

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

_____)	
E.G., Appellant)	
)	
and)	Docket No. 19-0236
)	Issued: August 22, 2019
U.S. POSTAL SERVICE, SANDHILLS POST OFFICE, Columbia, SC, Employer)	
_____)	

Appearances:
Wayne Johnson, 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 November 9, 2018 appellant, through counsel, filed a timely appeal from a May 29, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0236.

On August 27, 2014 appellant, then a 60-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that her hip and back problems were caused by her employment duties.

By decision dated December 1, 2014, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted employment factors. On January 21, 2015 it received appellant's January 7, 2015 request for an oral hearing. OWCP, by decision dated February 23, 2015, denied appellant's request for an oral hearing as it found her request to be untimely. It noted

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.

that the issues in the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered in support of her claim.

Appellant requested reconsideration on April 14, 2015. OWCP, by decision dated April 29, 2015, denied modification finding the evidence she submitted was irrelevant to the underlying issue of causal relationship.

On July 1, 2015 appellant again requested reconsideration. By decision dated December 14, 2015, it denied modification finding that the weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Chason S. Hayes, a second opinion Board-certified orthopedic surgeon. Appellant again filed a request for reconsideration on March 15, 2016. By decision dated April 5, 2016 OWCP reviewed the merits of her claim, but denied modification of the December 14, 2015 decision.

Appellant again filed a request for reconsideration on September 28, 2016. By decision dated January 20, 2017, OWCP denied modification finding that the additional evidence she had submitted was of insufficient probative value to warrant modification.

On May 9, 2018 OWCP received appellant's request for reconsideration. By decision dated May 29, 2018, it denied reconsideration finding that she had failed to submit medical evidence with her request or raise a new or relevant argument.

Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP's last merit decision for which review is sought.² Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).³ The Board has duly considered the matter and finds that appellant's request for reconsideration was untimely filed as it was not received until May 9, 2018, which is more than one year from the January 20, 2017 merit decision.

OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of its most recent decision. The application must establish, on its face, that such decision was erroneous.⁴ The standard utilized by OWCP in its May 29, 2018 decision is appropriate only for timely reconsideration requests. Because appellant filed an untimely reconsideration request, the case will be remanded to OWCP for application of the correct standard for reviewing untimely reconsideration requests, the clear evidence of error standard.⁵ After such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

² 20 C.F.R. § 10.607(a).

³ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁴ *Id.* at § 10.607. *See also C.B.*, Docket No. 17-0933 (issued July 17, 2017); *A.B.*, Docket No. 15-0521 (issued June 13, 2016).

⁵ *Id.* at § 10.606(b).

IT IS HEREBY ORDERED THAT the May 29, 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 22, 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