

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

P.J., Appellant

and

**DEPARTMENT OF AGRICULTURE, FARM
SERVICE AGENCY STATE OFFICE,
Albuquerque, NM, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 19-0962
Issued: December 30, 2019**

Appearances:

*Samuel Cheney Wolf, 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 April 1, 2019 appellant, through counsel, filed a timely appeal from an October 3, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-0962.

On February 8, 2016 appellant, then a 54-year-old county office trainee, filed an occupational disease claim (Form CA-2) alleging that she developed burning lips, a bloody nose, difficulty breathing, respiratory issues, coughing, and chest and head pain on November 23, 2015 due to factors of her federal employment. She reported that these conditions occurred as a result of the employing establishment's heating system which was an electrical fire odor, and white powder/ash from the vents.

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.

After further development, OWCP denied the claim by decision dated May 27, 2016, finding that the evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted employment factors.

On May 30, 2017 appellant, through counsel, requested reconsideration. By decision dated August 11, 2017, OWCP denied modification of the May 27, 2016 decision.

On August 13, 2018 appellant, through counsel, requested reconsideration of OWCP's August 11, 2017 merit decision and submitted medical reports.

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

The Board has considered the matter and finds that appellant's August 13, 2018 request for reconsideration was timely filed.² Section 10.607(a) of the 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.³ The one-year period begins on the day after the date of the originally contested decision. When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, a Sunday, or a legal holiday.⁴ In this case, one year from OWCP's August 11, 2017 merit decision was August 11, 2018. Because the last day of the filing period fell on a Saturday, the period extended to the next business day, which was Monday, August 13, 2018.⁵ OWCP received appellant's request for reconsideration on August 13, 2018. Therefore, the request was timely and subject to the standard for reviewing timely requests for reconsideration pursuant to 20 C.F.R. § 10.606(b)(3).⁶ As OWCP applied the incorrect standard in its October 3, 2018 decision, that decision must be set aside.⁷ The Board therefore remands the case for review of appellant's August 13, 2018 reconsideration request under the proper standard for a timely reconsideration request, followed by an appropriate decision.⁸

² *P.M.*, Docket No. 19-0639 (issued July 26, 2019).

³ 20 C.F.R. § 10.607(a).

⁴ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁵ *Id.*; *see also C.J.*, Docket No. 18-0994 (issued February 22, 2019).

⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(3). When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review of the merits. 20 C.F.R. § 10.608(a), (b).

⁷ The clear evidence of error standard utilized by OWCP in its October 3, 2018 decision is appropriate only for untimely reconsideration requests. *See* 20 C.F.R. § 10.607(b).

⁸ *C.D.*, Docket No. 17-1074 (issued August 28, 2017).

IT IS HEREBY ORDERED THAT the October 3, 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: December 30, 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