

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

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<b>T.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0426</b>
	)	<b>Issued: July 27, 2020</b>
<b>U.S. POSTAL SERVICE, MAIN POST OFFICE,</b>	)	
<b>Cincinnati, OH, Employer</b>	)	
_____	)	

*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 December 16, 2019 appellant filed a timely appeal from August 1 and October 30, 2019 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0426.<sup>1</sup>

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

On November 15, 1995 appellant, then a 39-year-old modified mail processor, filed an occupational disease claim (Form CA-2) alleging that, on November 6, 1995, she experienced discomfort in both hands and her right shoulder due to repetitive motions required while casing mail. OWCP assigned this claim OWCP File No. xxxxxx340. At that time, appellant had an

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<sup>1</sup> The Board notes that, following the October 30, 2019 decision, OWCP received additional evidence. 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.*

<sup>2</sup> Docket No. 19-0029 (issued June 21, 2019); Docket No. 17-1761 (issued June 6, 2018).

accepted claim for aggravation of chondromalacia of the right knee in OWCP File No. xxxxxx731, and she was working in a modified sedentary position.<sup>3</sup> She stopped work on November 9, 1995. On November 13, 1996 OWCP accepted appellant's claim for bilateral sprain/strain of both hands and wrists and right shoulder. On November 18, 1999 it terminated her wage-loss compensation as she failed to accept an offer of suitable employment, pursuant to 5 U.S.C. § 8106(c)(2).

On June 10, 2016 appellant filed a claim for compensation (Form CA-7) for wage loss for the period April 19, 1997 to June 9, 2016. By decision dated August 23, 2016, OWCP denied her claim for wage-loss compensation for the claimed period. By decision dated June 29, 2017, an OWCP hearing representative affirmed OWCP's decision.

Appellant appealed to the Board on August 14, 2017. By decision dated June 6, 2018,<sup>4</sup> the Board affirmed the June 29, 2017 OWCP decision, finding that appellant had not met her burden of proof to establish that she was disabled from work for the period August 19, 1997 to June 9, 2016, causally related to the accepted November 6, 1995 employment injury.

Appellant requested reconsideration on July 3, 2018. She detailed her history of complaints of severe pain in her hands and right shoulder dating back to 1995 and noted that she worked until April 1997, when she could no longer move her hands. Appellant also argued that the employing establishment provided her with offers to return to work based upon inaccurate and incomplete medical reports. She argued that OWCP committed error, that her physicians provided detailed medical reports, and that her injuries were caused by work at the employing establishment. Appellant submitted a number of medical reports from various physicians dating from 1995 to 2018.

By decision dated September 20, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim. It found that her reconsideration request did not raise a substantive legal error or argument, the medical evidence was irrelevant to the matter at hand and repetitious, and she did not submit new and relevant evidence.

Appellant appealed to the Board on October 3, 2018. By decision dated June 21, 2019, the Board affirmed OWCP's September 20, 2018 decision, finding that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).<sup>5</sup>

On July 11, 2019 appellant requested reconsideration. She argued that OWCP committed error when it combined her claims. Appellant indicated that she was attaching a seven-page report from Dr. Marvin H. Lucas, a Board-certified internist, which established that her injuries had never resolved. Dr. Lucas' report was not attached.

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<sup>3</sup> OWCP File No. xxxxxx340 has been administratively combined with File No. xxxxxx601, latter of which serves as the master file.

<sup>4</sup> Docket No. 17-1761 (issued June 6, 2018).

<sup>5</sup> Docket No. 19-0029 (issued June 21, 2019).

On August 1, 2019 OWCP denied appellant's request for reconsideration, finding that the request was untimely filed and failed to demonstrate clear evidence of error. It did not address appellant's argument or the evidence submitted with the reconsideration request.

Appellant again requested reconsideration on August 8, 2019, and submitted further argument. She argued that both she and Dr. Michael Pordy, a Board-certified internist, believed that the termination of her compensation benefits was in error. Appellant alleged that she was resubmitting four reports from Dr. Pordy that had not been properly reviewed by OWCP in the past, she also referenced submission of a report from Dr. Lucas. Appellant also alleged that OWCP combined her current claim with OWCP File No. xxxxxx601, never paid her compensation for her 1995 injury, and did not resolve the conflict in medical evidence prior to the termination of her compensation benefits. No medical evidence was received with appellant's reconsideration request.

By letter dated September 27, 2019, appellant provided additional argument. She alleged that OWCP kept confusing her claim numbers. Appellant submitted a copy of her August 3, 2019 letter requesting reconsideration, with an addendum in which she alleged that OWCP had previously referred to a June 30, 2019 request for reconsideration, but this was error as she had requested reconsideration on June 18, 2018 and had submitted 44 enclosures in support of her request for reconsideration. OWCP also received evidence in support of her request for reconsideration. The additional evidence included a September 25, 2016 report from Dr. Pordy, a September 25, 2019 report from Dr. Tara Adhikari, a Board-certified rheumatologist, and a September 25, 2019 after visit summary and medication list.

By decision dated October 30, 2019, OWCP denied appellant's "August 15, 2019" request for reconsideration, finding that the request was untimely filed and failed to demonstrate clear evidence of error. It did not address the evidence or argument submitted with the reconsideration request.

The Board finds that the case is not in posture for decision because OWCP failed to make findings regarding the arguments and evidence submitted in support of appellant's July 11 and August 8, 2019 reconsideration requests.

OWCP summarily denied appellant's requests for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>6</sup> 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.<sup>7</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. As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the

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<sup>6</sup> See *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *id.*; see also 20 C.F.R. § 10.607(b).

<sup>7</sup> 5 U.S.C. § 8124(a).

reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>8</sup>

In the August 1 and October 30, 2019 decisions, OWCP failed to analyze appellant's numerous arguments and the evidence she submitted with her requests for reconsideration to determine and explain whether it was sufficient to demonstrate clear evidence of error. The case must therefore be remanded to OWCP for an appropriate decision on appellant's reconsideration requests, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.<sup>9</sup>

The Board will therefore set aside OWCP's August 1 and October 30, 2019 decisions and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request. Accordingly,

**IT IS HEREBY ORDERED THAT** the August 1 and October 30, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 27, 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

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

<sup>9</sup> *C.D.*, Docket No. 19-1962 (issued June 29, 2020); 5 U.S.C. § 8124(a).