

On August 29, 2019 appellant requested reconsideration. By decision dated October 9, 2019, OWCP denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On December 9, 2019 appellant filed a timely appeal to the Board from the June 19, 2019 merit decision and the October 9, 2019 nonmerit decision.

By decision dated August 5, 2020, the Board found that appellant had not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment. The Board further found that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On July 27, 2021 OWCP received a request for reconsideration from counsel. Counsel submitted arguments and evidence on appellant's behalf, including a June 23, 2021 report from Dr. Val Irion, a Board-certified orthopedic surgeon and sports medicine specialist.

By letter dated August 18, 2021, OWCP advised counsel and appellant that it had received a request for reconsideration, but that it required a signed statement from appellant authorizing him to represent her before it could communicate with him. It added that appellant's reconsideration request would not proceed until the authorization was submitted. Further, OWCP noted that appellant could submit "her own completed, signed request for reconsideration" in order "to avoid delays to her right of appeal."

On August 18, 2021 OWCP received a signed authorization for counsel to represent appellant before OWCP, dated August 5, 2021.

In a letter dated October 29, 2021, received by OWCP on November 8, 2021, counsel requested that OWCP develop the claim and consider all of the evidence. He argued that he had filed a timely request for reconsideration on July 27, 2021; that OWCP had received appellant's signed authorization on August 18, 2021, and that it had neither processed the request for reconsideration, nor issued a formal decision with appeal rights. On December 6, 2021 counsel contacted OWCP to determine whether a response had been issued to his October 29, 2021 letter.

By decision dated January 12, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed, and failed to demonstrate clear evidence of error. It indicated that the reconsideration request was not received until November 8, 2021, more than one year after the August 5, 2020 decision. It further noted that, while counsel argued that the July 27, 2021 request for reconsideration was timely filed, as he was not authorized to act as appellant's representative at that time, the July 27, 2021 request for reconsideration was invalid.

The Board has duly considered this matter and finds that OWCP improperly determined that appellant's reconsideration request was untimely filed.

As noted above, counsel requested reconsideration on behalf of appellant, which was received by OWCP on July 27, 2021, within one year of the August 5, 2020 decision. However, in the decision dated January 12, 2022, OWCP found that the July 27, 2021 request was invalid, as counsel was not an authorized representative.

The Board has held that there is no requirement that OWCP actually have the authorization in hand at the time an authorized representative acts on behalf of a claimant. The representative

only needs to show that he or she was authorized at the time such action was undertaken.² Based on counsel's actions by filing the July 27, 2021 request for reconsideration, and appellant's subsequent acknowledgement of his representation, the Board, therefore, finds that appellant's request for reconsideration was timely filed.

The Board further finds that OWCP should have applied the standard applicable to a timely reconsideration request under 20 C.F.R. § 10.606(b)(3), rather than the more stringent clear evidence of error standard for an untimely reconsideration request under 20 C.F.R. § 10.607(a). Because OWCP erroneously reviewed the reconsideration request under the incorrect standard, the Board will remand the case for review under the proper standard for a timely reconsideration request.³

Thus, the Board finds that this case must be remanded for proper adjudication and application of the standard of review for timely reconsideration requests, to be followed by an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the January 12, 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: April 5, 2024
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

² *Ira D. Gray*, 45 ECAB 445 (1994).

³ *L.N.*, Docket No. 19-0170 (issued August 21, 2019).