

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

S.B., Appellant)	
)	
and)	Docket No. 18-1149
)	Issued: June 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Absecon, NJ, 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
JANICE B. ASKIN, Judge

On May 14, 2018 appellant filed a timely appeal from an April 27, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1149.

This case has previously been before the Board.¹ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 24, 2010 appellant, then a 44-year-old letter carrier, filed an emotional condition claim (Form CA-2) for alleged workplace harassment. Her claimed condition reportedly arose on or about January 2, 2010. OWCP assigned the claim File No. xxxxxx247. By decision dated January 20, 2011, OWCP accepted appellant's claim for major depressive disorder (single episode, severe) and adjustment disorder (mixed anxiety and depressed mood).

¹ Docket No. 12-1434, *Order Remanding Case* (issued February 27, 2013); Docket No. 14-1423 (issued November 21, 2014); Docket No. 14-1423, *Order Denying Petition for Reconsideration* (issued April 22, 2015); Docket No. 16-1868 (issued March 13, 2017); Docket No. 17-1621 (issued December 11, 2017).

On February 15, 2011 appellant filed an occupational disease claim (Form CA-2) for traumatic stress, depression, and anxiety, which allegedly arose on or about January 1, 2010. OWCP assigned that claim File No. xxxxxx420.

By decision dated April 4, 2011 OWCP denied appellant's February 15, 2011 emotional condition claim, in OWCP File No. xxxxxx420, finding that she had not established fact of injury. Following a remand order from the Board, OWCP ultimately combined appellant's two emotional condition claims and designated File No. xxxxxx247 as the master file.² Appellant has subsequently filed multiple requests for reconsideration and appeals to the Board.

When appellant's claim was last before the Board on its merits, it reviewed OWCP's August 17, 2016 decision which denied the acceptance of additional compensable factors of employment as alleged. By decision dated March 13, 2017 the Board found that appellant had not established additional compensable factors of employment in support of her emotional condition claim.

On August 10, 2017 appellant filed a third occupational disease claim (Form CA-2) alleging an emotional condition as a result of factors of her federal employment. By letter dated September 13, 2017, OWCP assigned that claim OWCP File No. xxxxxx780, and advised it was duplicative of her claim under File No. xxxxxx420. OWCP denied appellant's claim in File No. xxxxxx420 by decision dated November 8, 2017.

In a statement dated January 21, 2018, appellant referenced OWCP File Nos. xxxxxx420 and xxxxxx247 and indicated that she was requesting a "Director's Review" following a December 28, 2017 Board decision which was dismissed for lack of jurisdiction. By letter dated February 6, 2018, OWCP noted that it had denied her claim under File No. xxxxxx780 on November 8, 2017 and that she had since requested a hearing with OWCP's Branch of Hearings and Review in that claim file. It informed her that her only recourse under OWCP File Nos. xxxxxx420 and xxxxxx247 was to file an appeal.

On April 8, 2018 appellant requested reconsideration with OWCP following the Board's March 13, 2017 decision. In support thereof she submitted a statement dated April 4, 2018, reiterating that OWCP and the Board had failed to address a potential compensable work factor.

By decision dated April 27, 2018, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered this matter and finds that OWCP improperly denied appellant's reconsideration request by applying the legal standard for cases where reconsideration is untimely. The evidence of record reveals that appellant submitted a request for reconsideration of the March 13, 2017 merit decision and submitted evidence in support of her request within the required one-year time period. In a letter dated January 21, 2018, and received by OWCP on January 29, 2018, appellant referenced File Nos. xxxxxx420 and xxxxxx247 and indicated that she was requesting a "Director's Review." She asserted that neither OWCP nor the Board had addressed her allegation about a November 18, 2010 incident regarding changes in her delivery

² Docket No. 12-1434, *Order Remanding Case* (issued February 27, 2013).

route and having trays out of order. Appellant also included copies of various documents and correspondence from OWCP regarding her claims for wage-loss compensation. Although the January 21, 2018 statement does not mention the word “reconsideration,” the Board has found that there may be a request for reconsideration in situations where a letter does not contain the word “reconsideration.”³ No special form is required as long as the request is made in writing, identifies the decision and specific issues to be considered, and is accompanied by relevant and pertinent new evidence or argument not previously considered.⁴ In this case, appellant explicitly noted File Nos xxxxxxx420 and xxxxxx247, she requested a “Director’s Review” of her claim, and she submitted additional evidence. Furthermore, in the April 1, 2018 appeal request form, she noted that she had requested a review in January. Thus, the Board finds that appellant’s January 21, 2018 statement constituted a timely request for reconsideration.⁵

Although OWCP acknowledged receipt of the January 21, 2018 statement in its February 6, 2018 letter, it did not review whether to grant or deny her reconsideration request. Instead, OWCP referenced another claim and noted that appellant had requested a hearing with OWCP’s Branch of Hearings and Review.

OWCP’s regulations are clear that when it receives a timely request for reconsideration, it must determine whether to review the case on its merits.⁶ The Board finds that it did not do so in this claim. Because appellant filed a timely reconsideration request, OWCP should have reviewed her request under the standard for timely reconsideration requests.⁷ The clear evidence of error standard utilized by OWCP in its April 27, 2018 decision is appropriate only for untimely reconsideration requests.⁸ The Board will therefore set aside OWCP’s April 27, 2018 decision and remand the case for an appropriate decision on appellant’s timely request for reconsideration.

³ *Jack D. Johnson*, 57 ECAB 593 (2006); *Vicente P. Taimanglo*, 45 ECAB 504 (1994).

⁴ *Id.*

⁵ *C.M.*, Docket No. 11-1988 (issued June 6, 2012).

⁶ *See* 20 C.F.R. §§ 10.606(b)(3) & 10.608.

⁷ *See id.* at § 10.606(b)(3).

⁸ *Id.* at § 10.607(b).

IT IS HEREBY ORDERED THAT the April 27, 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: June 21, 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