

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

S.W., Appellant)	
)	
and)	Docket No. 18-0326
)	Issued: February 22, 2019
U.S. POSTAL SERVICE, NORTH METRO PROCESSING & DISTRIBUTION CENTER, North Metro, GA, 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
ALEC J. KOROMILAS, Alternate Judge

On December 4, 2017 appellant filed a timely appeal from a September 15, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 18-0326.

On January 9, 2007 appellant, then a 50-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx628 for bilateral shoulder impingement, herniated disc, bladder prolapse, and knee inflammation. She stopped work on September 5, 2006 and returned to limited-duty work on January 7, 2007. OWCP accepted employment-related aggravation of cervical and lumbosacral degenerative arthritis, aggravation of a left rotator cuff degenerative tear, and aggravation of cystocele. Subsequently, it expanded acceptance of the claim to include bilateral shoulder impingement, mixed incontinence, and left rotator cuff sprain. It paid appellant compensation on the periodic rolls beginning April 10, 2011.

On March 4, 2015 OWCP referred appellant to a vocational rehabilitation counselor based on the medical evidence which established that she was capable of performing full-time, light-duty work. By decision dated June 13, 2016, it found that she had failed, without good cause, to undergo vocational rehabilitation as directed. OWCP reduced appellant's compensation effective June 26, 2016 based on her ability to earn wages in a constructed position of an appointment clerk.

In a letter dated February 16, 2017 and received by OWCP on February 27, 2017, appellant requested reconsideration. On July 21, 2017 OWCP received an unsigned copy of appellant's February 16, 2017 request for reconsideration. By decision dated September 15, 2017, it found that the reconsideration request received on July 21, 2017 was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed. OWCP's regulations and procedures¹ establish a one-year time limit for requesting reconsideration, which begins on the date of OWCP's most recent merit decision. The most recent merit decision was dated June 13, 2016. Appellant's February 16, 2017 request for reconsideration was initially received by OWCP on February 27, 2017. OWCP, in its September 15, 2017 decision, did not reference the presence of this earlier request in the case record. As appellant's request for reconsideration was received by OWCP on February 27, 2017, within one year of the June 13, 2016 merit decision, it was timely filed.²

The case will therefore be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.³ The clear evidence of error standard utilized by OWCP in its September 15, 2017 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016); *see Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

² *See generally G.H.*, Docket No. 17-1169 (issued September 19, 2017).

³ *See* 20 C.F.R. § 10.606(b)(3) (an application for reconsideration must show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or include the submission of relevant and pertinent new evidence not previously considered by OWCP).

IT IS HEREBY ORDERED THAT the September 15, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: February 22, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board