

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

S.H., Appellant)	
)	
and)	Docket No. 18-1685
)	Issued: August 15, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Edison, NJ, Employer)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On September 4, 2018 appellant, through counsel, filed a timely appeal from a July 23, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1685.²

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On March 15, 2014 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2014 she sustained an arm and neck injury after lifting heavy baskets while in the performance of duty.

By decision dated May 6, 2014, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her claimed diagnosed medical conditions were causally related to the accepted March 4, 2014 employment incident.

Following numerous decisions and reconsideration requests, by decision dated February 1, 2017, OWCP denied modification of its prior decisions, finding that the evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the accepted March 4, 2014 employment incident.

On July 26, 2017 appellant, through counsel, appealed to the Board. By decision dated March 27, 2018, the Board affirmed OWCP's February 1, 2017 decision, finding that the medical evidence of record was insufficient to establish that appellant's cervical and left shoulder conditions were causally related to the accepted March 4, 2014 employment incident.⁴

In a letter received on April 24, 2018, appellant, through counsel, requested reconsideration of the merits of the claim. By decision dated July 23, 2018, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that appellant's April 24, 2018 reconsideration request was not made within one year of the February 1, 2017 OWCP merit decision.

The Board, having duly reviewed the record on appeal, finds that the case must be remanded to OWCP for application of the appropriate standard of review because appellant's request for reconsideration was timely filed.⁵

A request for reconsideration must be received by OWCP within one year of the date of a merit review of the claim, including any merit review by the Board.⁶ The last merit decision of record was the Board's March 27, 2018 decision. As appellant's reconsideration request was received on April 24, 2018, within one year of the Board's March 27, 2018 merit decision, the Board finds that the request was timely filed.⁷

³ Docket No. 17-1660 (issued March 27, 2018).

⁴ *Id.*

⁵ *C.V.*, Docket No. 14-1293 (issued February 23, 2015).

⁶ *Id.* See also *C.W.*, Docket No. 17-0836 (issued August 7, 2017); *Mary E. Schipske*, 43 ECAB 318 (1991).

⁷ *J.N.*, Docket No. 12-1543 (issued February 12, 2013).

OWCP applied the clear evidence of error legal standard in reviewing appellant's request for reconsideration.⁸ This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.⁹ Since OWCP erroneously reviewed the evidence submitted by appellant in support of her reconsideration request under the clear evidence of error standard, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3).¹⁰ Accordingly,

IT IS HEREBY ORDERED THAT the July 23, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 15, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁸ *A.M.*, Docket No. 16-1250 (issued December 20, 2016).

⁹ *See V.M.*, Docket No. 18-1184 (issued July 10, 2019); *Donna M. Campbell*, 55 ECAB 241 (2004).

¹⁰ *J.L.*, Docket No. 15-1142 (issued August 19, 2015).