United States Department of Labor Employees' Compensation Appeals Board

D. IZ. A)	
R.K., Appellant)	
)	
and) D	ocket No. 20-1664
) Is	ssued: September 1, 2022
SMITHSONIAN INSTITUTION, NATIONAL)	_
MUSEUM OF NATURAL HISTORY,)	
Washington, DC, Employer)	
)	
Appearances:	Case Su	bmitted on the Record
Sally F. LaMacchia, Esq., for the appellant ¹		

ORDER REMANDING CASE

Office of Solicitor, for the Director

Before:

JANICE B. ASKIN, Judge VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On September 25, 2020 appellant, through counsel, filed a timely appeal from a September 15, 2020 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1664.

On August 1, 2019 appellant, then a 59-year-old supervisory work manager specialist, filed an occupational disease claim (Form CA-2) alleging that she aggravated her anxiety disorder due to factors of her federal employment. She indicated that she first became aware of her condition on June 21, 2019 and realized that it was caused or aggravated by factors of her federal employment on July 10, 2019. Appellant stopped work on July 11, 2019.

By decision dated September 6, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she actually experienced the alleged

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.

employment factors. It explained that there was no evidence to corroborate the specific employment incidents that she claimed caused or contributed to her alleged emotional condition. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted additional evidence. On September 7, 2020 appellant, through counsel, requested reconsideration. By decision dated September 15, 2020, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that her September 7, 2020 reconsideration request was not mailed within one year of the last merit decision of September 6, 2019.

The Board has duly considered the matter and finds that the case must be remanded to OWCP for application of the appropriate standard of review as appellant's September 7, 2020 request for reconsideration was timely filed.²

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.³ 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 a legal holiday.⁴ One year following OWCP's September 6, 2019 merit decision was Sunday, September 6, 2020. As the last day of the one-year filing period fell on a weekend, appellant had until the close of business on Monday, September 7, 2020 to timely request reconsideration. Because OWCP received appellant's request on September 7, 2020, the Board finds that it was timely filed. The clear evidence of error standard utilized by OWCP in its September 15, 2020 decision is appropriate only for untimely reconsideration requests.⁵ Therefore, the Board will set aside OWCP's September 15, 2020 decision and remand the case for application of the appropriate standard of review for timely requests for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3).⁶ Accordingly,

² Order Remanding Case, R.M., Docket No. 20-0728 (issued October 21, 2020); T.L., Docket No. 19-1110 (issued August 11, 2020).

³ 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 2.1602.4 (September 2020).

⁴ Federal (FECA) Procedure Manual, *id*.

⁵ See 20 C.F.R. § 10.607(b).

⁶ Order Remanding Case, P.J., Docket No. 19-0962 (issued December 30, 2019).

IT IS HEREBY ORDERED THAT the September 15, 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: September 1, 2022

Washington, DC

Janice B. Askin, Judge Employees' Compensation Appeals Board

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

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