

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

S.S., Appellant)	
)	
and)	Docket No. 20-1351
)	Issued: February 15, 2022
VETERANS ADMINISTRATION, VA)	
MEDICAL & REGIONAL OFFICE CENTER,)	
Fargo, ND, Employer)	
)	

Appearances:
Appellant, pro se
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 June 29, 2020 appellant filed a timely appeal from a February 14, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1351.¹

On November 13, 1998 appellant, then a 36-year-old housekeeper, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 1998 she sustained a stress fracture when she pulled her gluteus maximus and aggravated her right foot along the sciatic nerve while in the performance of duty. She stopped work on November 14, 1998 and returned on November 16, 1998. OWCP accepted the claim for a stress fracture of the third metatarsal of the right foot. On May 7, 2001 it found that appellant was reemployed as a program tester with wages of \$320.00 per week, effective

¹ The Board notes that appellant submitted new 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.*

November 15, 2000. OWCP found that the position fairly and reasonably represented her wage-earning capacity.

Appellant filed a notice of recurrence (Form CA-2a) on January 20, 2019 claiming disability and medical treatment for December 31, 1999 causally related to her October 6, 1998 employment injury. She explained that she was unable to stand on her right foot.

By decision June 3, 2019, OWCP denied appellant's recurrence claim.

On September 16, 2019 appellant requested reconsideration.

By decision dated December 10, 2019, OWCP denied modification of its June 3, 2019 decision. It noted that appellant was in an automobile accident in 2011 and had reportedly sustained multiple back, cervical spine, and right arm injuries, as well as migraine headaches, and arthritis. OWCP noted that it had received a number of medical reports, however, the medical evidence of record did not establish a causal relationship between her medical conditions and her accepted employment injury.

OWCP thereafter received numerous medical reports from various medical providers dating from February 28, 2006 to July 3, 2019.

On February 11, 2020 appellant requested reconsideration. She discussed her history of injury and indicated that she had 60 percent permanent impairment of her right foot. Appellant argued that she was wrongfully terminated, that the employing establishment did not accommodate her work injury, engaged in unfair practices, slander, defamation of character, and retaliation. She also argued that her injuries from the motor vehicle accident had resolved in three months.

By decision dated February 14, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim. It summarily found that her 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 FECA 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.²

In the February 14, 2020 decision, OWCP did not reference or discuss appellant's arguments or evidence submitted after the most recent merit decision dated December 10, 2019.³

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

³ *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).

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 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.⁴ 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 February 14, 2020 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 such further development as OWCP deems necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the February 14, 2020 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: February 15, 2022
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

⁴ See *J.M.*, Docket No. 18-0729 (issued October 17, 2019); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).