

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

M.C., Appellant)	
)	
and)	Docket No. 18-0866
)	Issued: March 26, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

Appearances:
Daniel B. Shapiro, 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 March 14, 2018 appellant, through counsel, filed a timely appeal from a March 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-0866.²

On January 21, 2016 appellant, then a 51-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging "occupational stress" due to her work. She advised that she first became aware of her claimed condition and its relationship to her employment on February 2, 2015. In an accompanying statement, appellant reported that she had experienced

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 Together with her appeal request, appellant, through counsel, submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated October 11, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-0496 (issued October 11, 2018).

knee pain since February 2015 and indicated that she had advised her attending physician of her “ongoing job injury.” She stopped work for intermittent periods beginning in late 2015.³

By decision dated April 19, 2016, OWCP denied appellant’s claim for an employment-related occupational injury because she failed to establish the factual component of fact of injury. It indicated that appellant had failed to provide a detailed description of specific work activities that caused her claimed knee condition.

On April 4, 2017 appellant, through counsel, requested reconsideration of OWCP’s April 19, 2016 decision.⁴ She submitted additional medical reports in support of her reconsideration request. By decision dated June 30, 2017, OWCP denied appellant’s April 4, 2017 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence/argument submitted by appellant was irrelevant or immaterial.

On January 29, 2018 appellant, through counsel, again requested reconsideration of OWCP’s April 19, 2016 decision.⁵ By decision dated March 1, 2018, OWCP denied appellant’s January 29, 2018 request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that appellant’s reconsideration request neither raised substantive legal questions nor included new and relevant evidence.

The Board notes that the most recent decision reviewing the merits of appellant’s case was OWCP’s April 19, 2016 decision. Appellant had one calendar year from the date of that decision, or until April 19, 2017, to ensure receipt by OWCP of a reconsideration request.⁶

OWCP received appellant’s last reconsideration request on January 29, 2018. As the received date was more than one year after the April 19, 2016 decision, appellant’s request must be considered untimely. The proper standard of review for an untimely reconsideration request is the clear evidence of error standard.⁷

However, in denying appellant’s reconsideration request in its March 1, 2018 nonmerit decision, OWCP did not determine whether her reconsideration request was untimely filed and did not review the request under the clear evidence of error standard. Rather, it applied the standard of review for timely requests for reconsideration. As OWCP applied the incorrect standard of

³ On the reverse of the form, appellant’s immediate supervisor indicated that the employing establishment was challenging the claim.

⁴ In a March 30, 2017 memorandum received on April 4, 2017, counsel presented argument in support of appellant’s claim. In a February 27, 2017 statement received on April 4, 2017, appellant discussed the work duties she performed during the prior 14 years.

⁵ In a January 23, 2018 memorandum received on January 29, 2018, counsel presented additional argument in support of appellant’s claim. In connection with the memorandum, counsel provided portions of additional medical reports.

⁶ 20 C.F.R. § 10.607(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (February 2016).

⁷ 20 C.F.R. § 10.607(b).

review to the untimely request for reconsideration, the Board will set aside OWCP's March 1, 2018 decision and remand the case for proper review under the clear evidence of error standard.⁸

IT IS HEREBY ORDERED THAT the March 1, 2018 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: March 26, 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

⁸ See *D.G.*, Docket No. 17-1323 (issued January 2, 2018); *W.L.*, Docket No. 15-1842 (issued January 14, 2016).