

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

L.T., Appellant	)	
	)	
and	)	Docket No. 19-1215
	)	Issued: February 20, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Indianapolis, IN, 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 6, 2019 appellant filed a timely appeal from a February 27, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1215.<sup>1</sup>

On May 18, 2017 appellant, then a 66-year-old mail handler equipment operator, filed an occupational disease claim (Form CA-2) alleging that he sustained an occupational disease due to factors of his federal employment including repetitive pushing, pulling, and lifting hooks to stage and dispatch mail. He indicated that he first became aware of his condition and related it to his federal employment on May 2, 2017. Appellant stopped work on May 17, 2017 and returned on May 18, 2017.

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<sup>1</sup> 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.*

By decision dated September 28, 2017, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

On November 1, 2017 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated February 16, 2018, an OWCP hearing representative affirmed the September 28, 2017 decision.

On December 14, 2018 appellant requested reconsideration and subsequently provided additional evidence.

By decision dated February 27, 2019, OWCP denied appellant's December 14, 2018 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and notes that appellant's December 14, 2018 request constitutes a timely request for reconsideration. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>2</sup> Because appellant's request was received on December 14, 2018, which was within one year of OWCP's February 16, 2018 hearing decision, the Board finds that it was timely filed. The clear evidence of error standard utilized by OWCP in its February 27, 2019 decision is appropriate only for untimely reconsideration requests.<sup>3</sup> Therefore, the Board will set aside OWCP's February 27, 2019 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

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<sup>2</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>3</sup> See 20 C.F.R. § 10.607(b).

**IT IS HEREBY ORDERED THAT** the February 27, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order 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