

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

M.H., Appellant)	
)	
and)	Docket No. 16-1149
)	Issued: November 1, 2016
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, San Francisco, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

ORDER REMANDING CASE

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

On May 10, 2016 appellant filed a timely appeal from an April 14, 2016 decision of the Office of Workers' Compensation Programs (OWCP).

The Board has duly considered the matter and finds that the case is not in posture for a decision. In its April 14, 2016 decision, OWCP denied appellant's request for reconsideration finding that the January 21, 2016 request was untimely filed as it was not filed within one year of OWCP's November 13, 2014 decision and also because the request failed to demonstrate clear evidence of error. In support of its clear evidence of error determination, it merely stated, "you did not present clear evidence of error."

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹ Section 10.126 of Title 20 of the Code of Federal Regulations dictates that the decision shall contain findings of fact and a statement of reasons.² In a clear evidence of error case, OWCP must provide a limited review

¹ 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

² 20 C.F.R. § 10.126; *see also O.R.*, 59 ECAB 432 (2008).

explaining how the evidence appellant has submitted with her reconsideration request bears on the evidence previously of record, and whether this evidence demonstrates that OWCP committed an error.³ It did not provide any discussion of the arguments or evidence appellant submitted in support of his reconsideration request. OWCP did not discharge its responsibility to provide appellant a statement explaining how the evidence or argument appellant submitted with his reconsideration request bears on the evidence previously of record, and whether this evidence demonstrates that OWCP committed an error.

The case will be remanded to OWCP for further consideration of the evidence and argument submitted by appellant in support of his reconsideration request to be followed by an appropriate decision, containing appropriate findings and reasons, regarding whether he has established clear evidence of error.

IT IS HEREBY ORDERED THAT the April 14, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: November 1, 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

³ *Nelson T. Thompson*, 43 ECAB 919, 922 (1992); *see also Robert M. Pace*, 46 ECAB 551 (1995) (in determining whether clear evidence of error is shown, a brief evaluation of the evidence should be included in the decision so that any subsequent reviewer will be able to address the issue of discretion).