

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

_____)
D.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Baltimore, MD, Employer)
_____)

Docket No. 21-1229
Issued: July 6, 2022

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On August 6, 2021 appellant filed a timely appeal from a March 4, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-1229.¹

On February 4, 2014 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she slipped on ice while delivering mail and sustained multiple injuries while in the performance of duty. On March 31, 2014 OWCP accepted her claim for left ankle sprain, neck sprain, sprain of the back thoracic region, and sprain of the back lumbar region. On July 10 and August 20, 2014 it expanded acceptance of her claim to include displacement of the lumbar intervertebral disc without myelopathy, lesion of the radial nerve, closed dislocation of multiple cervical vertebrae, closed dislocation of lumbar vertebrae, contusion of the left forearm, and injury to the left radial nerve.

¹ The Board notes that, following the March 4, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

OWCP further developed appellant's claim, which included referring her to a second opinion physician and a referee physician.

On November 30, 2016 OWCP issued a notice proposing to terminate appellant's wage-loss compensation and medical benefits as she no longer had disability or residuals causally related to her accepted employment injury. It allowed her 30 days to respond to the proposal.

On January 10, 2017 OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 5, 2017, finding that the special weight of the evidence was represented by the referee physician.

On February 10, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on June 2, 2017.

By decision dated August 31, 2017, OWCP's hearing representative reversed the January 10, 2017 termination decision in part. The hearing representative found that appellant continued to experience disabling residuals of radial nerve lesion, but the medical evidence of record was sufficient to establish that her other accepted conditions had resolved.

Following the August 31, 2017 merit decision, appellant continued to request reconsideration of her claim. By decisions dated November 28, 2018 and February 26, 2020, OWCP denied modification of the August 31, 2017 hearing decision.

On March 3, 2021 appellant requested reconsideration of OWCP's February 26, 2020 decision. The evidence submitted in support of the reconsideration request included an electromyogram and nerve conduction velocity study dated June 26, 2019, magnetic resonance imaging (MRI) scans of the right and left hip dated October 2, 2019, MRI scans of the lumbar spine dated October 6, 2020 and January 26, 2021; a January 31, 2020 Social Security Administration fully favorable decision; an MRI scan of the cervical spine dated January 27, 2021, and a document from a health care provider dated February 25, 2021, which provided an extensive review of appellant's complete OWCP file and medical records.

By decision dated March 4, 2021, OWCP denied appellant's request for reconsideration of the merits of her 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.² 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.³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the

² *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.

³ 5 U.S.C. § 8124(a).

Director of OWCP shall contain findings of fact and a statement of reasons.⁴ 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.⁵

In denying appellant's reconsideration request, OWCP failed to analyze whether it was sufficient to demonstrate clear evidence of error. The March 4, 2021 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 her reconsideration request. Furthermore, it provided no discussion relative to the evidence submitted.⁶

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 she had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁷ The Board will, therefore, set aside OWCP's March 4, 2021 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding appellant's reconsideration request.⁸ Accordingly,

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *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).

⁷ 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. *Supra* note 5 at Chapter 2.1602.5(a) (September 2020).

⁸ *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.

IT IS HEREBY ORDERED THAT the March 4, 2021 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: July 6, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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