

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

C.W., Appellant)	
)	
and)	Docket No. 23-0142
)	Issued: June 15, 2023
U.S. POSTAL SERVICE, LINCOLN PARK)	
POSTAL STORE, Chicago, IL, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 10, 2022 appellant filed a timely appeal from a November 4, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0142.

On July 12, 2019 appellant, then a 63-year-old customer services supervisor, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury or medical condition on May 13, 2019. He alleged that the injury or condition occurred as a result of factors of his federal employment which required moving, pushing, and pulling heavy equipment, lifting, pulling heavy bags, doing relay runs, "climbing in and out of 2-tons" in all weather conditions, twisting, bending and climbing. Appellant stopped work on May 31, 2019.

By decision dated September 23, 2019, OWCP denied appellant's occupational disease claim. It found that the medical evidence did not provide a well-reasoned medical opinion causally relating appellant's diagnosed right knee degenerative joint disease condition to the accepted factors of his federal employment.

On May 19, 2020 appellant requested reconsideration. In a May 12, 2020 letter, Dr. Elsie Walker Thomas, an internist, opined that appellant's work as a letter carrier aggravated his preexisting osteoarthritis.

In a June 2, 2020 letter, OWCP noted that further clarification was needed to establish causal relationship. It requested that Dr. Thomas respond to its questions and clarify how the accepted work factors altered or aggravated appellant's preexisting osteoarthritis condition. OWCP afforded 30 days for the physician's response. No response was received.

By decision dated August 10, 2020, OWCP denied modification of its prior decision.

On September 8, 2020 appellant requested reconsideration. A copy of Dr. Thomas' August 5, 2020 response to OWCP's questions was submitted.

By decision dated November 4, 2020, OWCP denied modification of its August 10, 2020 decision.

On August 24, 2022 appellant requested reconsideration. In an accompanying letter dated August 22, 2022, he noted that he had requested an extension of time to submit medical documentation due to COVID-19 and he explained the issues he had with his doctors in obtaining medical documentation. Appellant submitted a June 27, 2022 report, wherein Dr. Sherwin W. Ho, a Board-certified orthopedic surgeon, discussed appellant's diagnosed knee osteoarthritis.

By decision dated November 4, 2022, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It found that appellant "did not present clear evidence of error." It related that "The basis for this decision is."

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

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.² 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.³ As well, OWCP's procedures provide that the reasoning behind its 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.⁴

In denying appellant's reconsideration request, OWCP failed to analyze whether it was sufficient to demonstrate clear evidence of error. The November 4, 2022 decision simply noted:

¹ *D.R.*, Docket No. 21-1229 (issued July 6, 2022); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

² 5 U.S.C. § 8124(a).

³ 20 C.F.R. § 10.126.

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

“The basis for this decision is.” OWCP did not address the evidence submitted in support of his reconsideration request.⁵

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 he had demonstrated clear evidence that OWCP’s last merit decision was incorrect.⁶ The Board will, therefore, set aside OWCP’s November 4, 2022 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding appellant’s reconsideration request.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the November 4, 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: June 15, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

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

⁵ *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *see also Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

⁶ OWCP’s regulations and procedures provide that OWCP will reopen a claimant’s case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant’s request demonstrates clear evidence of error on the part of OWCP. *Supra* note 4 at *Reconsiderations*, Chapter 2.1602.5a (September 2020).

⁷ *See Order Remanding Case, D.R.*, Docket No. 21-1229 (issued July 6, 2022); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also id.* at § 10.607.