

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

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C.M., Appellant )

and )

**DEPARTMENT OF THE AIR FORCE,** )  
**RESERVE OFFICER TRAINING CORP,** )  
**Clemson, SC, Employer** )

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**Docket No. 16-1569**  
**Issued: May 3, 2017**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

On July 26, 2016 appellant filed a timely appeal from a January 27, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 16-1569.

On August 20, 2014 appellant, then a 21-year-old Air Force Reserve Officer Training Corps cadet, filed a traumatic injury claim (Form CA-1) alleging on March 12, 2014 he sustained a herniated disc while running at the Norman Track and Field Complex on Clemson University. OWCP requested additional information in support of his claim on September 22, 2014. It specifically requested a "[l]ine of [d]uty statement." OWCP also requested medical evidence. On October 24, 2014 it received a "[l]ine of [d]uty [d]etermination" from Colonel Christopher R. Mann, of the employing establishment dated October 7, 2014. By decision dated October 24, 2014, OWCP denied appellant's claim finding that he had not submitted the necessary evidence to establish that his injury occurred in the performance of duty as he had not submitted a "[l]ine of [d]uty [s]tatement." On November 12, 2014 it acknowledged receipt of the "line of duty statement" and concluded that this document satisfied the performance of duty requirement for appellant's claim. OWCP further determined that appellant had failed to submit medical evidence establishing that his diagnosed conditions were causally related to his March 12, 2014 employment injury. On November 4, 2015 appellant requested reconsideration and submitted

additional medical evidence. In a January 27, 2016 decision, OWCP denied the November 4, 2015 request for reconsideration finding it was not timely filed within one year of the October 24, 2014 decision and failed to demonstrate clear evidence of error.

The Board has considered the matter and finds that the November 4, 2015 request constituted a timely request for reconsideration. Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.<sup>1</sup> OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

The Board finds that the November 12, 2014 OWCP correspondence was an appealable final decision. This decision contained findings of fact and a statement of reasons.<sup>5</sup> The November 12, 2014 decision also altered the basis for the denial of appellant's claim from failure to establish an injury in the performance of duty to failure to establish an injury causally related to his accepted employment activity. Finally, OWCP made reference to the appeal rights which accompanied its October 24, 2014 decision.<sup>6</sup>

As the November 12, 2014 decision was appealable, contrary to OWCP's finding, appellant timely requested reconsideration which OWCP received on November 4, 2015. Accordingly, clear evidence of error was not the appropriate standard of review. The case shall be remanded to OWCP for proper consideration of appellant's November 4, 2015 request for reconsideration under 20 C.F.R. §§ 10.606, 10.608, and 10.609.<sup>7</sup>

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<sup>1</sup> 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).

<sup>2</sup> 20 C.F.R. § 10.607

<sup>3</sup> *Id.* at § 10.607(a). The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>4</sup> *Id.* at § 10.607(b).

<sup>5</sup> *Id.* at § 10.126.

<sup>6</sup> *Julius Cormier*, 47 ECAB 465 (1996).

<sup>7</sup> *B.C.*, Docket No. 14-1281 (issued November 6, 2014). A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(2). When a timely application for reconsideration meets at least one of the above-noted requirements, OWCP will reopen the case for merit review and determine whether modification of the prior decision is appropriate. 20 C.F.R. §§ 10.608(a) and 10.609.

**IT IS HEREBY ORDERED THAT** the January 27, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision of the Board.

Issued: May 3, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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