United States Department of Labor Employees' Compensation Appeals Board

J.D., Appellant))
and) Docket No. 23-0966) Issued: November 29, 2023
U.S. POSTAL SERVICE, OAKLAND PROCESSING & DISTRIBUTION CENTER, Oakland, CA, Employer))))))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before: JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On June 30, 2023 appellant filed a timely appeal from a January 24, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0966.

This case has previously been 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.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted as his claim is in a pending status as no one from the employing establishment showed up at the hearing scheduled before OWCP's Branch of Hearings and Review or the Board. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² Docket No. 19-0497 (issued February 5, 2020).

On May 15, 1998 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 1998 he was falsely accused by a coworker, V.H., for using "improper language" while in the performance of duty. This resulted in an April 17, 1998 "just cause" interview for unacceptable conduct, which he contended set off his preexisting psychological condition. Appellant stopped work on April 18, 1998 and returned to work on May 15, 1998.³

By decision dated July 6, 1998, OWCP denied appellant's claim. It found that the evidence failed to establish a compensable employment factor. An OWCP hearing representative affirmed this decision on May 6, 1999.

Appellant continued to pursue his appeal rights and he continued to submit additional evidence. By decision dated December 12, 2018, OWCP denied appellant's request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

Following an appeal by appellant the Board, by decision dated February 5, 2020, affirmed OWCP's decision dated December 12, 2018.⁴ It found that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error in OWCP's May 6, 1999 decision.

Appellant continued to pursue his appeal rights and submit additional evidence.

On May 12 and December 8, 2022 OWCP received appellant's letters dated May 8 and December 5, 2022 requesting reconsideration. He submitted arguments as to why he believed that his claim was pending.

By decision dated January 24, 2023, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It advised "[y]ou did not present clear evidence of error. Therefore your request for reconsideration is denied because it was not received within the one-year limit."

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

³ The record is unclear as to when appellant again stopped work.

⁴ Supra note 2.

⁵ See Order Remanding Case, R.G., Docket No. 23-0011 (issued June 14, 2023); 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).

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 January 24, 2023 decision, did not consider or address appellant's arguments it received in his May 8 and December 5, 2022 letters requesting reconsideration. Specifically, he set forth arguments as to why he believed that his claim was pending. OWCP failed to analyze these arguments 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 he had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁹

The Board will therefore set aside OWCP's January 24, 2023 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,

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 January 24, 2023 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: November 29, 2023

Washington, DC

Janice B. Askin, Judge Employees' Compensation Appeals Board

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

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