

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

S.E., Appellant)	
)	
and)	Docket No. 19-0068
)	Issued: August 20, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Mobile, AL, Employer)	
)	

Appearances:
Appellant, pro se
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 October 11, 2018 appellant filed a timely appeal from a July 9, 2018 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. The Clerk of the Appellate Boards docketed the appeal as No. 19-0068.

OWCP accepted appellant's January 1, 1994 occupational disease claim (Form CA-2) for aggravation of traumatic arthritis of both knees. In 2009, it expanded acceptance of the claim to include a left knee meniscus tear. Appellant underwent multiple surgical procedures on the left and right knees. OWCP initially paid appellant intermittent wage-loss compensation benefits on the supplemental rolls. It paid him wage-loss compensation for total disability on the periodic rolls as of December 18, 2011.

In 2016, appellant requested that his claim be expanded to include a consequential condition of right lateral epicondylitis. OWCP's district medical adviser (DMA) reviewed the medical evidence of record and, after further development, OWCP denied the claim for a consequential condition on May 16, 2016. It found that the medical evidence of record was insufficient to establish that the claimed right elbow condition was causally related to, or a consequence of, the accepted January 1, 1994 employment injury. Appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 17, 2017.

By decision dated April 4, 2017, an OWCP hearing representative affirmed OWCP's May 16, 2016 decision, finding that the February 8, 2017 opinion of Dr. Andre J. Fontana, a Board-certified orthopedic surgeon, was speculative and lacked additional supporting objective evidence.

On February 23, 2018 OWCP received a letter from appellant requesting "reconsideration of the case concerning his right elbow." Appellant also submitted additional evidence including articles which he claimed supported a finding that falling and use of a cane can cause epicondylitis.

On May 3, 2018 OWCP received a letter from appellant again requesting reconsideration based on the evidence he previously submitted.

By decision dated July 9, 2018, OWCP denied appellant's request for reconsideration, finding that his May 3, 2018 request was untimely filed and failed to demonstrate clear evidence of error.

The Board has considered the matter and finds that appellant's request for reconsideration, which OWCP received on February 23, 2018, was timely filed. Section 10.607(a) of OWCP's FECA implementing regulations provides that an application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹ Timeliness is determined by the document receipt date (*i.e.*, the "received date") in OWCP's integrated Federal Employees' Compensation System.² Because appellant's request for reconsideration of the April 4, 2017 merit decision was received on February 23, 2018, the Board finds that it was timely filed.³

Because appellant filed a timely reconsideration request, OWCP should have reviewed his request under the standard for timely reconsideration requests.⁴ The clear evidence of error standard utilized by OWCP in its July 9, 2018 decision is appropriate only for untimely reconsideration requests.⁵

Therefore, the Board will set aside OWCP's July 9, 2018 decision and remand the case for an appropriate decision on appellant's timely request for reconsideration.

¹ 20 C.F.R. § 10.607(a). The one year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request 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).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, Reconsiderations, Chapter 2.1602.4(b) (February 2016).

³ *See C.J.*, Order Remanding Case, Docket No. 18-0994 (issued February 22, 2019); *D.R.*, Order Remanding Case, Docket No. 16-1654 (issued January 4, 2017).

⁴ *See* 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.607(b).

IT IS HEREBY ORDERED THAT the July 9, 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 20, 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