

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, OILDALE CARRIER
ANNEX, Bakersfield, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 21-1430
Issued: June 9, 2022**

Appearances:

Sarah Holden, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On September 29, 2021 appellant, through counsel, filed a timely appeal from an April 7, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 21-1430.

On September 28, 2017 appellant, then a 60-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 14, 2017 she injured her lower back, hips, and left leg when she emptied, scanned, and sorted parcels into wired cages while in the performance of duty. She stopped work that day. Appellant submitted a narrative statement describing the alleged employment incident, witness statements, and medical evidence.

By decision dated December 1, 2017, OWCP accepted that the September 14, 2017 incident occurred as alleged, but denied the claim because the evidence of record was insufficient

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 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.

to establish causal relationship between the accepted employment incident and a diagnosed condition.

On June 22, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated September 19, 2018, OWCP denied modification of the December 1, 2017 decision.

On September 3, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated February 13, 2020, OWCP denied modification of the September 19, 2018 decision.

On February 13, 2021 appellant, through counsel, requested reconsideration and provided additional arguments. She also submitted a February 12, 2021 report by Dr. Mansukh Ghadiya, a Board-certified family medicine physician.

By decision dated April 7, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.² OWCP's procedures further provide that, when determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, Sunday, or legal holiday.³ One year following OWCP's February 13, 2020 merit decision was February 13, 2021, which was a Saturday. Accordingly, Monday, February 15, 2021 was a Federal holiday, appellant had until Tuesday, February 16, 2021 to request reconsideration. Because OWCP received her reconsideration request on February 13, 2021, the Board finds that it was timely filed.⁴ The clear evidence of error standard utilized by OWCP in its April 7, 2021 decision is appropriate only for untimely reconsideration requests.⁵ Therefore, the Board will set aside OWCP's April 7, 2021 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

² 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020).

³ Federal (FECA) Procedure Manual, *id.*

⁴ See *Order Remanding Case, B.W.*, Docket No. 20-1512 (issued August 24, 2021); *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *C.B.*, Docket No. 13-1732 (issued January 28, 2014); *Steven E. Pratt*, Docket No. 93-443 (issued February 2, 1994).

⁵ See 20 C.F.R. § 10.607(b); *see also id.*

IT IS HEREBY ORDERED THAT the April 7, 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: June 9, 2022
Washington, DC

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

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

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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