

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

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<b>C.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0861</b>
	)	<b>Issued: October 12, 2023</b>
<b>U.S. POSTAL SERVICE, LODI POST OFFICE,</b>	)	
<b>Lodi, CA, Employer</b>	)	
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*Appearances:*  
*Lisa Varughese, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

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

On June 8, 2023 appellant, through counsel, filed a timely appeal from a December 13, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0861.

On August 3, 2021 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2021 he sustained tension in his "whole body" while in the performance of duty. On the reverse side of the claim form, appellant's supervisor contended that appellant was not injured in the performance of duty. His supervisor further noted that appellant was claiming chest pain and stress, but the causes were unknown. Appellant stopped work on July 28, 2021.

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<sup>1</sup> 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 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.

By decision dated September 16, 2021, OWCP found that appellant had not established that the July 21, 2021 incident had occurred in the performance of duty as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter continued to receive medical evidence. On July 21, 2021 appellant was seen by Levi Gore, a family nurse practitioner. He related severe stress beginning July 21, 2021. Appellant felt he had interactions with coworkers that were “inappropriate” and would also “get the run around” when trying to “report items” at work. Mr. Gore diagnosed acute stress reaction, and placed appellant on restricted work duty until July 27, 2021. OWCP continued to receive follow-up reports from Mr. Gore dated July 28, August 18, and September 15, 2021.

On September 16, 2022 appellant, through counsel, requested reconsideration of OWCP’s September 16, 2021 decision.

OWCP also received a narrative statement from appellant on September 16, 2022 detailing circumstances of his alleged work environment. Appellant alleged that his supervisor provided inconsistent instructions, and he detailed incidents in this regard. He also noted that he did not receive adequate training regarding use of a mail cart, and that he was over worked as he usually worked at least 9 hours a day, and during peak times he worked 10 to 12 hours a day. Appellant also alleged that he believed his supervisor was targeting him because he did not process appellant’s paperwork.

By decision dated December 13, 2022, OWCP denied appellant’s reconsideration request, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

The Board, having duly considered the matter, finds that this case is not in posture for decision.<sup>2</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.<sup>3</sup> Herein, the last merit decision was OWCP’s September 16, 2021 decision. As a request for reconsideration was received on September 16, 2022, within one year of the September 16, 2021 merit decision, the Board finds that her request for reconsideration was timely filed.

OWCP, however, applied the clear evidence of error standard in reviewing appellant’s request for reconsideration.<sup>4</sup> That standard is only appropriate in cases where a reconsideration request is untimely filed.<sup>5</sup> Because OWCP erroneously reviewed the evidence submitted in support of appellant’s reconsideration request under the clear evidence of error standard, the case shall be remanded for application of the appropriate standard of review for

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<sup>2</sup> See *T.L.*, Docket No. 19-1110 (issued August 11, 2020).

<sup>3</sup> 20 C.F.R. § 10.607(a).

<sup>4</sup> *C.D.*, Docket No. 17-1074 (issued August 28, 2017); *A.M.*, Docket No. 16-1250 (issued December 20, 2016).

<sup>5</sup> See *V.M.*, Docket No. 18-1184 (issued July 10, 2019); *Donna M. Campbell*, 55 ECAB 241 (2004).

timely requests for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3), to be followed by an appropriate decision.<sup>6</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the December 13, 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: October 12, 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

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<sup>6</sup> *A.K.*, Docket No. 20-0003 (issued June 2, 2020); *Order Remanding Case, J.H.*, Docket No. 18-1367 (issued July 17, 2019); *E.S.*, Docket No. 17-0698 (issued July 14, 2017).