

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

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D.F., Appellant)	
)	
and)	Docket No. 20-0267
)	Issued: June 29, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
KANSAS CITY VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Kansas City, MO, Employer)	
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Appearances:
Melford V. McCormick, J.D., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 23, 2019 appellant, through her representative, filed a timely appeal from an August 19, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 20-0267.

On May 14, 2010 appellant, then a 51-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on May 1, 2010 she sustained injuries to her buttocks, knees, back, neck, and left shoulder when she was assaulted and fell down while in the performance of

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.

duty. She did not stop work, but worked modified duty. OWCP accepted appellant's claim for spasm of the back muscle and lumbar sprain.²

On April 28, 2017 appellant requested that her claim be reevaluated due to a recent diagnosis and expanded to include the additional diagnosis of spinal stenosis. After development of the case record OWCP, by decision dated November 22, 2017, denied her request. It found that the medical evidence of record was insufficient to establish that appellant's was additional claimed spinal conditions were causally related to the accepted May 1, 2020 employment injury.

Subsequent to the decision, appellant submitted additional medical reports, including a December 11, 2017 report by Dr. Jonathon D. Chilton, a Board-certified neurosurgeon, who related that he initially examined appellant on April 25, 2016 for complaints of a six-year history of back pain that began after a May 2010 assault at work. OWCP also received a December 1, 2017 letter by Dr. Sequita Richardson, a Board-certified family physician, and a December 7, 2017 letter by Dr. Pamela S. Taylor, a clinical psychologist and licensed professional counselor, who related that they had not treated appellant for a back injury.

In a letter dated March 5, 2108 and received on March 13, 2018, appellant's representative noted appellant's claim number and indicated that he was enclosing additional medical records. He further noted this was a request for reconsideration of the November 22, 2017 decision which denied benefits. Appellant submitted reports dated December 13, 2017 to January 10, 2018 by Dr. Scott McMurray, a Board-certified orthopedic surgeon, who indicated that he had treated appellant for complaints of left shoulder pain after an injury at work.

On July 31, 2019 OWCP received an additional letter from appellant's representative who related that the letter and enclosed documents served as a request for reconsideration of the November 22, 2017 denial decision. The representative alleged that he was enclosing a November 6, 2017 letter, which cited medical records that were sent to the incorrect office. He also submitted an appeal request form (Form AB-1), which indicated that appellant was requesting reconsideration.

By decision dated August 19, 2019, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that it did not receive the request for reconsideration of its November 22, 2017 decision until July 31, 2019.

The Board has considered the matter and finds that OWCP improperly determined that appellant's request for reconsideration was not timely filed within the one-year time period.³

The record contains a letter dated March 5, 2018, which was received by OWCP on March 13, 2018. In the letter, appellant's counsel noted OWCP's claim number and indicated that the letter was a request for reconsideration of the November 22, 2017 decision which denied

² In a decision dated July 19, 2010, OWCP also found that the medical evidence of record was insufficient to establish that appellant sustained neck, left shoulder, and bilateral knee conditions causally related to the May 1, 2010 employment incident.

³ *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

benefits. The Board notes that the letter identified the proper claim number and explicitly noted that appellant was requesting reconsideration of the November 22, 2017 OWCP decision. Appellant also submitted medical evidence that specifically addressed the issue of whether her claim should be expanded to include additional conditions. Accordingly, the Board finds that appellant's March 5, 2018 letter, received by OWCP on March 13, 2018, constituted a request for reconsideration.⁴ Therefore, because appellant's March 13, 2018 request for reconsideration was received within one year of OWCP's November 22, 2017 merit decision,⁵ it was timely filed.⁶

The Board finds that OWCP improperly denied appellant's reconsideration request by applying the legal standard for cases where reconsideration is requested after more than one year has elapsed. OWCP should have applied the legal standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3).⁷ Because it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard which applies to untimely filed reconsideration requests, the Board will remand the case for review of this evidence under the proper standard of review for a timely reconsideration request.⁸

Thus, the Board finds that the case must be remanded for proper adjudication and application of the appropriate standard of review, to be followed by an appropriate decision.

⁴ *R.D.*, Docket No. 14-896 (issued August 1, 2014); *C.M.*, Docket No. 11-1988 (issued June 6, 2012).

⁵ Section 10.607(a) of the Board's *Rules of Procedure* provides that an application for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought. 20 C.F.R. § 10.607(a)

⁶ *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

⁷ An application for reconsideration must be in writing, must set forth arguments, and must contain evidence, including all supporting documents, that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(3). When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review of the merits. 20 C.F.R. § 10.608(a), (b).

⁸ *L.N.*, *Order Remanding Case*, Docket No. 19-0170 (issued August 21, 2019).

IT IS HEREBY ORDERED THAT the August 19, 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 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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