

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 21-0706</b>
	)	<b>Issued: April 17, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Riverdale, GA, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On April 7, 2021 appellant, through counsel, filed a timely appeal from a January 29, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-0706.

On July 31, 2017 appellant, then a 43-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left knee laceration as well as left arm, left shoulder, breastbone, and back injuries on July 29, 2017 when she was involved in a motor vehicle accident while in the performance of duty. She stopped work on the date of injury. OWCP initially accepted the claim for contusion of the lower back, pelvis, unspecified part of the neck, and left knee, and laceration without foreign body of the left knee. It later expanded the acceptance of the claim to include rotator cuff tear or rupture of the left shoulder, not specified as traumatic, and unilateral post-traumatic osteoarthritis of the left knee.

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<sup>1</sup> 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.

By merit decision dated December 16, 2019, OWCP denied expansion of the acceptance of appellant's claim to include right shoulder rotator cuff strain, cervical radiculopathy, bilateral upper limb carpal tunnel syndrome, and bilateral upper extremity median neuropathy. It found that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted July 29, 2017 employment injury. The decision was mailed to appellant's last known address of record.

OWCP subsequently received additional medical evidence in support of expansion of appellant's claim to include additional conditions involving her right shoulder, cervical and lumbar areas of the spine, bilateral upper extremities, and left knee.

In a letter dated December 22, 2020, OWCP advised appellant that, while she had recently contacted OWCP regarding expansion of her claim, by decision dated December 16, 2019, it had denied her request. It thereafter noted receipt of a December 2, 2020 medical report and indicated that there was no "medical information" to support expansion of her claim for the conditions diagnosed in the December 2, 2020 report.<sup>2</sup>

On January 14, 2021 appellant requested reconsideration and submitted additional medical evidence in support of her expansion claim.

By decision dated January 29, 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.

The Board notes that while OWCP's December 22, 2020 letter was not accompanied by appeal rights, it was a final adverse decision issued by OWCP. This letter contained findings of fact and a statement of reasons.<sup>3</sup> The December 22, 2020 letter also specifically concluded that the medical evidence of record was insufficient to establish expansion of the acceptance of the claim. Given the circumstances of this case, the Board concludes that the December 22, 2020 letter was an appealable final decision subject to review under 20 C.F.R. §§ 501.2(c) and 501.3(a).<sup>4</sup>

As appellant's request for reconsideration was received within one year of the December 22, 2020 decision, it was timely filed.<sup>5</sup> OWCP, therefore, should have applied the standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3). As it erroneously reviewed the evidence submitted in support of appellant's reconsideration request

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<sup>2</sup> This letter was not accompanied by appeal rights.

<sup>3</sup> 5 U.S.C. § 8124(a); 20 C.F.R. § 10.126.

<sup>4</sup> *See, K.W.*, Docket No. 18-0055 (issued March 8, 2019); *L.L.* Docket No. 18-0117 (issued February 25, 2019).

<sup>5</sup> A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought. Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)). 20 C.F.R. § 10.607(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

under the more stringent clear evidence of error standard for untimely requests for reconsideration,<sup>6</sup> the case must be remanded for review of the evidence under the proper standard of review for timely reconsideration requests.<sup>7</sup> Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the January 29, 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: April 17, 2023  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. *Id.* at Chapter 2.1602.5a (September 2020); *see also C.M.*, Docket No. 19-1211 (issued August 5, 2020); *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

<sup>7</sup> *M.W.*, Docket No. 21-0841 (issued October 26, 2021); *P.S.*, Docket No. 20-1192 (issued July 20, 2021); *E.S.*, Docket No. 17-0698 (issued July 14, 2017); *Jack D. Johnson*, 57 ECAB 593 (2006); *Vicente P. Taimanglo*, 45 ECAB 504 (1994).