

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

<hr/>)	
J.J., Appellant)	
)	
and)	Docket No. 18-0829
)	Issued: February 21, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Selfridge, MI, Employer)	
<hr/>)	

Appearances: *Case Submitted on the Record*
Garrett J. TenHave-Chapman, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On March 12, 2018 appellant, through counsel, filed a timely appeal from a September 18, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned the appeal Docket No. 18-0829.²

On February 18, 2016 appellant, then a 49-year-old supervisory air interdiction agent (pilot), filed a traumatic injury claim (Form CA-1) alleging that he injured his head, left upper

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.

² The Board notes that following the September 18, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

extremity, and lower back in a February 16, 2016 work-related fall.³ OWCP received various chiropractic treatment records in support of appellant's claim. After additional development, it denied his claim by decision dated September 9, 2016. OWCP found that appellant had not established the medical component of fact of injury. It subsequently received diagnostic studies and additional chiropractic treatment records.

On September 12, 2017 appellant, through counsel, requested reconsideration of OWCP's September 9, 2016 decision and submitted additional medical evidence, including various reports dated September 1, 2016 through June 2, 2017 from Dr. Jason Stanczak, a chiropractor.

By decision dated September 18, 2017, OWCP denied appellant's request for reconsideration because it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that this case is not in posture for decision. Although OWCP correctly determined that appellant's September 12, 2017 request for reconsideration was untimely, the September 18, 2017 decision failed to explain how the evidence received following the September 9, 2016 decision was insufficient to demonstrate clear evidence of error. Its decision "shall contain findings of fact and a statement of reasons."⁴ In this instance, OWCP merely concluded, without explanation, that appellant had not demonstrated clear evidence of error. As such, the September 18, 2017 decision does not fully comply with 20 C.F.R. § 10.126.⁵ Accordingly, the case shall be remanded for issuance of an appropriate *de novo* decision that contains "findings of fact and a statement of reasons."⁶

³ Appellant stated that he was walking to the front of his helicopter when he slipped on an ice-covered ramp and fell to the ground.

⁴ *Id.* at § 10.126.

⁵ *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5b (February 2016) (if clear evidence of error has not been presented, the letter decision should include a brief evaluation of the evidence submitted and a finding that clear evidence of error has not been shown).

⁶ 20 C.F.R. § 10.126.

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

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