

Following the July 29, 2022 decision, appellant submitted a February 28, 2022 report from Dr. David Shein, a Board-certified orthopedic surgeon. Dr. Shein noted that appellant had bilateral shoulder, left knee, and left hip conditions, which emanated from employment injuries. He concluded that appellant remained 100 percent disabled.

On May 18, 2023 appellant requested reconsideration.

By decision dated June 9, 2023, OWCP denied appellant's May 18, 2023 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It found that he "did not present clear evidence of error." OWCP related in a sentence fragment that "The basis for this decision is...." The explanation for the finding, however, was left blank.

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 June 9, 2023 decision simply noted in a sentence fragment "The basis for this decision is...." The explanation for the finding, however, was left blank. OWCP therefore did not address the evidence submitted in support of appellant's 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,

¹ *Order Remanding Case, C.W.*, Docket No. 23-0142 (issued June 13, 2023); *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).

⁵ *C.W.*, *supra* note 1; *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 Chapter 2.1602.5a (September 2020).

therefore, set aside OWCP's June 9, 2023 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 June 9, 2023 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: November 7, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁷ See *C.W.*, *supra* note 1; *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.