

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

R.G., Appellant)	
)	
and)	Docket No. 23-0011
)	Issued: June 14, 2023
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Fresno, CA,)	
Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On October 3, 2022 appellant filed a timely appeal from a July 13, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0011.¹

This case has been previously before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 17, 2016 appellant, then a 53-year-old clerk (developmental), filed an occupational disease claim (Form CA-2) alleging that she developed lower back pain and right leg

¹ The Board notes that following the July 13, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² Docket No. 19-1889 (issued April 14, 2021).

radiculitis due to factors of her federal employment. She noted that she first became aware of her condition and its relation to her federal employment on March 19, 2015.³

In the last merit decision dated August 1, 2018, OWCP found that the medical evidence submitted was insufficient to establish causal relationship between appellant's diagnosed back condition and the accepted factors of her federal employment.

On April 9, 2019 appellant requested reconsideration of OWCP's August 1, 2018 decision.

By decision dated April 16, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On September 10, 2019 appellant filed timely appeal with the Board. By decision dated April 14, 2021, the Board affirmed OWCP's April 16, 2019 decision denying appellant's request for reconsideration.⁴

OWCP continued to receive medical evidence covering the period July 7, 2014 through January 29, 2020.

On September 14, 2021 OWCP received additional medical evidence including an October 21, 2019 intake functional status summary; progress notes dated March 18, 2021 from Dr. Matthew McCutcheon, a chiropractor; and a June 8, 2021 progress note from Dr. Mark Menniti Stecker, a Board-certified neurologist.

On October 22, 2021 appellant requested reconsideration. In support of her request for reconsideration, she submitted a May 27, 2021 report from Dr. Sheena Edmonds, an osteopath and Board-certified family practitioner; reports dated September 30 and October 5, 2021 from Dr. Lanny Crockett, a chiropractor; and office visit notes dated September 23, 2021 from Dr. Asma Tariq, Board-certified in family medicine.

In a letter dated January 18, 2022, OWCP informed appellant that it had received her letter requesting reconsideration on October 22, 2021. However, it noted that it was unclear which decision or issues she was requesting OWCP to reconsider. Thus, OWCP advised appellant that no further action would be taken on her October 22, 2021 request.

OWCP subsequently received progress notes dated October 27, 2021 from Dr. Loveneet Singh, a Board-certified neurologist, interpreting an electromyography (EMG). It also received an unsigned neurology consultation report dated February 16, 2022.

On June 28, 2022 appellant again requested reconsideration of its April 16, 2019 decision.

By decision dated July 13, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

³ Appellant resigned from the employment effective May 17, 2015.

⁴ *Id.*

The Board finds that this case is not in posture for decision.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirement of FECA and its implementing regulations.⁵ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation.⁶ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.⁷ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁸

OWCP, in its July 13, 2022 decision, did not mention or address any of the medical evidence it received dated July 11, 2015 through October 27, 2021 subsequent to its April 16, 2019 decision denying appellant's request for reconsideration under section 8128(a). It failed to analyze this evidence to determine whether it was sufficient to demonstrate clear evidence of error. The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁹

The Board will therefore set aside OWCP's July 13, 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 reconsideration request.¹⁰ Accordingly,

⁵ See *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).

⁶ 5 U.S.C. § 8124(a).

⁷ 20 C.F.R. § 10.126.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

⁹ *T.T.*, Docket No. 21-1278 (issued March 29, 2022); *M.G.*, Docket No. 21-0893 (issued December 27, 2021); *R.C.*, Docket No. 21-0466 (issued February 16, 2022).

¹⁰ See *Order Remanding Case, D.R.*, Docket No. 21-1229 (issued July 6, 2022); *T.P.*, *supra* note 5; see also 20 C.F.R. § 10.607.

IT IS HEREBY ORDERED THAT the July 13, 2022 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this order of the Board.

Issued: June 14, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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