

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

_____)	
E.C., Appellant)	
)	
and)	Docket No. 23-0472
)	Issued: September 20, 2023
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer)	
_____)	

Appearances:
Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On February 17, 2023 appellant, through counsel, filed a timely appeal from a January 30, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0472.

On April 10, 1999 appellant, then a 31-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 1999 he sustained a lumbar sprain, displacement of L4 disc without myelopathy, and lumbosacral neuritis due to moving large amounts of mail while in the performance of duty. He stopped work on April 11, 1999. OWCP initially accepted appellant's claim for lumbar sprain, and subsequently expanded the acceptance of his claim to include lumbar intervertebral disc displacement and lumbosacral neuritis. It paid him wage-loss compensation on the supplemental rolls, effective March 29, 2001, and on the periodic rolls, effective May 18, 2003.

By decision dated June 27, 2013, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 30, 2013, finding that he had no disability or residuals related to his April 10, 1999 employment injury after that date.

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.

After the termination of his compensation, appellant filed a series of requests for reconsideration of OWCP's June 27, 2013 decision. By nonmerit decisions dated November 14, 2016, May 24, 2018, and November 15, 2021, OWCP denied his requests for reconsideration as they were untimely filed and failed to demonstrate clear evidence of error.

On January 20, 2023 appellant requested reconsideration of OWCP's June 27, 2013 decision. In support of his request for reconsideration, he submitted a 17-page brief in which counsel presented arguments alleging that OWCP erred in its June 27, 2013 decision. Appellant also submitted a number of medical reports, including those of Dr. Hassan Chahadeh, a Board-certified psychiatrist, Dr. Floyd Luckett, a physician Board-certified in internal medicine, Dr. Howard Cotler, a Board-certified orthopedic surgeon, and Dr. Benoy Benny, a Board-certified psychiatrist.

By decision dated January 30, 2023, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. After determining that his January 20, 2023 request for reconsideration was untimely, OWCP further found that he had not demonstrated clear evidence of error, and denied his request for merit review by stating without elaboration, "As the documentation submitted on reconsideration lacks a new arguable case for error as well as lacks medical evidence relevant and pertinent to the contested matter at hand, your claim would ordinarily not be subject to merit review under 5 U.S.C. § 8128."

The Board finds that this case is not in posture for decision.

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.² 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.³ Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (IFECS).⁴ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁵ OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error in its most recent merit decision. The request must establish, on its face, that such decision was erroneous.⁶ The term clear evidence of error is intended to represent a difficult standard. If clear evidence of error has not been presented, OWCP should deny the request by letter decision, which includes a brief evaluation of the evidence submitted and a finding made that clear evidence of error has not been shown.⁷

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and an award for or against payment of compensation.⁸ Its regulations at 20 C.F.R. § 10.126

² 5 U.S.C. § 8128(a); *see also* *A.B.*, Docket No. 19-1539 (issued January 27, 2020); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

⁵ *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).

⁶ 20 C.F.R. § 10.607(b).

⁷ *See supra* note 4 at Chapter 2.1602.5a, b (September 2020).

⁸ 5 U.S.C. § 8124(a).

provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.⁹ 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.¹⁰

In the present case, appellant submitted a 17-page brief containing argument, as well as a series of medical reports. However, in its January 30, 2023 decision, OWCP summarily found that he had not demonstrated clear evidence of error in OWCP's June 27, 2013 decision without discussing any of the evidence and argument submitted by him. Given that OWCP did not provide adequate findings, facts, and a statement of reasons regarding the evidence and argument appellant submitted in support of his request for reconsideration, he would not understand the precise defect of the claim and the kind of evidence which would overcome it.¹¹ Therefore, the case must be remanded to OWCP in order for it to provide adequate findings, facts, and a statement of reasons in an appropriate decision regarding his request for reconsideration.

IT IS HEREBY ORDERED THAT the January 30, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order of the Board.

Issued: September 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁹ 20 C.F.R. § 10.126.

¹⁰ *Supra* note 4 at 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).

¹¹ *See id.*