

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

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<b>C.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0450</b>
	)	<b>Issued: August 13, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Miami, FL, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Capp P. Taylor, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On December 24, 2019 appellant, through counsel, filed a timely appeal from a November 1, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0450.

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 11, 2014 appellant, then a 38-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed lower back and bilateral lung conditions due to the factors of her federal employment. She noted that she first became aware of her

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<sup>1</sup> 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.

<sup>2</sup> *C.D., Order Dismissing Appeal*, Docket No. 17-0200 (issued June 20, 2017).

conditions on March 12, 2012 and realized their relationship to her federal employment on February 19, 2014. Appellant did not stop work. She submitted medical evidence in support of her claim.

By decision dated May 13, 2014, OWCP denied appellant's occupational disease claim. It accepted her duties as a mail handler and diagnoses of lumbar degenerative disc disease and lumbar radiculopathy, but denied her claim finding that the medical evidence of record was insufficient to establish that her lumbar condition was causally related to the accepted employment factors.

On May 28, 2014 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 5, 2015. By decision dated February 24, 2015, the hearing representative affirmed the May 13, 2014 decision.

On February 8, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated May 2, 2016, OWCP denied modification of the February 24, 2015 decision, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between appellant's mail handler duties and her diagnosed lumbar condition.<sup>3</sup>

OWCP subsequently received a November 2, 2018 report by Dr. Luis E. Grau, a family medicine specialist. Dr. Grau described appellant's mail handler duties and classified the physical requirements of her job as strenuous and repetitive. He discussed her diagnostic testing, provided physical examination findings, and opined that she sustained an "aggravation of her condition due to her work duties of employment."

On October 24, 2019 appellant, through counsel, requested reconsideration of the May 2, 2016 OWCP decision. Counsel argued that appellant had presented clear and convincing evidence that her occupational activities contributed to her lumbar condition, which was supported by objective findings.

By decision dated November 1, 2019, OWCP denied appellant's reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that this case is not in posture for decision because OWCP failed to make findings regarding the arguments and evidence submitted in support of appellant's October 24, 2019 reconsideration request.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>4</sup> Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against

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<sup>3</sup> Appellant appealed the May 2, 2016 decision to the Board. By order dated June 20, 2017, the Board dismissed her appeal finding that her appeal was untimely filed and, accordingly, the Board was without jurisdiction to review the appeal.

<sup>4</sup> *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

payment of compensation.<sup>5</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.<sup>6</sup> As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>7</sup>

In its November 1, 2019 decision, OWCP properly found that appellant's October 24, 2019 reconsideration request was untimely filed as it was received more than a year following the last merit decision, dated May 2, 2016. However, in denying appellant's untimely reconsideration request, it failed to analyze whether it was sufficient to demonstrate clear evidence of error. The November 1, 2019 decision simply noted: "we did consider your request under 20 C.F.R. § 10.607." However, OWCP did not address the arguments made by counsel in his October 24, 2019 reconsideration request letter. Furthermore, it provided no discussion relative to the new medical evidence submitted by appellant from Dr. Grau.<sup>8</sup>

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect.<sup>9</sup> The Board will therefore set aside OWCP's November 1, 2019 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's untimely reconsideration request. Accordingly,

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<sup>5</sup> 5 U.S.C. § 8124(a).

<sup>6</sup> 20 C.F.R. § 10.126.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>8</sup> See *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

<sup>9</sup> OWCP regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.5(a) (February 2016).

**IT IS HEREBY ORDERED THAT** the November 1, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for action consistent with this decision of the Board.

Issued: August 13, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board