

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

J.V., Appellant)	
)	
and)	Docket No. 21-0226
)	Issued: February 16, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Scarborough, ME, 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
PATRICIA H. FITZGERALD, Alternate Judge

On December 1, 2020 appellant filed a timely appeal from a September 22, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0226.

This case has previously been before the Board.¹ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 25, 2017 appellant, then a 46-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he experienced discomfort in his left thumb and corresponding tendons in his left arm as a result of his repetitive movements at work, which included culling, ripping, and stripping on a preparation area designed for right-handed individuals. He noted that he first became aware of his conditions on August 25, 2017 and their relationship to his federal employment on September 22, 2017. On the reverse side of the claim form, the employing establishment indicated that appellant was last exposed to the work conditions alleged to have caused his conditions on September 25, 2017.

¹ Docket No. 19-1844 (issued August 14, 2020).

OWCP, by decision dated November 28, 2017, denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed rupture of the extensor tendon of the left thumb was causally related to the accepted factors of his federal employment. On December 9, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 12, 2018, the hearing representative affirmed the November 28, 2017 decision, finding that the medical evidence submitted was insufficient to establish causal relationship between appellant's diagnosed medical condition and his accepted employment factors.

On October 26, 2018 appellant requested reconsideration. He indicated that a September 18, 2018 letter from Dr. Therese K. White, an attending Board-certified plastic surgeon, accompanied his reconsideration request.

By decision dated January 18, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), finding that it neither raised substantive legal questions, nor included relevant and pertinent new evidence. It noted that Dr. White's September 18, 2018 report was not received.

On March 19, 2019 appellant again requested reconsideration.

In an unsigned decision dated April 23, 2019, OWCP denied appellant's March 19, 2019 request for reconsideration of the merits of his claim pursuant to section 8128(a) of FECA, finding that it neither raised substantive legal questions, nor included relevant and pertinent new evidence. It again indicated that Dr. White's September 18, 2018 report did not accompany appellant's reconsideration request.

On July 23, 2019 appellant again requested reconsideration. In support of his request, he submitted Dr. White's September 18, 2018 report, wherein she opined that appellant sustained an extensor tendon rupture of his left thumb due to his repetitive work duties as a mail handler and provided medical rationale in support of her opinion.

By decision dated August 7, 2019, OWCP denied appellant's July 23, 2019 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On September 3, 2019 appellant appealed OWCP's April 23 and August 7, 2019 decisions to the Board. By decision dated August 14, 2020,² the Board set aside the April 23, 2019 decision. The Board found that OWCP failed to follow its procedures when it issued its April 23, 2019 decision denying appellant's March 19, 2019 request for reconsideration, as the contested decision was unsigned and did not confirm that it was issued by a senior claims examiner not involved in the prior decisions. In light of the Board's disposition, the remaining issue of whether OWCP properly denied appellant's July 23, 2019 request for reconsideration as untimely filed and failing

² *Id.*

to demonstrate clear evidence of error was rendered moot. The Board remanded the case for OWCP to issue an appropriate merit decision after any further development as deemed necessary.

On remand, OWCP issued a September 22, 2020 nonmerit decision, again denying appellant's July 23, 2019 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board having reviewed this matter, finds that this case is not in posture for decision as OWCP has not complied with the Board's instructions as set forth in its August 14, 2020 decision. By that decision, the Board found that OWCP failed to follow its procedures when it issued its April 23, 2019 decision denying appellant's March 19, 2019 request for reconsideration. The Board set aside the issue of whether OWCP properly denied appellant's July 23, 2019 reconsideration request as moot. On remand, OWCP was to issue an appropriate merit decision regarding appellant's occupational disease claim. Instead, it issued a nonmerit decision, again finding that appellant's July 23, 2019 request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. OWCP did not issue an appropriate merit decision addressing appellant's occupational disease claim as so instructed by the Board.

The Board has final authority to determine questions of law and fact. The Board's decisions are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director of OWCP.³ A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.⁴ The Board has already considered whether OWCP properly denied appellant's July 23, 2019 request for reconsideration in its August 14, 2020 decision which set aside that issue as moot.

OWCP has not issued a decision in which it followed the directives of the Board in its August 14, 2020 decision, *i.e.*, it has not issued an appropriate merit decision containing adequate facts, findings, and reasoning regarding appellant's occupational disease claim. The case is, therefore, again remanded for OWCP to consider all the evidence of record and, following any further development as deemed necessary, issue an appropriate merit decision on appellant's occupational disease claim.

³ See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84 (1949). See also *J.S. Docket No. 12-622* (issued September 12, 2012); *L.C.*, Docket No. 09-1816 (issued March 17, 2010) (OWCP did not follow the Board's instructions in ascertaining the information necessary to determine pay rate); *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed).

⁴ See 20 CFR § 501.6(d); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). There is no indication that a petition for reconsideration was filed within 30 days of the issuance of the Board's August 14, 2020 decision and, therefore, the decision became final after 30 days. 20 CFR § 501.6(d).

IT IS HEREBY ORDERED THAT the September 22, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 16, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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