

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

C.R., Appellant	)	
	)	
and	)	<b>Docket No. 19-0127</b>
	)	<b>Issued: August 20, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Dallas, TX, 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 22, 2018 appellant filed a timely appeal from an August 27, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0127.<sup>1</sup>

On December 21, 2017 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a lower/mid back and neck strain, which he attributed to factors of his federal employment including lifting packages up to 70 pounds and trays of mail up to 40 pounds, carrying mail bags weighing over 50 pounds, and walking up to seven miles per day. He explained that he initially thought the pain would resolve on its own, but despite some treatment his pain remained persistent. Appellant indicated that he first became aware of his condition and related it to his federal employment on September 4, 2017. He did not stop work.

By decision dated January 30, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that the events occurred as alleged.

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<sup>1</sup> 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.*

It also found the medical evidence failed to establish a diagnosed medical condition causally related to the employment duties.

On March 2, 2018 appellant requested reconsideration and subsequently provided additional evidence.

By decision dated April 23, 2018, OWCP modified its prior decision, noting that the evidence was sufficient to establish the factual component of fact of injury, but the claim remained denied as the medical evidence was insufficient to establish the medical component of fact of injury. Specifically, it found that the medical evidence did not establish a diagnosed medical condition causally related to the accepted employment factors.

On June 5, 2018 appellant again requested reconsideration. No additional evidence was received.

By decision dated August 27, 2018, OWCP denied appellant's June 5, 2018 request for reconsideration finding that it was untimely filed and failed to demonstrate clear of evidence of error.

The Board has duly considered the matter and notes that appellant's June 5, 2018 request constituted a timely request for reconsideration. Section 10.607(a) of OWCP's 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.<sup>2</sup> Appellant therefore had until April 23, 2019 to timely requests reconsideration of the April 23, 2018 OWCP decision. Because appellant's request was received on June 5, 2018, the Board finds that it was timely filed. The clear evidence of error standard utilized by OWCP in its August 27, 2018 decision is appropriate only for untimely reconsideration requests.<sup>3</sup> Therefore, the Board will set aside OWCP's August 27, 2018 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

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<sup>2</sup> 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).

<sup>3</sup> See 20 C.F.R. § 10.607(b).

**IT IS HEREBY ORDERED THAT** the August 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development 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