

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

D.A., Appellant)	
)	
and)	Docket No. 20-1439
)	Issued: March 19, 2021
U.S. POSTAL SERVICE, DeWITT POST)	
OFFICE, DeWitt, MI, Employer)	
)	

Appearances:
Anita Lewallen, for the appellant¹
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 July 1, 2020 appellant, through her representative, filed an appeal from a January 6, 2020 letter of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1439.

On March 14, 2017 appellant, then a 61-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2017 she sustained a right shoulder injury as a result of opening a door while in the performance of duty. She did not stop work. By decision dated May 17, 2018, OWCP accepted her claim for sprain of the right rotator cuff capsule, initial encounter. It ultimately expanded the acceptance of appellant's claim to include the following: strain of unspecified muscle, fascia and tendon at shoulder and upper arm level, right arm initial encounter; and other specified disorders of tendon, left shoulder.

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.

On May 15, 2018 appellant filed claims for compensation (Form CA-7) for disability commencing May 3, 2018. By decision dated June 20, 2018, OWCP denied her claim as the medical evidence did not establish causal relationship to the accepted March 13, 2017 employment injury. Appellant, through her representative, requested reconsideration on July 10, 2019 and submitted additional evidence. By decision dated October 8, 2019, OWCP denied appellant's reconsideration request finding that it was untimely filed and that the submitted evidence did not demonstrate clear evidence of error on the part of OWCP in the issuance of its June 20, 2018 merit decision.

By letter dated and received by OWCP on December 17, 2019 appellant again requested reconsideration, indicating that this request "is being made following [OWCP's] decision dated October 8, 2019 in which [OWCP] determined that the previously submitted appeal, dated June 17, 2019, was untimely received." She contended that she had "uploaded" her reconsideration request and additional evidence to OWCP's portal on June 17 and 18, 2019, prior to the expiration of the one-year time limitation from the issuance of the June 20, 2018 OWCP decision. Appellant concluded, therefore, that OWCP erred in denying her reconsideration request as untimely filed. With her December 17, 2019 reconsideration request appellant again submitted additional evidence.

In response to appellant's reconsideration request, OWCP replied on January 6, 2020 that it had previously denied her request from the June 20, 2018 merit decision on October 8, 2019 as untimely filed and failing to demonstrate clear evidence of error. OWCP pointed out, as it indicated it had done in its October 8, 2019 decision, that the only avenue appeal available to appellant was an appeal to the Board. It concluded, therefore: "No further action will be taken upon this reconsideration claim. You may file an appeal to ECAB within 180 days of this office's October 8, 2019 decision if you so choose."

The Board, having duly considered the matter, notes that section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.² 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.³ 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.⁴

OWCP, in its January 6, 2020 letter, it declined to review appellant's December 17, 2019 reconsideration request by stating that "[n]o further action will be taken." The Board concludes that the January 6, 2020 correspondence was, in effect, a final adverse decision. As such, OWCP was required to provide findings of fact and a statement of reasons. However, the only explanation it provided for declining to take further action on her claim was that it had previously apprised her that her only avenue of appeal following the issuance of its October 18, 2019 decision was to this Board. There was no supporting citation. The Board will therefore set aside OWCP's January 6,

² 5 U.S.C. § 8124(a).

³ 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

2020 decision and remand the case for an appropriate decision on appellant's reconsideration request, which provides detailed reasons for accepting or rejecting the reconsideration request.⁵ Accordingly,

IT IS HEREBY ORDERED THAT the September 10, 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.

Issued: March 19, 2021
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

⁵ See *supra* note 2.