

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

_____)	
D.L., Appellant)	
)	
and)	Docket No. 22-0558
)	Issued: September 14, 2022
U.S. POSTAL SERVICE, MOUNTAIN VIEW)	
POST OFFICE, Mountain View, CA, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 5, 2022 appellant filed a timely appeal from a February 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0558.

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

On May 31, 1994 appellant filed a claim for traumatic injury (Form CA-1) alleging that on that date she sustained injury to her upper chest and back in the performance of duty while "pulling down her route." OWCP accepted the claim for right shoulder strain, cervical strain, and right

¹ Docket No. 12-640 (issued October 22, 2012), *denying petition for recon.*, Docket No. 12-640 (issued March 14, 2013); Docket No. 10-318 (issued September 8, 2010); Docket No. 08-1843 (issued June 15, 2009); *Order Remanding Case*, Docket No. 06-1211 (issued January 31, 2007); Docket No. 05-1905 (issued March 6, 2006).

shoulder impingement.² It paid appellant wage-loss compensation on the supplemental rolls from August 13 to 22, 2000.

By decision dated December 15, 2009, OWCP terminated her compensation benefits under OWCP File No. xxxxxx429. Appellant subsequently requested a hearing before OWCP's Branch of Hearings and Review. By decision dated August 17, 2011, OWCP's hearing representative affirmed the termination of appellant's compensation benefits.

Appellant requested reconsideration on September 2, 2011. On October 7, 2011 OWCP denied her request for reconsideration. On January 27, 2012 appellant appealed to the Board. By decision dated October 22, 2012, the Board affirmed the termination of her compensation benefits.³

On November 16, 2020 appellant requested reinstatement of her wage-loss compensation and medical benefits. Appellant argued in part that OWCP erred in inclusion of right shoulder impingement as a residual and accepted injury. She further argued that OWCP erred in the termination of her medical benefits and compensation based on total disability. Appellant continued to request reconsideration on December 10, 18, 19, and 22 2020 in which she further argued that OWCP had abused its discretion with regard to termination of her wage-loss compensation and medical benefits. In support thereof, she submitted correspondence dated from 1995 through 2009; a notification of personnel action (Standard Form SF-50) dated August 29, 1995; medical documents dated 1996 through 2007; correspondence regarding job offers dated October 30, 1996, January 22, 1997, and October 25, 2002; a union interview regarding grievance dated November 17, 2008; and a report of investigation by the inspector general of the employing establishment dated May 23, 2007.

By decision dated February 11, 2021, OWCP summarily denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It simply stated, "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." OWCP cited Board precedent and concluded, "You did not present clear evidence of error. Therefore, your request for reconsideration is denied because it was not received within the one-year limit."

On February 18, 2021 appellant appealed to the Board.

² OWCP assigned the present claim OWCP File No. xxxxxx429. Appellant has a prior claim for an August 24, 1992 traumatic injury assigned OWCP File No. xxxxxx724. OWCP accepted that claim for left knee strain, right hip contusion, and lumbosacral strain. Appellant also has a claim for a June 22, 2007 traumatic injury under OWCP File No. xxxxxx666, wherein she alleged that she sustained neck and right arm injuries on June 22, 2007 while sitting at her desk and working on her computer in the performance of duty. OWCP denied that claim. Appellant also has an occupational disease claim under OWCP file No. xxxxxx390, wherein she alleged that she sustained an aggravation of a preexisting condition resulting in pain in the neck, right arm, and right shoulder as a result of sitting at her desk and developing a muscle spasm, turning to the right, and feeling her neck "pop." OWCP denied the claim. OWCP File Nos., xxxxxx724, xxxxxx666, xxxxxx390, and xxxxxx429 have been administratively combined, with the latter serving as the master file.

³ Docket No. 12-640 (issued October 22, 2012), *denying petition for recon.*, Docket No. 12-640 (issued March 14, 2013).

By decision dated January 26, 2022, the Board affirmed in part and set aside in part OWCP's February 11, 2021 nonmerit decision. It found that appellant's request for reconsideration was untimely filed; however, it further found that OWCP failed to properly explain its findings with regard to whether appellant's untimely reconsideration request failed to demonstrate clear evidence of error. The Board remanded the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on her untimely reconsideration request.⁴

By decision dated February 28, 2022, OWCP again denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that she did not present clear evidence of error, as she did not submit medical evidence disputing the determination in 2000 that she could return to work at her regular duties on a full-time basis.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

In its February 28, 2022 decision, OWCP found that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. It explained that she had not submitted medical evidence disputing the determination in 2000 that she could return to work at her regular duties on a full-time basis. However, as noted by the Board in its January 26, 2022 decision, appellant had submitted medical documents dated 1996 through 2007. OWCP did not analyze these documents in order to determine if they demonstrated clear evidence of error.

As the Board's decisions are final with regard to the subject matter appealed,⁵ it is crucial that all evidence relevant to the subject matter of the claim, which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.⁶ Because OWCP failed to consider the medical evidence submitted by appellant on reconsideration, the Board cannot review such evidence for the first time on appeal.⁷ For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.⁸ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹ Accordingly,

⁴ Docket No. 21-0523 (issued January 26, 2022).

⁵ See 20 C.F.R. § 501.6(d).

⁶ See *Order Remanding Case, R.A.*, Docket No. 22-0204 (issued July 28, 2022); *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, 41 ECAB 548 (1990).

⁷ 20 C.F.R. § 501.2(c)(1). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁸ *Order Remanding Case, D.B.*, Docket No. 21-0984 (issued December 27, 2021); see *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

⁹ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

IT IS HEREBY ORDERED THAT the February 28, 2022 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 14, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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