

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

R.M., Appellant)	
)	
and)	Docket No. 20-0728
)	Issued: October 21, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
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 February 13, 2020 appellant filed a timely appeal from a January 13, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0728.

This case has previously been before the Board.¹ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 14, 2008 appellant, then a 41-year-old part-time flex carrier, filed a notice of traumatic injury claim (Form CA-1) alleging that she sustained neck and back injuries when a truck backed into her parked postal vehicle on October 11, 2008, while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx712 and, by decision dated November 28, 2008, accepted the claim for cervical and lumbar sprains. Appellant stopped work intermittently and OWCP paid her wage-loss compensation on the supplemental rolls.

On November 10, 2011 appellant filed a second Form CA-1 alleging that her postal vehicle was rear ended while she was stopped at a traffic light and she sustained a cervical injury on

¹ Docket No. 18-1621 (issued August 23, 2019).

November 8, 2011, while in the performance of duty. OWCP assigned that claim, OWCP File No. xxxxxx371, and by decision dated December 28, 2011, accepted it for cervical strain. Appellant stopped work intermittently and OWCP paid her wage-loss compensation on the supplemental rolls.

On December 13, 2017 appellant requested that the acceptance of her claims be expanded to include consequential pinched nerves of the back and neck as causally related to her two prior work-related motor vehicle accidents. She further requested that OWCP File Nos. xxxxxx712 and xxxxxx371 be administratively combined.

In a letter dated January 17, 2018, OWCP notified appellant that OWCP File Nos. xxxxxx712 and xxxxxx371 were administratively combined, with the former assigned as the master file.

In a letter dated February 5, 2018, appellant again requested that OWCP expand the acceptance of her claims to include the consequential conditions of lumbosacral radiculopathy, lumbosacral spondylosis, and cervical radiculopathy.

By decision dated March 22, 2018, OWCP denied expansion of appellant's claims to include consequential conditions.

On April 23, 2018 appellant requested reconsideration and submitted additional evidence in support of her claim.

By decision dated July 18, 2018, OWCP denied modification of the March 22, 2018 decision finding that the medical evidence of record was insufficient to establish that appellant's claimed consequential lumbosacral radiculopathy, lumbosacral spondylosis, and cervical radiculopathy were causally related to her accepted October 11, 2008 and November 8, 2011 employment injuries.

On August 23, 2018 appellant filed an appeal before the Board.

By decision dated August 23, 2019, the Board affirmed the July 18 and March 22, 2018 OWCP decisions, finding that appellant had not met her burden of proof to establish consequential lumbar and cervical conditions causally related to the accepted October 11, 2008 and November 8, 2011 employment injuries.

On December 24, 2019 appellant requested reconsideration of the August 23, 2019 decision and submitted additional medical evidence in support of her claim.² The request was dated December 12, 2019 and postmarked on December 21, 2019.

² The record reflects that three separate OWCP decisions were also issued on August 23, 2019, which denied appellant's requests for authorization of medical procedures and denied her claim for a recurrence on February 26, 2019. In a January 10, 2020 CA-110 telephone memorandum, the claims examiner requested that she stipulate, which August 23, 2019 decision she was requesting reconsideration. Appellant clarified that she was requesting reconsideration for the decision denying expansion of her claim for additional medical conditions, noting that she had been diagnosed with a new condition.

By decision dated January 13, 2020, 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. It noted that appellant's December 24, 2019 reconsideration request was not made within one year of the last merit decision on July 18, 2018.

The Board, having duly reviewed the record on appeal, finds that the case must be remanded to OWCP for application of the appropriate standard of review because appellant's request for reconsideration was timely filed.³

A request for reconsideration must be received by OWCP within one year of the date of a merit review of the claim, including any merit review by the Board.⁴ The last merit decision of record was the Board's August 23, 2019 decision affirming OWCP's denial of her expansion claim. As appellant's reconsideration request was received on December 24, 2019, within one year of the Board's August 23, 2019 merit decision, the Board finds that the request was timely filed.⁵

OWCP applied the clear evidence of error legal standard in reviewing appellant's request for reconsideration.⁶ This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.⁷ Since OWCP erroneously reviewed the evidence submitted by appellant in support of her reconsideration request under the clear evidence of error standard, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3).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.

³ *T.L.*, Docket No. 19-1110 (issued August 11, 2020).

⁴ *R.T.*, Docket No. 20-0298 (issued August 6, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (February 2016).

⁵ *S.H.*, Docket No. 18-1685 (issued August 15, 2019).

⁶ *C.D.*, Docket No. 17-1074 (issued August 28, 2017); *A.M.*, Docket No. 16-1250 (issued December 20, 2016).

⁷ *See V.M.*, Docket No. 18-1184 (issued July 10, 2019); *Donna M. Campbell*, 55 ECAB 241 (2004).

⁸ *P.J.*, Docket No. 19-0962 (issued December 30, 2019).

IT IS HEREBY ORDERED THAT the January 13, 2020 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: October 21, 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