

made. As a claimant has only 180 days to appeal final adverse OWCP decisions to the Board, appellant was left with just over two weeks, or until April 11, 2017, to appeal the October 13, 2016 merit decision to the Board.¹ OWCP's 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.”²

The Board, having duly considered the matter, finds that OWCP’s delay in issuing a decision on appellant’s reconsideration request substantially jeopardized her from appealing OWCP’s most recent merit decision to the Board.³

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.

¹ 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). The 180th day following the October 13, 2016 merit decision was April 11, 2017.

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

³ See *K.A.*, Docket No. 16-1392 (issued November 7, 2016) (OWCP substantially jeopardized appellant’s appeal rights when OWCP’s delay in issuing a decision on the reconsideration request left appellant with only 70 days to appeal from the last merit decision).

IT IS HEREBY ORDERED THAT the March 27, 2017 nonmerit decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with the above opinion.

Issued: April 18, 2019
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