

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

L.N., Appellant)	
)	
and)	Docket No. 19-0170
)	Issued: August 21, 2019
DEPARTMENT OF THE NAVY, JOINT BASE)	
ANACOSTIA-BOLLING, Washington, DC,)	
Employer)	
)	

Appearances:
Jesse Slade, 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 November 2, 2018 appellant, through her representative, filed a timely appeal from an August 27, 2018 decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned the appeal Docket No. 19-0170.

On September 7, 2012 appellant, then a 49-year-old supervisory information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2012 she sustained a concussion and neck sprain after she tripped and fell head-first into a wall while in the

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, following the August 27, 2018 decision, OWCP received additional evidence. 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.*

performance of duty. OWCP accepted the claim for concussion and cervical sprain. Subsequently, it expanded acceptance of appellant's claim to include post-concussion syndrome.

By decision dated May 30, 2017, OWCP denied appellant's request to expand acceptance of her claim to include vertigo, sleep disturbance, traumatic brain injury, and depressive disorder. It found that the medical evidence of record failed to establish that these conditions were causally related to her August 31, 2012 employment injury.

On November 14, 2017 appellant, through her representative, requested reconsideration.

By decision dated February 9, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On May 30, 2018 appellant again requested reconsideration.

By decision dated August 27, 2018, OWCP denied appellant's May 30, 2018 request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's May 30, 2018 request for reconsideration was timely filed. Section 10.607(a) of OWCP's regulations provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.³ In computing the time for requesting reconsideration, the one-year period begins on the next day after the date of the original contested decision.⁴ The last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday.⁵ OWCP received appellant's request for reconsideration of its last merit decision dated May 30, 2017 on Wednesday, May 30, 2018. It is well established that when the date of the reconsideration request is exactly one year after the date of OWCP's decision, it is timely under 20 C.F.R. § 10.607(a).⁶ Because appellant's application for reconsideration was received within one year of OWCP's May 30, 2017 merit decision, it was timely filed.⁷

The Board finds that OWCP improperly denied appellant's reconsideration request by applying the legal standard for cases where reconsideration is requested after more than one year has elapsed. OWCP should have applied the legal standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3).⁸ Because it erroneously reviewed the evidence

³ 20 C.F.R. § 10.607(a); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁴ *Id.*

⁵ *Id.*; *see also* *R.C., Order Remanding Case*, Docket No. 18-0311 (issued June 11, 2018).

⁶ *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

⁷ *Id.*

⁸ An application for reconsideration must be in writing and 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)(3).

submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard which applies to untimely filed reconsideration requests, the Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.⁹

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 proceedings consistent with this order of the Board.

Issued: August 21, 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

⁹ *C.J., Order Remanding Case*, Docket No. 18-0994 (issued February 22, 2019).