

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

J.F., Appellant)	
)	
and)	Docket No. 21-0407
)	Issued: November 10, 2021
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Houston, TX, Employer)	
)	

Appearances:
Joyce Fuller, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 28, 2021 appellant, through his representative, filed a timely appeal from a December 29, 2020 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21 -0407.²

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 an 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 The Board notes that following the December 29, 2020 decision, OWCP received additional evidence. 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.*

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 10, 2000 appellant, then a 36-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that he sustained right shoulder injury, clavicle strain and right rotator cuff injury on August 9, 2000 when a coworker tapped him on the shoulder, causing him to "go to his knees."⁴

By merit decisions dated November 22, 2000, May 21, 2001 and April 22, 2002, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted August 9, 2000 employment incident.

Following the April 22, 2002 merit decision, appellant continued to request reconsideration of his claim. OWCP denied appellant's requests for reconsideration and he filed appeals to the Board. By decision dated May 20, 2019, the Board affirmed an August 29, 2018 OWCP nonmerit decision, finding that appellant's reconsideration request was untimely filed and failed to demonstrate clear evidence of error.⁵

On November 30, 2020 appellant again requested reconsideration of OWCP's decisions dated August 29, 2018 and April 22, 2002. In the request for reconsideration, appellant's representative contended that after the Board issued its May 20, 2019 decision, there were administrative delays by OWCP. Appellant's representative further contended there was clear evidence of error. Evidence submitted in support of the reconsideration request included a copy of appellant's Form CA-1; copies of OWCP's May 21, 2001, October 1, 2002, and August 29, 2018 decisions; a partial copy of the Board's May 20, 2018 decision; OWCP's acknowledgement letter of August 10, 2020; the Board's November 8, 2020 letter regarding its lack of jurisdiction over ECAB Docket Nos. 20-1433 and 18-1802; and two USPS Tracking forms showing delivery dates.

³ Docket No. 18-1802 (issued May 20, 2019); *Order Dismissing Appeal* in Docket No. 20-1433 and *Dismissing Petition for Reconsideration* in Docket No. 18-1802, Docket Nos. 20-1433 & 18-1802 (issued August 28, 2020); Docket No. 18-0250 (issued July 6, 2018); Docket No. 16-0871 (issued June 10, 2016); Docket No. 14-1589 (issued November 24, 2014); Docket No. 12-1749 (issued February 5, 2013), *petition for recon. denied*, Docket No. 12-1749 (issued August 2, 2013); Docket No. 10-2378 (issued August 16, 2011), *petition for recon. denied*, Docket No. 10-2378 (issued February 23, 2012); Docket No. 09-1027 (issued December 17, 2009), *petition for recon. denied*, Docket No. 09-1027 (issued May 6, 2010); Docket No. 08-271 (issued June 20, 2008); Docket No. 07-978 (issued August 17, 2007); Docket No. 04-2283 (issued December 21, 2005).

⁴ The record indicates that appellant had a May 3, 2000 claim (OWCP File No. xxxxxx590) accepted for right shoulder strain and a September 18, 1991 claim accepted for left elbow lateral epicondylitis, left shoulder adhesive capsulitis, left brachial plexus lesions, left tenosynovitis of the hand/wrist and sprain/strains of the right shoulder, upper arm and acromioclavicular joint. The September 18, 1991 claim has been established as a master file (OWCP File No. xxxxxx559) with both the May 3, 2000 and the current August 9, 2000 claims combined as subsidiary files.

⁵ *See supra* note 3.

By decision dated December 29, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim, 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 FECA and its implementing regulations.⁶ 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.⁷ 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.⁸ 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.⁹

In denying appellant's reconsideration request, OWCP failed to analyze whether it was sufficient to demonstrate clear evidence of error. The December 29, 2020 decision simply noted: "We did consider your request under 20 C.F.R. § 10.607(b) to determine whether you presented clear evidence that [OWCP's] last merit decision was incorrect." However, OWCP did not address appellant's contentions raised in his reconsideration request. Furthermore, it provided no discussion relative to the evidence submitted.¹⁰

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 he had demonstrated clear evidence that OWCP's last merit decision was incorrect.¹¹ The Board will therefore set aside OWCP's December 29, 2020 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request.¹² Accordingly,

⁶ *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

⁷ 5 U.S.C. § 8124(a).

⁸ 20 C.F.R. § 10.126.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁰ *M.D.*, *supra* note 5; *see also Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

¹¹ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016).

¹² *Supra* note 6.

IT IS HEREBY ORDERED THAT the December 29, 2020 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this order of the Board.

Issued: November 10, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board