

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

_____)	
T.P., Appellant)	
)	
and)	Docket No. 19-1533
)	Issued: April 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Nampa, ID, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 10, 2019 appellant filed a timely appeal from a January 11, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1533.¹

On January 5, 2013 appellant, then a 50-year old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2012 she sustained a concussion and bruises to her right hip and buttocks when she slipped on ice and fell while in the performance of duty. She stopped work on January 5, 2013 and returned to work on January 7, 2013. In an April 18, 2013 decision, OWCP accepted the claim for contusion of the hip and thigh, right. On April 27, 2016 it expanded acceptance of the claim to include lumbar sprain (resolved) and low back contusion (resolved).

¹ The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

In a July 6, 2017 decision, OWCP terminated appellant's medical benefits effective July 7, 2017. It found that the weight of the medical evidence established that appellant no longer had any remaining residuals of the accepted work-related medical conditions as a result of the December 31, 2012 employment injury.

On January 10, 2019 appellant requested reconsideration. She also submitted medical evidence, consisting of a partial report from Dr. Edwin M. Clark, a Board-certified orthopedic surgeon, previously received by OWCP on September 18, 2013, a December 31, 2013 report from Dr. Paul J. Montelbano, a Board-certified neurosurgeon, reports dated July 1 and August 13, 2013, and June 2, 2014 from Dr. Howard D. Shoemaker, Board-certified in occupational medicine, and reports dated October 23, 2014, October 21, 2015, and April 20, 2018 from Dr. Christian G. Gussner, Board-certified in physical medicine and rehabilitation.

By decision dated January 11, 2019, OWCP denied appellant's request for reconsideration of the merits of its July 6, 2017 decision. It found the request was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered the matter, concludes that the case is not in posture for decision.² Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulation at 20 C.F.R. § 10.126 provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. 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.⁴

The Board finds that OWCP, in its January 11, 2019 decision, did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision.⁵ OWCP did not make any findings regarding the evidence submitted in support of the reconsideration request.⁶ It summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁷ OWCP stated that "the basis for this decision is," but did not complete the sentence. OWCP's failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision.⁸

² *S.H.*, Docket No. 19-0482 (issued January 6, 2020).

³ 5 U.S.C. § 8124(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁵ 20 C. F.R. § 10.126; *D.W.*, Docket No. 18-0483 (issued March 7, 2019).

⁶ *C.R.*, Docket No. 17-0964 (issued September 9, 2019).

⁷ *Supra* note 6.

⁸ *Id.*

The Board will set aside OWCP's the January 11, 2019 decision and remand the case for an appropriate decision on appellant's untimely reconsideration request.

IT IS HEREBY ORDERED THAT the January 11, 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: April 30, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board