

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

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S.G., Appellant)	
)	
and)	Docket No. 22-1136
)	Issued: January 17, 2023
U.S. POSTAL SERVICE, NORTH HOUSTON)	
POST OFFICE, Houston, TX, Employer)	
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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 July 26, 2022 appellant sought an appeal from a July 21, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1136.

On January 31, 2019 appellant, then a 62-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained constant numbness and tingling in her hands due to factors of her federal employment, including answering telephones, pushing buttons and writing. She noted that she first became aware of her claimed condition and its relation to her federal employment on January 28, 2014. Appellant did not stop work, but continued working in a light-duty job for four hours per day.¹

In a February 15, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a

¹ Appellant previously submitted the findings of July 26, 2004 and October 28, 2016 electromyogram and nerve conduction velocity studies of the upper extremities and a report of an anterior decompression fusion at C6-7 performed on April 15, 2016.

knowledgeable supervisory on the accuracy of appellant's statements. It afforded both parties 30 days to respond.

In response, appellant submitted February 4 and March 4, 2019 reports from Dr. Robert Lowry, a Board-certified physiatrist, who noted her recitation of work duties, diagnosed bilateral carpal tunnel syndrome, cubital tunnel syndrome and pronator teres syndrome, and found her totally disabled from work.

By decision dated March 20, 2019, OWCP denied appellant's claim for a work-related occupational disease, finding that she failed to establish the factual component of fact of injury. It concluded therefore that the requirements had not been met to establish an injury as defined by the Federal Employees' Compensation Act (FECA).

On May 29, 2019 appellant requested reconsideration of the March 20, 2019 decision.

Appellant submitted March 25 and April 30, 2019 reports, of Dr. Lowry who again noted her recitation of work duties and diagnosed multiple bilateral upper extremity conditions, which he related to the repeated stress and strain of her work duties.

By decision dated September 10, 2019, OWCP denied modification of its March 20, 2019 decision.

On April 25, 2022 appellant requested reconsideration of the September 10, 2019 decision.

Appellant submitted August 26, 2019, June 29, 2020, and February 10, 2022 reports, from Dr. John W. Ellis, a Board-certified emergency and family medicine specialist. In these reports, Dr. Ellis provided discussions of her work duties, diagnosed bilateral carpal tunnel syndrome and other conditions, and provided discussions of his belief that the diagnosed conditions were causally related to the reported work duties.

By decision dated July 21, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted, "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." OWCP did not acknowledge or discuss the reports of Dr. Ellis.

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

The Board finds that OWCP did not make findings regarding the evidence appellant submitted in support of the reconsideration request.² OWCP summarily denied her request for reconsideration without complying with the review requirement of FECA and its implementing

² See *R.C.*, *Order Remanding Case*, Docket No. 20-1671 (issued May 6, 2021); *J.K.*, *Order Remanding Case*, Docket No. 20-0556 (issued August 13, 2020); *C.D.*, *Order Remanding Case*, Docket No. 20-0450 (issued August 13, 2020); *T.B.*, *Order Remanding Case*, Docket No. 20-0426 (issued July 27, 2020).

regulations.³ Section 8124(a) of FECA (5 U.S.C. § 8124(a)) provides that OWCP shall determine and make findings of fact, and make an award for or against payment of compensation. Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁴

In the July 21, 2022 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, why the evidence submitted in connection with the untimely request for reconsideration did not demonstrate clear evidence of error in the September 10, 2019 decision, and was insufficient to warrant further merit review.⁵ It did not address the evidence submitted by her on reconsideration, including the reports of Dr. Ellis. This case must therefore be remanded to OWCP for an appropriate decision on appellant's untimely request for reconsideration that describes the evidence submitted on reconsideration, and provides detailed reasons for accepting or rejecting the request for reconsideration pursuant to the relevant standards.⁶

The Board will therefore set aside OWCP's July 21, 2022 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's request for reconsideration.

³ See *M.G.*, Docket No. 21-0893 (issued December 27, 2021); *Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁵ Pursuant to 5 U.S.C. § 8128(a), OWCP has the discretion to reopen a case for further merit review. A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought. 20 C.F.R. § 10.607(a). When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error. If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review. See 20 C.F.R. § 10.607(b); *L.C.*, Docket No. 18-1407 (issued February 14, 2019).

⁶ See *A.G.*, Docket No. 21-0817 (issued July 26, 2022); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

IT IS HEREBY ORDERED THAT the July 21, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 17, 2023
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