

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

_____)	
J.Z., Appellant)	
)	
and)	Docket No. 18-0428
)	Issued: February 21, 2019
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Warrendale, PA,)	
Employer)	
_____)	

Appearances:
Marc J. Levy, 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
ALEC J. KOROMILAS, Alternate Judge

On December 26, 2017 appellant, through counsel, filed a timely appeal from an August 18, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 18-0428.

On October 27, 2015 appellant, then a 38-year-old mine safety and health inspector, filed an occupational disease claim (Form CA-2) alleging that his life was threatened by a mine operator in 2014. He alleged that he developed seizures as a result of the continued threats on October 22, 2015.

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.

By decision dated May 13, 2016, OWCP denied appellant's emotional condition claim. It found that appellant had not provided the necessary factual information to support his allegations of threats or harassment.

On June 10, 2016 appellant requested reconsideration. By decision dated October 14, 2016, OWCP denied modification of the May 13, 2016 decision, finding that appellant had not established a compensable factor of employment as causing or contributing to his diagnosed emotional condition.

On October 28, 2016 appellant requested reconsideration of the October 14, 2016 merit decision. OWCP did not issue its nonmerit decision denying appellant's request for reconsideration until August 18, 2017, approximately 10 months after the request was made. OWCP's procedures provide:

"When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board, OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared. There is no obligation to conduct a merit review on insufficient evidence if the maximum 180-day time limit for requesting review by the Board will have expired within the 90-day period following OWCP's receipt of the claimant's reconsideration request."²

The Board, having duly considered the matter, finds that OWCP's delay of 10 months in issuing a decision on appellant's reconsideration request effectively precluded him from appealing OWCP's most recent merit decision to the Board.³ Had OWCP acted upon his request within 90 days, appellant would have been able to seek review of the most recent merit decision dated October 14, 2016.⁴

Accordingly, the case will be remanded to OWCP to issue an appropriate decision on the merits of the claim in order to preserve appellant's appeal rights.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (February 2016).

³ See 20 C.F.R. §§ 501.2(c) and 501.3. For final adverse OWCP decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

⁴ See *K.A.*, Docket No. 16-1392 (issued November 7, 2016); *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992).

IT IS HEREBY ORDERED THAT the August 18, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with the above opinion.

Issued: February 21, 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