

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

S.B., Appellant	)	
	)	
and	)	Docket No. 22-0758
	)	Issued: September 23, 2022
ENVIRONMENTAL PROTECTION AGENCY,	)	
Chicago, IL, 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  
JAMES D. MCGINLEY, Alternate Judge

On April 19, 2022 appellant filed a timely appeal from an October 21, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0758.

On December 15, 2016 appellant, then a 56-year-old remedial project manager/environmental engineer, filed a traumatic injury claim (Form CA-1) alleging that on October 23, 2015 she sustained neck and back injuries when she was rear-ended in a motor vehicle collision in the performance of duty.

Appellant submitted a motor vehicle accident report describing the alleged employment incident and a prescription form dated February 3, 2017 from Dr. Tian Xia, Board-certified in anesthesiology and pain medicine.

By decision dated February 10, 2017, OWCP accepted that the October 23, 2015 incident occurred as alleged, but denied the claim, finding that appellant had not submitted medical evidence containing a medical diagnosis causally related to the accepted incident.

On February 9, 2018 appellant requested reconsideration and submitted medical evidence. By decision dated May 1, 2018, OWCP modified the prior decision to find that appellant had established a diagnosed medical condition, but continued to deny the claim as the evidence of

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

On May 1, 2019 appellant requested reconsideration and submitted additional medical evidence. By decision dated July 26, 2019, OWCP denied modification of the May 1, 2018 decision.

On May 22, 2020 appellant requested reconsideration and submitted additional medical evidence. By decision dated September 11, 2020, OWCP denied modification of the July 26, 2019 decision.

On September 12, 2021 appellant requested reconsideration and submitted an August 31, 2021 statement and an August 27, 2021 report from Dr. Xia.

By decision dated October 21, 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.<sup>1</sup> 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.<sup>2</sup> One year following OWCP's September 11, 2020 merit decision was September 11, 2021, which was a Saturday. Accordingly, appellant had until Monday, September 13, 2021 to request reconsideration. Because OWCP received her reconsideration request on September 12, 2021, the Board finds that it was timely filed.<sup>3</sup> The clear evidence of error standard utilized by OWCP in its October 21, 2021 decision is appropriate only for untimely reconsideration requests.<sup>4</sup> Therefore, the Board will set aside OWCP's October 21, 2021 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

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<sup>1</sup> 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).

<sup>2</sup> Federal (FECA) Procedure Manual, *id.*

<sup>3</sup> See *Order Remanding Case, K.G.*, Docket No. 21-1430 (issued June 9, 2022); *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).

<sup>4</sup> See 20 C.F.R. § 10.607(b); *see also id.*

**IT IS HEREBY ORDERED THAT** October 21, 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: September 23, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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