

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

_____)	
L.T., Appellant)	
)	
and)	Docket Nos. 19-1964 and
)	17-1537
U.S. POSTAL SERVICE, POST OFFICE,)	Issued: September 23, 2020
Cordova, TN, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER REMANDING CASE IN DOCKET NO. 19-1964 AND DISMISSING
PETITION FOR RECONSIDERATION IN DOCKET NO. 17-1537**

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

On September 25, 2019 appellant filed a timely appeal from an April 2, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1964.¹

On December 2, 2015 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on November 12, 2015, she tore her right shoulder rotator cuff when reaching behind to get a package while in the performance of duty. She stopped work on November 16, 2015 and returned on December 1, 2015.

By decision dated January 12, 2016, OWCP denied appellant's claim. It accepted that the November 12, 2015 incident occurred as alleged, but found that the evidence submitted in support

¹ The Board notes 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.*

of her claim was insufficient to establish that her medical condition was caused by the November 12, 2015 employment incident.

On March 29, 2016 and March 1, 2017 appellant requested reconsideration. By decisions dated June 27, 2016 and May 19, 2017, OWCP denied modification.

On July 6, 2017 appellant, through counsel, filed a timely appeal with the Board from the May 19, 2017 decision. By decision dated December 1, 2017, the Board affirmed the May 19, 2017 decision, finding that appellant had not met her burden of proof to establish a right shoulder injury causally related to the accepted November 12, 2015 employment incident.²

On December 13, 2018 appellant requested reconsideration.³ In support thereof appellant submitted a number of medical reports dated from November 16, 2015 to December 12, 2018.

By decision dated April 2, 2019, OWCP denied appellant's 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 decision. OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of the Federal Employees' Compensation Act⁴ (FECA) and its implementing regulations.⁵ Section 8124 of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁶ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁷ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁸

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect. The Board will therefore set aside OWCP's April 2, 2019 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision.

² *Id.*

³ OWCP's April 2, 2019 decision notes that appellant's request for reconsideration was received on December 4, 2018. This, however, appears to be a typographical error as the record establishes that it was received on December 13, 2018.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *C.D.*, Docket No. 20-0450; *see also* 20 C.F.R. § 10.607.

⁶ 5 U.S.C. § 8124(a).

⁷ 20 C.F.R. § 10.126.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

The Board notes that appellant also indicated on her appeal form that she was appealing from the Board's December 1, 2017 decision in Docket No. 17-1537. However, that decision became final upon the expiration of 30 days from the date of issuance.⁹ As appellant did not file her disagreement with the Board's December 1, 2017 decision until September 25, 2019 this submission may not be deemed as a timely petition for reconsideration as it was filed in excess of 30 days from the date of issuance.¹⁰ Thus the petition for reconsideration of the December 1, 2017 Board decision must be dismissed as untimely filed. Accordingly,

IT IS HEREBY ORDERED THAT the April 2, 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.

IT IS FURTHER ORDERED THAT the petition for reconsideration in Docket No. 17-1537 is dismissed as untimely filed.

Issued: September 23, 2020
Washington, DC

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

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

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

⁹ 20 C.F.R. § 501.6(d).

¹⁰ *Id.* at § 501.7(a).