

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

C.G., Appellant)	
)	
and)	Docket No. 20-0051
)	Issued: June 29, 2020
U.S. POSTAL SERVICE, LOGISTICS & DISTRIBUTION CENTER, Tampa, FL, Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 7, 2019 appellant, through counsel, filed a timely appeal from an April 10, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0051.²

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 10, 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.*

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated by reference. The relevant facts are as follows.

On February 18, 2009 appellant, then a 34-year-old mail handler operator, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2009 she injured her left arm and back when moving a bulk mail cart while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx098 and accepted the claim for lumbar, left shoulder, and arm strain.⁴

In a letter dated December 12, 2012, OWCP noted that, under File No. xxxxxx258, appellant would receive wage-loss benefits on the periodic rolls, effective December 16, 2012.

On March 18, 2015 OWCP terminated appellant's wage-loss compensation and medical benefits for OWCP File Nos. xxxxxx098, xxxxxx258, and xxxxxx723, effective March 18, 2015, finding that she no longer had any residuals or disability due to her accepted conditions.

On August 3, 2015 appellant requested reconsideration. By decision dated October 8, 2015, OWCP denied modification. On November 6, 2015 appellant requested reconsideration. By decision dated January 21, 2016 OWCP denied modification.

On May 31, 2016 appellant requested reconsideration. By decision dated June 7, 2016, OWCP denied reconsideration of the merits of her claim.

On March 19, 2019 appellant again requested reconsideration. In support of her request, she submitted new medical evidence and also resubmitted medical evidence previously reviewed by OWCP.

By decision dated April 10, 2019, OWCP denied appellant's March 19, 2019 request for reconsideration, finding that the request was untimely filed and failed to demonstrate clear evidence of error. It found that it was unnecessary to address the medical evidence 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 March 19, 2019 reconsideration request.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁵ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against

³ Docket No. 15-0303 (issued January 14, 2016); Docket No. 14-0315 (issued May 21, 2014), *petition for recon., denied*, Docket No. 14-0315 (issued December 1, 2014).

⁴ On September 17, 2013 OWCP administratively combined OWCP File Nos. xxxxxx098, xxxxxx258, and xxxxxx723. File No. xxxxxx098 was designated as the master file. Under OWCP File No. xxxxxx258, OWCP accepted that appellant sustained cervical and lumbosacral strains on June 9, 2011 while pushing an automated mail cart. Under OWCP File No. xxxxxx723, it accepted that appellant sustained neck, left shoulder, and upper arm strains on March 31, 2009 while pulling a heavy tray of mail off a pallet of heavy letter trays.

⁵ *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *Id.*; see also 20 C.F.R. § 10.607(b).

payment of compensation.⁶ 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.⁷ In the April 10, 2019 decision, OWCP denied the March 19, 2019 reconsideration request, finding it was untimely filed as it was received more than a year following the last merit decision dated January 21, 2016, but failed to analyze the evidence or argument as to whether it was sufficient to demonstrate clear evidence of error. It specifically related that the medical evidence submitted had not been considered.

The Board will therefore set aside OWCP's April 10, 2019 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's untimely reconsideration request. Accordingly,

IT IS HEREBY ORDERED THAT the April 10, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for action consistent with this decision of the Board.

Issued: June 29, 2020
Washington, DC

Christopher J. Godfrey, Deputy 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

⁶ 5 U.S.C. § 8124(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).