

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

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E.D., Appellant)	
)	
and)	Docket No. 19-1172
)	Issued: February 20, 2020
U.S. POSTAL SERVICE, POST OFFICE, Fenton, MO, 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 April 30, 2019 appellant filed a timely appeal from two November 21, 2018 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1172.

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

OWCP accepted appellant's January 7, 1994 traumatic injury claim (Form CA-1) for trimalleolar fracture of the left ankle and open reduction internal fixation left medial and lateral malleoli. It subsequently expanded acceptance of the claim to include post-traumatic arthritis of the left ankle with posterior tibial tendon dysfunction. Appellant returned to work with restrictions on January 13, 1994 and returned to full-duty work on July 8, 1994. Her employment with the employing establishment terminated on August 2, 1994, after which time she performed nonfederal employment.

On August 26, 2009 OWCP terminated appellant's wage-loss compensation benefits, effective August 30, 2009, finding that her injury-related disability had ceased. Appellant filed

¹ Docket No. 16-0708 (issued January 17, 2017); Docket No. 14-1102 (issued August 15, 2014); Docket No. 10-1245 (issued April 26, 2011).

requests for reconsideration that were denied. OWCP last reviewed the merits of this claim on March 13, 2013 and denied modification.²

Appellant continued to request reconsideration. By decisions dated July 15, September 6, and November 15, 2013, and March 2, 2014, OWCP denied reconsideration of the merits of the claim. On April 16, 2014 appellant appealed to the Board. By decision dated August 15, 2014, the Board affirmed the November 15, 2013 and March 2, 2014 OWCP decisions.³ Appellant continued to request reconsideration. By decisions dated September 29, 2015 and January 4, 2016, OWCP denied appellant's requests for reconsideration, finding that they were untimely filed and failed to demonstrate clear evidence of error. On February 26, 2016 appellant appealed to the Board. By decision dated January 17, 2017, the Board affirmed the September 29, 2015 and January 4, 2016 nonmerit decisions.⁴

On April 11 and June 25, 2018 OWCP received appellant's requests for reconsideration of "all aspects of my case." Appellant argued that wage-loss compensation claims for the periods July 17, 1994 to January 24, 1995, December 20, 1995 to August 31, 2004, and August 30, 2009 to March 13, 2013 had not been considered and she had clear evidence of error which to demonstrate continuation of her disability from her January 7, 1994 work injury. She noted that she was enclosing additional medical evidence that showed her work injuries continued and produced consequential injuries.

The additional evidence included a January 7, 1994 x-ray of the left ankle, a May 2, 2012 magnetic resonance imaging (MRI) scan of the left ankle, a February 5, 2015 memorandum of phone call, a February 6, 2015 letter from OWCP indicating there was no evidence to support her claim for compensation for the period December 27, 2014 to January 24, 2015, a report dated January 2, 2013 from a podiatrist, an August 1, 2014 bone scan of the whole body, and an August 7, 2014 MRI scan of the lumbar spine. OWCP also received a January 2, 2013 duty status report (Form CA-17).

In a letter dated July 31, 2018, OWCP informed appellant that her reconsideration request had been reviewed. It explained that there were two issues that could be addressed and would be referred to a senior claims examiner. The issues included her claim for wage-loss compensation for the period from December 20, 1995 to August 31, 2004, and the termination of her wage-loss compensation effective August 30, 2009.

By separate decisions dated November 21, 2018, OWCP denied appellant's requests for reconsideration, finding that the requests were untimely filed and failed to demonstrate clear evidence of error.

² Appellant continued to request reconsideration. In a decision dated August 15, 2014, the Board affirmed the November 15, 2013 and March 21, 2014 OWCP decisions, which denied reconsideration without conducting a merit review regarding the termination of benefits Docket No. 14-1102 (issued August 15, 2014).

³ Docket No. 14-1102, *supra* note 1.

⁴ Docket No. 16-0708, *supra* note 1.

The Board finds that the case is not in posture for decision because OWCP failed to make findings regarding the evidence submitted in support of the reconsideration requests.⁵ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁶ 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.⁷ 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. 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.⁸ In the November 21, 2018 decisions, OWCP denied the two reconsideration requests finding each untimely filed as they were received more than a year following the relevant decision, but it failed to analyze the relevant evidence as to whether it was sufficient to demonstrate clear evidence of error.

The case must be remanded for OWCP to describe the evidence submitted on reconsideration and provide detailed reasons for accepting or rejecting the claim.⁹

The Board will set aside OWCP's November 21, 2018 decisions and remand the case for an appropriate decision on appellant's untimely reconsideration requests. Accordingly,

⁵ *C.R.*, Docket No. 17-0964 (issued September 9, 2019).

⁶ *Id.*; *see also* 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (February 2016).

⁷ 5 U.S.C. § 8124(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁹ *C.R.*, *supra* note 4; *see also M.L.*, Docket No. 09-0956 (issued April 15, 2010).

IT IS HEREBY ORDERED THAT the November 21, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for action consistent with this decision of the Board.

Issued: February 20, 2020
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