

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

_____)	
B.J., Appellant)	
)	
and)	Docket No. 19-0598
)	Issued: September 17, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Crown Point, IN, Employer)	
_____)	

Appearances:
Joseph E. Allman, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On January 24, 2019 appellant, through counsel, filed a timely appeal from a December 14, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0598.

This case has previously been before the Board.² The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On May 13, 2015 appellant, then a 55-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left shoulder, upper arm, back, and neck sprain/strains and thoracic back pain due to her employment duties.

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 Docket No. 16-1614 (issued September 21, 2017).

By decision dated August 12, 2015, OWCP denied the claim, finding that the evidence of record was insufficient to establish the factual portion of her claim. On September 8, 2015 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on December 18, 2015. In a February 9, 2016 decision, an OWCP hearing representative affirmed the August 12, 2015 decision. Appellant, through counsel, subsequently appealed to the Board.

By decision dated September 21, 2017, the Board affirmed the February 9, 2016 OWCP decision, finding that appellant had not met her burden of proof to sufficiently identify employment activities alleged to have caused or contributed to her left shoulder condition.

On December 7, 2018 OWCP received a September 19, 2018 reconsideration request from counsel.³ OWCP's procedures provide that timeliness is determined by the date that the request was received by OWCP (the received date in iFECS).⁴ If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.⁵

By decision dated December 14, 2018, OWCP applied the standard applicable to a timely request for reconsideration and denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).⁶ As the last merit decision issued in this case was a September 21, 2017 Board decision, her request for reconsideration which was received into iFECS on December 7, 2018 was untimely. As appellant's request for reconsideration was untimely filed, OWCP erroneously reviewed her request for reconsideration using the standard for timely reconsideration requests.⁷

The Board will, consequently, remand the case for application of the proper standard, to be followed by the issuance of an appropriate decision. Accordingly,

³ This is the received date as indicated in the Integrated Federal Employees' Compensation System (iFECS).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016); *S.J.*, Docket No. 17-1835 (issued December 19, 2018).

⁵ *F.A.*, Docket No. 19-0321 (issued July 5, 2019); *R.Y.*, Docket No. 16-1301 (issued December 15, 2016); *T.E.*, Docket No. 16-0574 (issued August 18, 2016).

⁶ OWCP noted the receipt date for the reconsideration request as September 19, 2018.

⁷ *G.B.*, Docket No. 17-1298 (issued January 25, 2018); *L.D.*, Docket No. 15-0865 (issued October 6, 2015); *H.L.*, Docket No. 13-2077 (issued March 20, 2014).

IT IS HEREBY ORDERED THAT the December 14, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: September 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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