

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

_____)
J.P., Appellant)

and)

U.S. POSTAL SERVICE, MARINETTE POST)
OFFICE, Marinette, WI, Employer)

) **Docket No. 23-0231**
) **Issued: July 27, 2023**
)
)
)
)
)
_____)

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On December 5, 2022 appellant filed a timely appeal from a November 21, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0231.

On February 10, 2015 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2015 she sustained a right ankle sprain and right leg strain when she slipped and fell on ice, and landed on her back while in the performance of duty. OWCP accepted the claim for right ankle sprain. On June 4, 2015 appellant underwent OWCP-authorized arthroscopic debridement of the right ankle with repair of a talus microfracture and the peroneus longus tendon. OWCP paid her wage-loss compensation on the supplemental rolls, effective June 4, 2015 and on the periodic rolls, effective August 23, 2015. Appellant separated from federal employment effective September 8, 2015.

OWCP subsequently expanded the acceptance of appellant's claim to include pain in right ankle and joints of right foot, lateral popliteal nerve lesion of right lower limb, traumatic arthropathy of right ankle and foot, spontaneous rupture of other tendons, low back pain, other lumbar intervertebral disc degeneration, and ankle sprain.

By decision dated March 23, 2021, OWCP denied expansion of the acceptance of appellant's claim to include conditions of the cervical spine and right upper extremity.

On March 18, 2022 appellant requested reconsideration. She contended that new medical evidence established a right rotator cuff tear and chronic cervical spine pain. In support of her request, appellant submitted a March 14, 2022 report by Dr. James R. Spears, a Board-certified orthopedic surgeon. Dr. Spears recounted a history of injury and treatment, noted findings on examination, and diagnosed a complete traumatic right rotator cuff tear, and impingement syndrome of the right shoulder. He recommended right shoulder arthroscopy with subacromial decompression.

In a November 8, 2022 letter received by OWCP on November 10, 2022, appellant requested a status update regarding her March 18, 2022 request for reconsideration.

By decision dated November 21, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to present clear evidence of error. It found that he had requested reconsideration on November 10, 2022, more than one year following OWCP's March 23, 2021 decision.

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.¹ 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.² One year following OWCP's March 23, 2021 merit decision was March 23, 2022. Because OWCP received appellant's reconsideration request on March 18, 2022, within one year of the March 23, 2021 merit decision, the Board finds that it was timely filed.³ The clear evidence of error standard utilized by OWCP in its November 21, 2022 decision is appropriate only for untimely reconsideration requests.⁴ Therefore, the Board will set aside OWCP's November 21, 2022 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

¹ 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).

² Federal (FECA) Procedure Manual, *id.*

³ See *Order Remanding Case, L.T.*, Docket No. 21-0322 (issued June 28, 2021); *Order Remanding Case, D.P.*, Docket No. 20-0928 (issued December 17, 2020); *Order Remanding Case, W.H.*, Docket No. 14-0092 (issued April 28, 2014).

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

IT IS HEREBY ORDERED THAT the November 21, 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: July 27, 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