



pop in his lower spine, experienced sharp pain down his right leg, and had difficulty walking. Appellant did not stop work.

In an April 19, 2019 development letter, OWCP informed appellant that the evidence received was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary and afforded him 30 days to submit the necessary evidence.

By decision dated May 21, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted any medical evidence containing a medical diagnosis in connection with the accepted April 6, 2018 employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by the Federal Employees' Compensation Act.

Thereafter, OWCP received an April 13, 2018 magnetic resonance imaging (MRI) scan of the lumbar spine and medical reports by Dr. Paymaun M. Lofti, an orthopedic spine surgeon, who, on May 2, 2018, performed surgery including L4-5 laminectomy, neuroforaminotomy, medial facetectomy and L4-5 fusion with interbody cage placement.

On January 15, 2020 appellant requested reconsideration of the May 21, 2019 decision.

By decision dated March 6, 2020, OWCP modified its May 21, 2019 decision, finding that the evidence established a medical diagnosis in connection with his accepted April 6, 2018 employment incident. However, it continued to deny appellant's claim, finding that the evidence of record was insufficient to establish a causal relationship between appellant's diagnosed lumbar conditions and the accepted April 6, 2018 employment incident.

On April 3, 2020 appellant requested reconsideration of the March 6, 2020 decision.

By decision dated April 8, 2020, OWCP denied appellant's request for review of the merits of his claim. It found that he had not submitted relevant new evidence or legal argument which would require merit review of his claim.

On May 26, 2020 appellant requested reconsideration and submitted additional evidence.

In a May 26, 2020 report, Dr. Lofti opined that appellant's L4-5 disc herniation and subsequent surgery were causally related to the April 6, 2018 employment incident.

By decision dated August 28, 2020, OWCP denied appellant's reconsideration request finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered this matter, finds that the case is not in posture for decision.<sup>2</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>3</sup> The last merit decision was OWCP's March 6,

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<sup>2</sup> *T.L.*, Docket No. 19-1110 (issued August 11, 2020).

<sup>3</sup> 20 C.F.R. § 10.607(a).

2020 decision, which denied appellant's traumatic injury claim. As appellant's request for reconsideration was received on May 26, 2020, within one year of the March 6, 2020 merit decision, the Board finds that appellant's request for reconsideration was timely filed.

OWCP, however, applied the clear evidence of error standard in reviewing appellant's request for reconsideration.<sup>4</sup> That standard is only appropriate in cases where a reconsideration request is untimely filed.<sup>5</sup> Because OWCP erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the clear evidence of error standard, the case shall be remanded 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), to be followed by an appropriate decision.<sup>6</sup>

**IT IS HEREBY ORDERED THAT** the August 28, 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: January 27, 2023  
Washington, DC

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

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

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

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<sup>4</sup> *C.D.*, Docket No. 17-1074 (issued August 28, 2017); *A.M.*, Docket No. 16-1250 (issued December 20, 2016).

<sup>5</sup> *See V.M.*, Docket No. 18-1184 (issued July 10, 2019); *Donna M. Campbell*, 55 ECAB 241 (2004).

<sup>6</sup> *A.K.*, Docket No. 20-0003 (issued June 2, 2020); *Order Remanding Case, J.H.*, Docket No. 18-1367 (issued July 17, 2019); *E.S.*, Docket No. 17-0698 (issued July 14, 2017).