

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Allen Park, MI, Employer**

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**Docket No. 16-0827
Issued: August 12, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On March 15, 2016 appellant filed a timely application for review of the December 16, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which denied his request for reconsideration without conducting a merit review.

The Board notes that most recent merit decision in this case is OWCP's June 10, 2015 decision. On July 14, 2015 OWCP received appellant's reconsideration request which was dated June 24, 2015.¹ It did not issue a decision on appellant's request for reconsideration until December 16, 2015, over five months after the request was made. The Board finds that appellant is entitled to a merit review of his case. 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.² Appellant had 180 days, or until December 7, 2015, to appeal OWCP's June 10, 2015 merit decision to the Board.³ The Board finds that OWCP's delay of over five months in issuing a decision on appellant's reconsideration request

¹ Appellant submitted additional evidence in support of the request. He also submitted another reconsideration request received by OWCP on December 9, 2015.

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

³ See 20 C.F.R. § 501.3(e).

effectively precluded appellant from appealing OWCP's most recent merit decision on his claim to the Board. Had OWCP acted upon appellant's request within 90 days, appellant would have been able to seek review of OWCP's June 10, 2015 merit decision before the Board.⁴

Accordingly, the Board will set aside OWCP's December 16, 2015 decision and remand the case for 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 December 16, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.

Issued: August 12, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁴ See *Geoma R. Munn*, 50 ECAB 242 (1999); *Joseph L. Cabral*, 44 ECAB 152 (1992); *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).