

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

C.C., Appellant)	
)	
and)	Docket No. 23-0783
)	Issued: October 2, 2023
U.S. POSTAL SERVICE, TAMPA CARRIER)	
ANNEX, Tampa, FL, Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

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

On May 15, 2023 appellant, through counsel, filed a timely appeal from a November 15, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0783.

On May 19, 2020 appellant, then a 37-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 15, 2020 he sustained a left thumb injury for an unknown reason while in the performance of duty. He stopped work on May 16, 2020 and returned on May 18, 2020. In a narrative statement dated May 16, 2020, appellant clarified that while he was working on his route, he heard a "pop" and noticed that his left thumb was bigger than his right thumb, and that it was in pain.

By decision dated August 5, 2020, OWCP denied appellant's traumatic injury claim, finding that appellant had not provided a sufficiently-clear explanation of the event supporting a

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

traumatic injury at work on May 15, 2020, and thus he had not met the requirements to establish an injury as defined by FECA.

On June 12, 2020 appellant underwent a left thumb trigger thumb release procedure.

On August 5, 2021 appellant, through counsel, requested reconsideration of OWCP's August 5, 2020 decision. Counsel submitted a memorandum in which he argued that appellant's account of events on May 15, 2020 was sufficient to establish the factual component of fact of injury. Attached to the memorandum was a statement from appellant explaining that on May 15, 2020, he delivered mail on his route to a house with branches in the yard. Appellant carried his satchel, mail, and flats in his left hand, and heard a "pop." He assumed it came from stepping on a branch and completed his workday. The next morning, appellant woke up with his left thumb bigger than his right thumb and in considerable pain. He then realized that the "pop" he heard the day before was likely an injury to his left thumb. Appellant went to the emergency room and he was told he had injured his left thumb.

By decision dated November 3, 2021, OWCP reviewed the merits of appellant's claim and modified its August 5, 2020 decision, finding that he had submitted sufficient evidence to establish the factual basis of his claim. However, the claim remained denied as it found that appellant had submitted insufficient evidence to establish a causal relationship between the accepted employment incident of May 15, 2020 and his diagnosed left thumb condition.

In a letter dated and received by OWCP on November 3, 2022, appellant, through counsel, again requested reconsideration. Counsel argued that the evidence of record was sufficient to establish causal relationship between the accepted employment incident of May 15, 2020 and appellant's diagnosed left thumb condition.

By decision dated November 15, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board, having duly considered the matter, finds that OWCP improperly determined that appellant's request for reconsideration was untimely filed.

Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.² In this case, the last merit decision was dated November 3, 2021, and appellant's request for reconsideration was received by OWCP on November 3, 2022. One year from November 3, 2021 was November 3, 2022. Thus, his request was timely received within one year of the date of OWCP's decision for which review was sought.

As appellant filed a request for reconsideration within one year of OWCP's November 3, 2021 merit decision, the Board finds that OWCP improperly denied his reconsideration request by applying the legal standard for cases where reconsideration is requested after more than one year has elapsed. OWCP should have applied the standard reserved for timely reconsideration requests

² 20 C.F.R. § 10.607(a). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

as set forth in 20 C.F.R. § 10.606(b)(3).³ Since it erroneously reviewed appellant’s reconsideration request under the more stringent clear evidence of error standard, the Board will remand the case for review under the proper standard for a timely reconsideration request.⁴ Accordingly,

IT IS HEREBY ORDERED THAT the November 15, 2022 decision of the Office of Workers’ Compensation Programs is reversed and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 2, 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

³ 20 C.F.R. § 10.606(b)(3) of OWCP’s regulations provide that a request for reconsideration must be in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.

⁴ *Supra* note 2.