

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

C.J., Appellant	)	
	)	
and	)	<b>Docket No. 22-0233</b>
	)	<b>Issued: August 11, 2022</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Hazelwood, MO, 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  
JAMES D. McGINLEY, Alternate Judge

On November 29, 2021 appellant filed a timely appeal from a November 8, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-0233.

On May 19, 2017 appellant, then a 55-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 2016 he injured his right lower back when he picked up a heavy large flat rate box off a belt while in the performance of duty. He stopped work on that date.

Appellant submitted numerous medical reports from various medical providers dating from September 1, 2016 through May 22, 2017.

By decision dated June 30, 2017, OWCP accepted that the August 20, 2016 incident occurred as alleged and that a medical condition was diagnosed; however, it denied his claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted employment incident.

On April 19, 2018 appellant requested reconsideration and submitted additional medical reports dated September 7, 2016 through November 15, 2017.

By decision dated May 18, 2018, OWCP denied modification of the June 30, 2017 decision.

Appellant requested reconsideration on May 14, 2019 and July 29, 2020. He submitted a May 1, 2019 report and an undated narrative report from Dr. Dewey Dixon, a chiropractor.

By decisions dated August 6, 2019 and October 27, 2020, OWCP denied modification.

On October 27, 2021 appellant requested reconsideration.

In an October 12, 2021 statement, appellant described the various job positions that he had worked at the employing establishment over 35 years. He alleged that he worked 12 plus hours every night. Appellant explained that when he bent over a cultivator belt grabbing a large flat rate box, he felt a pull in his lower back and herniated his disc. He alleged that he never experienced back pain until the described employment incident.

By decision dated November 8, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. §8128(a). It summarily found that his reconsideration request did not raise a substantive legal question nor include new and relevant evidence, and was therefore insufficient to warrant a review of the prior decision.

The Board finds that the case is not in posture for decision.

5 U.S.C. § 8124(a) of the Federal Employees' Compensation Act (FECA)<sup>1</sup> provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation. 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. As well, OWCP's procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>2</sup>

The Board further finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.<sup>3</sup> In the November 8, 2021 decision, OWCP did not reference or discuss appellant's arguments in his October 12, 2021 statement submitted after the most recent merit decision dated October 27, 2020.<sup>4</sup> Accordingly, it did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, why the argument and evidence had not met any of the requirements of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

<sup>3</sup> *See A.J.* Docket No. 21-0944 (issued March 23, 2022); *J.M.*, Docket No. 18-0729 (issued October 17, 2019); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

<sup>4</sup> *C.H.*, Docket No. 20-0325 (issued July 17, 2020); *see R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017).

20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.<sup>5</sup> This case must therefore be remanded to OWCP for an appropriate decision on appellant's reconsideration request that describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.

Accordingly, the Board will set aside OWCP's November 8, 2021 decision and remand the case for OWCP to review the evidence and argument in support of appellant's reconsideration request, make findings of fact, and provide a statement of reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After that and other such further development as OWCP deems necessary, it shall issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the November 8, 2021 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: August 11, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>5</sup> *Order Remanding Case, S.S.*, Docket No. 20-1351 (issued February 15, 2022).