

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

M.D., Appellant)	
)	
and)	Docket No. 19-1957
)	Issued: June 22, 2020
FEDERAL DEPOSIT INSURANCE)	
CORPORATION, Arlington, VA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 24, 2019 appellant, through counsel, filed a timely appeal from an August 1, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1957.²

On June 9, 2015 appellant, then a 57-year-old financial analyst, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2015 he tripped on a strip of concrete when walking between the first and second floors of the employing establishment parking garage and "flew" forward, head first, into a concrete staircase, while in the performance of duty. He alleged that, as a result, he sustained a large bruise on his upper right arm and skinned both knees.

¹ 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.

² This case has previously been before the Board. Docket No.17-0086 (issued August 3, 2017).

Appellant also experienced a sore right thigh, forearm cramps, soreness in his back, and tingling in his right hand and fingers.

By decision dated July 28, 2015, OWCP denied appellant's claim, finding that he had not established the February 20, 2015 incident occurred as alleged.

On June 7, 2016 appellant, through counsel, requested reconsideration and submitted evidence in support of his request. By decision dated August 24, 2016, OWCP denied modification of the July 28, 2015 OWCP decision.

On October 20, 2016 appellant, through counsel, appealed to the Board. By decision dated August 3, 2017,³ the Board affirmed OWCP's August 24, 2016 decision, as modified. The Board found that the evidence submitted was sufficient to establish that the February 20, 2015 incident occurred as alleged and that appellant was in the performance of duty at the time of the incident. The Board, however, further found that appellant had not met his burden of proof to establish an injury causally related to the accepted February 20, 2015 employment incident.

On August 7, 2018 appellant, through counsel, requested reconsideration.

By decision dated August 1, 2019, OWCP denied modification, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted February 20, 2015 employment incident.

Section 10.607(a) of OWCP's regulations provides that a request for reconsideration must be received within one year of the date of OWCP's last merit decision for which review is sought.⁴ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).⁵ The Board has duly considered the matter and finds that appellant's request for reconsideration was untimely filed as it was not received until August 7, 2018, which is more than one year from the last merit decision, which was the Board's August 3, 2017 decision.

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of its most recent decision. The request must establish, on its face, that such decision was erroneous.⁶ The standard utilized by OWCP in its August 1, 2019 decision is appropriate only for timely reconsideration requests. Because appellant filed an untimely reconsideration request, the case will be remanded to OWCP for application of the correct standard for reviewing untimely reconsideration requests, the clear evidence of error standard.⁷ After such

³ *Id.*

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁶ *Id.* at § 10.607. *See also C.B.*, Docket No. 17-0933 (issued July 17, 2017); *A.B.*, Docket No. 15-0521 (issued June 13, 2016).

⁷ *Id.* at § 10.606(b).

further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

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

Issued: June 22, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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