

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

B.D., Appellant)	
)	
and)	Docket No. 19-0907
)	Issued: March 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Detroit, MI, Employer)	
)	

Appearances:
Appellant, pro se
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 March 26, 2019 appellant filed a timely appeal from an October 17, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0907.

On February 17, 2016 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she aggravated her lumbosacral spine due to factors of her federal employment.¹ She attributed her condition to having walked on uneven and shifting surfaces. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on August 20, 2015 and returned to work on February 6, 2016.

By decision dated May 4, 2016, OWCP denied appellant's occupational disease claim on the medical component of fact of injury, as it found the medical evidence of record lacked a valid, compensable diagnosis. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

¹ Appellant noted that she had a history of back problems dating back to a June 20, 2013 injury under OWCP File No. xxxxxx083, which was accepted for lumbar strain.

On November 15, 2016 appellant filed a request for reconsideration of the May 4, 2016 decision. By decision dated November 23, 2016, OWCP denied reconsideration, finding that appellant had not submitted additional evidence or argument in support of her claim.

On May 1, 2017 appellant filed a request for reconsideration of the May 4, 2016 decision. With her request, she included a November 3, 2016 narrative report from Dr. Jian Zu, a Board-certified family practitioner, which included a diagnosis of spinal osteoarthritis. Dr. Zu opined that her low back pain, which was initially due to a lumbar strain and compounded by flare-ups of spinal osteoarthritis, resulted from or was exacerbated by an on-the-job injury in 2013 and by prolonged walks on pulverized sidewalks over the course of 30 years.

By decision dated July 6, 2017, OWCP modified its prior decision, finding that appellant had established fact of injury. It also found that Dr. Zu's November 3, 2016 report was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted factors of her federal employment. Thus, OWCP denied her occupational disease claim as she had not established causal relationship.

On July 6, 2018 appellant filed a request for reconsideration.

In a July 9, 2018 note, Dr. Zu diagnosed spinal osteoarthritis and lumbar disc protrusion with nerve impingement and noted that her medical condition flared-up intermittently when she stood or walked more than 20 minutes at a time, which caused severe pain radiating down her right lower extremity.

By decision dated October 17, 2018, OWCP denied appellant's July 6, 2018 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that this case is not in posture for a decision.²

The last merit decision of record was OWCP's July 6, 2017 decision. As appellant's reconsideration request was received on July 6, 2018, within one year of the July 6, 2017 decision, it was timely filed. It is well established that when the date of the reconsideration request is exactly one year after the date of OWCP's decision, it is timely under 20 C.F.R. § 10.607(a).³ Therefore, OWCP should have applied the standard applicable to a timely reconsideration request as set forth in 20 C.F.R. § 10.606(b)(3) rather than the more stringent clear evidence of error standard for an untimely request for reconsideration set forth in 20 C.F.R. § 10.607(a). Because OWCP erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the Board will remand the case for review of the newly submitted evidence under the proper standard of review for a timely reconsideration request.⁴

² *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *see K.K.*, Docket No. 16-1187 (issued February 7, 2017); *E.B.*, Docket No. 16-0746 (issued June 1, 2016).

³ *R.M.*, Docket No. 17-0473 (issued June 6, 2017).

⁴ *J.H.*, *supra* note 2; *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

Thus, the Board finds that the case shall be remanded for proper adjudication and application of the appropriate standard of review, to be followed by an appropriate decision.⁵

IT IS HEREBY ORDERED THAT the October 17, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: March 30, 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

⁵ *J.H.*, *supra* note 2; *W.R.*, Docket No. 16-0098 (issued May 26, 2016).