

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

C.D., Appellant)	
)	
and)	Docket No. 19-1962
)	Issued: June 29, 2020
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY, Marysville, WA,)	
Employer)	
)	

Appearances:
Sara Kincaid, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

On September 25, 2019 appellant, through counsel, filed a timely appeal from an April 2, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1962.²

On August 29, 2017 appellant, then a 57-year-old store worker, filed an occupational disease claim (Form CA-2) alleging that she sustained right shoulder, elbow, wrist, and finger conditions due to factors of her employment. Specifically, she attributed the conditions to having

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 The Board notes that, following the April 2, 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.*

to use only her right arm and hand at work as she had a prior left rotator cuff injury under OWCP File No. xxxxxx651. Appellant indicated that she first became aware of her condition and its relationship to factors of her federal employment on August 26, 2017.

After initial development of the claim, by decision dated November 20, 2017, OWCP denied appellant's claim finding that she had not submitted any evidence containing a medical diagnosis in connection with the accepted employment factors.

OWCP subsequently received additional medical documentation in support of her claim.

On January 16, 2019 OWCP received counsel's November 16, 2018 letter requesting reconsideration, and a supplemental letter dated January 11, 2019.³ Counsel argued that appellant had established causal relationship between the diagnosed medical conditions and the accepted factors of her federal employment. He specifically referred to evidence previously of record.

By decision dated April 2, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim finding that the request was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that the case is not in posture for a decision.

The Board finds that OWCP properly determined that appellant's January 16, 2019 request for reconsideration was untimely filed. The last merit decision was issued on November 20, 2017 and OWCP received appellant's request for reconsideration on January 16, 2019.⁴ As appellant's request for reconsideration was not received and scanned into iFECS by OWCP within the one-year time limitation, pursuant to 20 C.F.R. § 10.607(a), the request for reconsideration was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying the claim.⁵

The Board further finds, however, that OWCP did not make any findings regarding the evidence submitted in support of the reconsideration request.⁶ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁷ Section 8124(a) of FECA provides that OWCP shall determine

³ On January 16, 2019 OWCP also received a copy of an envelope mailed on November 16, 2018 from counsel's law firm to OWCP.

⁴ Timeliness is determined by the document receipt date (i.e. "the received date" in OWCP's Integrated Federal Employee's Compensation System (iFECS)). If the request for reconsideration has a document received date greater than one year, the request must be considered untimely. The record does not document receipt of and scan of counsel's November 16, 2018 letter until January 16, 2019. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁵ 20 C.F.R. § 10.607(b); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *see Debra McDavid*, 57 ECAB 149 (2005).

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

⁷ *Id.*; *see also* 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(d) (February 2016).

and make a finding of fact and make an award for or against payment of compensation.⁸ 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.⁹

The case must therefore be remanded to OWCP for an appropriate decision on appellant's untimely reconsideration request, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.⁸

IT IS HEREBY ORDERED THAT April 2, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for action consistent with this order of the Board.

Issued: June 29, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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

⁸ 5 U.S.C. § 8124(a).

⁹ See *K.W.*, Docket No. 19-1808 (issued April 2, 2020).