

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

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H.D., Appellant)	
)	
and)	Docket No. 19-1417
)	Issued: September 15, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
CARL VINSON VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Dublin, GA, 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 June 17, 2019 appellant filed a timely appeal from a January 17, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1417.¹

On January 28, 2008 appellant, then a 55-year-old former nurse, filed an occupational disease claim alleging that she had an allergic response to environmental stimuli which caused a

¹ The Board notes that following the January 17, 2019 decision, OWCP received additional evidence and that appellant submitted additional evidence on appeal. 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.*

respiratory condition due to factors of her federal employment. She was removed from her position effective March 2, 2007 due to medical inability to perform the job.²

Following initial development of the claim on March 15, 2011 OWCP accepted the claim for temporary exacerbations of extrinsic asthma and contact dermatitis.

On June 24, 2011 appellant filed a schedule award claim which OWCP denied on August 25, 2011.

On September 23, 2011 appellant requested a hearing before an OWCP hearing representative. Following a preliminary review, by decision dated December 19, 2011, OWCP's hearing representative set aside the August 25, 2011 decision and remanded the claim to OWCP to obtain a pulmonary function study. OWCP referred appellant to Dr. Mark D. Livezey, Board-certified in internal medicine, allergy, and immunology. Based on his opinion that appellant had no permanent impairment, on March 15, 2012, OWCP again denied appellant's schedule award claim.

On April 12, 2012 appellant again requested a hearing before an OWCP hearing representative. On August 8, 2012 OWCP's hearing representative affirmed the March 15, 2012 decision. On February 11, 2013 appellant requested reconsideration, and by decision dated March 19, 2013, OWCP denied modification of its prior schedule award denials. On March 28, 2014 she requested reconsideration. By decision dated April 21, 2014, OWCP found that appellant's request was untimely filed and that she failed to establish clear evidence of error.

In correspondence dated September 22, 2015, appellant notified OWCP that she was changing her address to Douglasville, GA. Her former address was in Warner Robins, GA.

On April 8, 2016 appellant requested that the acceptance of her claim be expanded to include additional respiratory and immune system conditions. She again listed her Douglasville, GA address.

By letter dated November 15, 2016, sent to the Douglasville, GA address, OWCP notified appellant that her case was reopened for medical treatment. It advised her that to avoid confusion in the future that the qualifying term "temporary" was being removed from her accepted conditions. OWCP also informed appellant of the medical evidence needed to support expansion of her claim.

In March 2017 OWCP referred her to Dr. Jane T. St. Clair, a Board-certified occupational medicine specialist, for a second-opinion evaluation. Correspondence during this period was sent

² Appellant has six subsidiary claims that were administratively combined by OWCP on April 13, 2010. The current claim, File No. xxxxxx949 was designated the master file. Under subsidiary File No. xxxxxx585, by decision dated October 1, 2007, under Docket No. 07-1026, the Board found that appellant did not establish an employment-related injury on November 3, 2005 and denied her request for subpoenas. The Board affirmed OWCP's June 8 and October 6, 2006, and January 9, 2007 decisions. Docket No. 07-1026 (issued October 1, 2007). By decision dated September 15, 2009, Docket No. 09-438, the Board found that OWCP properly refused to reopen appellant's claim pursuant to section 8128(a) of FECA. The Board affirmed OWCP's September 2 and October 7, 2008 decisions. Docket No. 09-438 (issued September 15, 2009).

to the Douglasville, GA address. Appellant also submitted additional medical evidence. Dr. St. Clair submitted reports dated May 11 and September 16, 2017.

On June 1, 2017 appellant wrote to OWCP and again listed her Douglasville, GA address.

By decision dated September 28, 2017, OWCP denied appellant's claim to expand the accepted conditions and for schedule award compensation. The decision was sent to appellant's former address in Warner Robins, GA.

On October 2, 2018 appellant requested reconsideration from the September 28, 2017 decision. She wrote that she had only recently received a copy of the decision, noting that it had been sent to an incorrect address where she formerly lived.

By decision dated January 17, 2019, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It sent the decision to the Warner Robins, GA address.

The Board, having duly considered the matter, finds that this case is not in posture for decision. In denying appellant's reconsideration request, OWCP failed to note that she had changed her address in 2015 and mailed its September 28, 2017 decision to an incorrect former address. Because OWCP had not mailed the September 28, 2017 decision to appellant's last known address, the presumption of receipt under the mailbox rule³ is rebutted.⁴ For this reason, the Board finds that appellant's October 2, 2018 reconsideration request was timely filed and sets aside OWCP's January 17, 2019 decision, which found that her reconsideration request was untimely filed and failed to demonstrate clear evidence of error. The case is remanded for OWCP to address appellant's October 2, 2018 reconsideration request in accordance with section 8128(a) of FECA and its regulations at sections 10.605 through 10.610.⁵ After such further development deemed necessary, OWCP shall issue an appropriate decision.⁶

³ In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the "mailbox rule." *W.P.*, 59 ECAB 515 (2008).

⁴ *T.L.*, Docket No. 19-0087 (issued June 26, 2019).

⁵ 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.610.

⁶ *Id.*; *see A.B.*, Docket No. 15-0290 (issued May 4, 2015); *L.R.*, Docket No. 14-0361 (issued June 5, 2014).

IT IS HEREBY ORDERED THAT the January 17, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: September 15, 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