



On October 26, 2015 appellant, through counsel, requested reconsideration of the termination of her benefits. By decision dated November 25, 2015, OWCP denied modification. On December 30, 2015 it received appellant's counsel's request for reconsideration dated that day. OWCP did not issue its nonmerit decision on appellant's request for reconsideration until April 18, 2016, approximately four months after the request was made. Its procedures provide:

“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. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared. There is no obligation to conduct a merit review on insufficient evidence if the maximum 180-day time limit for requesting review by the Board will have expired within the 90-day period following OWCP's receipt of the claimant's reconsideration request.”<sup>2</sup>

The Board, having duly considered the matter, finds that OWCP's delay of more than four months in issuing a decision on appellant's reconsideration request effectively precluded her from appealing OWCP's most recent merit decision to the Board.<sup>3</sup> Had OWCP acted upon her request within 90 days, she would have been able to seek review of the most recent merit decision dated November 25, 2015.<sup>4</sup>

Accordingly, the case will be remanded to OWCP to issue an appropriate decision on the merits of the claim in order to preserve appellant's appeal rights.

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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> See 20 C.F.R. §§ 501.2(c) and 501.3. For final adverse OWCP decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

<sup>4</sup> See *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).

**IT IS HEREBY ORDERED THAT** the April 18, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with the above opinion.

Issued: November 7, 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