

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

_____)	
A.J., Appellant)	
)	
and)	Docket No. 22-0186
)	Issued: March 7, 2023
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2021 appellant filed a timely appeal from a November 1, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated August 5, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 1, 2021 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 case record 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.*

ISSUE

The issue is whether OWCP properly denied appellant's October 25, 2021 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On December 10, 2018 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2018 he sustained injuries to his back, neck and right leg when he was struck by an over the road (OTR) container in the performance of duty. OWCP accepted the claim for sprains of cervical and lumbar spine ligaments, and contusions of the right hip and right shoulder. It paid appellant wage-loss compensation on the supplemental rolls from January 19 through May 24, 2019.

On October 24, 2019 appellant filed a claim for compensation (Form CA-7) for the period May 24 through October 12, 2019. Medical evidence received with the claim included reports documenting appellant's lumbar epidural steroid injections.

In a development letter dated November 4, 2019, OWCP advised appellant that the medical evidence received was insufficient to support his claim for wage-loss compensation during the period claimed. It noted the type of medical evidence needed to support his claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received additional medical evidence.

By decision dated December 20, 2019, OWCP denied appellant's claim for disability from work for the period May 24 through October 12, 2019 as the medical evidence of record was insufficient to establish disability from work due to the accepted December 4, 2018 employment injury.

Appellant continued to submit medical evidence in support of his wage-loss compensation claim.

On June 16, 2020 appellant requested reconsideration of OWCP's December 20, 2019 decision.

By decision dated August 5, 2020, OWCP denied modification of its December 20, 2019 disability decision.

Appellant continued to submit medical evidence in support of his wage-loss compensation claim.

On October 25, 2021 appellant requested reconsideration of OWCP's August 5, 2020 wage-loss compensation decision.

By decision dated November 1, 2021, OWCP summarily denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It simply noted: "You did not present clear evidence of error.... The basis for this decision is."

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁴ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁷ OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁸ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

ANALYSIS

The Board finds that OWCP properly determined that appellant's request for reconsideration was untimely filed.

OWCP's regulations¹⁰ and procedures¹¹ establish a one-year time limit for requesting reconsideration, which begins on the date of the last merit decision issued in the case. A right to reconsideration within one year also accompanies any subsequent merit decision on the issue(s).¹² The most recent merit decision addressing appellant's occupational disease claim was OWCP's August 5, 2020 decision. As his request for reconsideration was not received by OWCP until

³ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁶ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁸ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 5 at Chapter 2.1602.5 (September 2020).

⁹ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ 20 C.F.R. § 10.607(a); *see J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Alberta Dukes*, 56 ECAB 247 (2005).

¹¹ *Supra* note 5 at Chapter 2.1602.4 (September 2020).

¹² 20 C.F.R. § 10.607(b).

October 25, 2021, more than one year after the August 5, 2020 decision, the Board finds that it was untimely filed. Consequently, appellant must demonstrate clear evidence of error.

The Board further finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹³ The November 1, 2021 decision simply noted: "You did not present clear evidence of error.... The basis for this decision is." As noted, 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.¹⁴ 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.¹⁵ 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.¹⁶ However, OWCP did not consider and address any of the medical reports received since the August 5, 2020 decision and did not make findings explaining the basis of its decision.¹⁷

The case must, therefore, be remanded for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's untimely reconsideration request.

CONCLUSION

The Board finds that appellant's request for reconsideration was untimely filed. The Board further finds that the case is not in posture for decision with regard to whether the request for reconsideration failed to demonstrate clear evidence of error.

¹³ 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).

¹⁴ 5 U.S.C. § 8124(a).

¹⁵ 20 C.F.R. § 10.126.

¹⁶ 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).

¹⁷ *R.C.*, Docket No. 21-0466 (issued February 16, 2022).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 7, 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