCP denied appellant's claim because it was untimely filed. The Branch of Hearings and Review affirmed OWCP's decision on May 1, 2013.

When the case was last before the Board, OWCP had issued a June 19, 2014 decision denying reconsideration. Appellant took issue with the denial of reconsideration and filed an appeal with the Board on December 15, 2014. He also filed a request for reconsideration with OWCP on December 22, 2014. While the case was pending before the Board, OWCP issued a January 14, 2015 decision denying reconsideration. It found that appellant's latest request for reconsideration was untimely filed and failed to present clear evidence of error.

In a decision dated April 14, 2015, the Board set aside the June 19, 2014 nonmerit decision because OWCP neglected to consider evidence appellant submitted on reconsideration.⁴ Following the Board's remand of the claim to OWCP, appellant filed the current appeal challenging OWCP's January 14, 2015 decision denying reconsideration.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁶ 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.⁷ 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.⁸

³ OWCP also found that the medical evidence did not contain a diagnosis related to appellant's claimed occupational exposure.

⁴ The Board's April 14, 2015 decision is incorporated herein by reference.

⁵ 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).

⁶ 20 C.F.R. § 10.607 (2014).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.607(b).

ANALYSIS

While a case is on appeal to the Board, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal.⁹ Under Docket No. 15-0440, the Board had jurisdiction over the claim beginning December 15, 2014, and did not issue its decision until April 14, 2015. The question before the Board at that time was whether appellant established a basis for further review of OWCP's May 1, 2013 merit decision, which denied appellant's claim as untimely. This is the same issue OWCP addressed in its January 14, 2015 decision. Accordingly, the Board finds that OWCP lacked jurisdiction when it issued the January 14, 2015 decision denying merit review. Therefore, OWCP's January 14, 2015 decision is null and void.

CONCLUSION

The Board finds that OWCP did not have jurisdiction over appellant's claim at the time it issued its January 14, 2015 nonmerit decision. Consequently, the January 14, 2015 OWCP decision is null and void.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2015 decision of the Office of Workers' Compensation Programs is set aside as null and void.

Issued: September 14, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Id.* at § 10.626; *see, e.g., Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004).