

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

The case has previously been before the Board.³ The facts of the case as presented in the prior order are incorporated herein by reference. The relevant facts are as follows.

On June 11, 2013 appellant, then a 36-year-old letter carrier, filed a recurrence claim (Form CA-2a) concerning a prior injury. On September 5, 2013, however, OWCP determined that appellant was in fact alleging that he sustained a new injury on May 14, 2013. By decision dated October 21, 2013, it denied appellant's claim, finding that the evidence of record failed to establish that a May 14, 2013 injury occurred as alleged.

Appellant requested a hearing which was held on April 22, 2014. By decision dated July 8, 2014, the hearing representative affirmed OWCP's October 21, 2013 decision.

By letter dated April 8, 2015, counsel notified OWCP that he had submitted a request for reconsideration on appellant's behalf on October 8, 2014. By decision dated July 21, 2015, OWCP denied appellant's April 8, 2015 reconsideration request, finding that it was timely filed but insufficient to warrant further merit review.

Appellant appealed to the Board. On January 28, 2016 the Board set aside the July 21, 2015 decision and remanded the case to OWCP. The Board found that the case record was incomplete as it was missing the April 22, 2014 hearing transcript as well as the October 8, 2014 request for reconsideration that counsel contended he had previously submitted. It was unclear whether additional evidence was also missing from the record. The Board, therefore, directed OWCP to properly assemble the case record and, after reviewing all evidence associated with the claim, issue an appropriate decision.

The current case record reflects that on August 31, 2015 OWCP received an October 8, 2014 letter from counsel requesting reconsideration. With the October 8, 2014 letter were two medical reports from Dr. Samuel Epstein, an osteopath, dated August 15 and September 30, 2015. Both reports are in the case record, and were received by OWCP on August 31, 2015.

By decision dated July 6, 2016, OWCP found that the evidence of record did not support that it received a request for reconsideration dated October 8, 2014. Rather, it noted that the earliest request for reconsideration of the July 8, 2014 decision received in the file was the request of April 8, 2015. In addition, OWCP held that it did not receive any documents during the period July 9, 2014 through April 7, 2015, and the only medical evidence received after the July 8, 2014 merit decision were the reports of Dr. Epstein received on August 31, 2015, "more than one month after the nonmerit decision of [July 21, 2015] was issued." As a result, it found

³ *Order Remanding Case*, Docket No. 15-1921 (issued January 28, 2016).

that the evidence of record failed to support that it erred in refusing to consider the merits of the July 21, 2015 decision.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁵ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

In the present case, the issue is whether OWCP properly denied appellant's request for reconsideration. OWCP acknowledged that counsel had submitted a reconsideration request as of April 8, 2015, which is timely with respect to the July 8, 2014 merit decision.

The record contains new medical evidence from Dr. Epstein submitted on August 31, 2015. The Board finds that OWCP failed to review this evidence. The case was remanded by the Board to properly assemble the case record and issue an appropriate decision. The evidence now before OWCP showed a timely request for reconsideration and additional medical evidence submitted after the July 8, 2014 merit decision. OWCP was obligated to consider all evidence properly submitted by the claimant and received by OWCP before the final decision was issued.⁷

OWCP was required to review the medical evidence from Dr. Epstein in its July 6, 2016 decision and determine whether appellant was entitled to a merit review. The Board finds that it failed to do so. The case will, therefore, be remanded to OWCP for a proper decision with respect to the timely reconsideration request, pursuant to 20 C.F.R. § 10.606(b)(3).

CONCLUSION

The Board finds that the case is not in posture for decision.

⁴ 5 U.S.C. § 8128(a) (providing that "[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 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

⁷ *See J.C.*, Docket No. 15-1666 (issued October 29, 2015); *William A. Couch*, 41 ECAB 548 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 6, 2016 is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: January 17, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board