



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."<sup>1</sup>

The Board, having duly considered the matter, finds that OWCP's delay of approximately 24 months in issuing a decision on denying appellant's reconsideration request effectively precluded him from appealing OWCP's most recent merit decision to the Board.<sup>2</sup> Had OWCP acted upon his request within 90 days, he would have still been able to seek Board review of the November 13, 2015 merit decision.<sup>3</sup>

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.

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<sup>1</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (February 2016). The 180-day limit for requesting review by the Board of the November 13, 2015 merit decision expired on May 11, 2016. The 90-day period following appellant's January 19, 2016 request for reconsideration expired on April 18, 2016 which was within the 180-day limit for requesting review by the Board.

<sup>2</sup> 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).

<sup>3</sup> 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) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 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: 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