

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

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C.S., Appellant)	
)	
and)	Docket No. 23-1128
)	Issued: February 27, 2024
U.S. POSTAL SERVICE, GARY POST OFFICE,)	
Gary, IN, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On August 31, 2023 appellant filed a timely appeal from a February 9, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1128.

On December 13, 2021 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2021 she injured her right knee when she stepped on a bolt on the floor with her right foot and suddenly slid forward while in the performance of duty.

OWCP received reports dated from December 29, 2021 through March 11, 2022 by Dr. Mukund Komanduri, a Board-certified orthopedic surgeon. Dr. Komanduri, recounted a history of injury, noted findings on examination, and diagnosed a right meniscal tear causally related to the December 6, 2021 employment incident.

By decision dated March 29, 2022, OWCP found that the December 6, 2021 employment incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 1, 2022 appellant requested reconsideration. In support of her request, she submitted an incomplete July 1, 2022 report by Dr. Komanduri in which he noted that bone marrow edema in the right knee visible on a diagnostic imaging study indicated an acute injury. Dr. Komanduri opined that the December 6, 2021 employment incident caused a right meniscal tear, bone marrow injury to the right knee, and right knee instability.

By decision dated July 14, 2022, OWCP denied modification of the March 29, 2022 decision.

On September 12, 2022 appellant requested reconsideration. In support of her request, she submitted an undated report by Dr. Komanduri in which he opined that the December 6, 2021 employment incident caused a bone marrow injury to the right knee, and aggravated preexisting patellofemoral arthritis and patellar instability.

By decision dated February 9, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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

On September 12, 2022 appellant filed a request for reconsideration of OWCP's July 14, 2022 merit decision. However, it was not until February 9, 2023, 150 days after she filed her request for reconsideration, that OWCP issued a decision finding that the evidence submitted in support of her September 12, 2022 request for reconsideration was insufficient to warrant a merit review.

OWCP's procedures provide a timeliness goal for issuing reconsideration decisions within 90 days from the receipt of the request.¹ As OWCP's February 9, 2023 nonmerit decision was issued significantly more than 90 days after it received appellant's request for reconsideration on September 12, 2022 the question becomes whether the delay has impacted her ability to file a timely request for reconsideration of the merits of her case under 5 U.S.C. § 8128(a).² The 180-day period to appeal the July 14, 2022 merit decision to the Board expired on January 10, 2023 prior to the issuance of OWCP's February 9, 2023 nonmerit decision.³ Had OWCP issued the reconsideration decision within its 90-day timeliness goal, appellant would have had additional time to request reconsideration of the merits of the claim from the July 14, 2022 decision under the criteria set forth for a timely request for reconsideration with OWCP or to appeal the July 14, 2022 merit decision to the Board.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2c (September 2020).

² *Order Remanding Case, B.M.*, Docket No. 21-0901 (issued February 15, 2022); *K.B.*, Docket No. 20-0037 (issued June 23, 2020); *see G.D.*, Docket No. 19-0815 (issued January 16, 2020); *E.I.*, Docket No. 18-0634 (issued January 23, 2019) (the Board ordered a merit review where OWCP delayed its reconsideration decision more than 90 days from the receipt of the request).

³ For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. 20 C.F.R. § 501.3(e).

Therefore, the Board finds that this case is not in posture for decision.⁴ To preserve appellant's right to file a timely appeal to the Board or request reconsideration with OWCP, the case will be remanded to OWCP for a merit review of the evidence of record to be followed by an appropriate decision. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 9, 2023 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: February 27, 2024
Washington, DC

Alec J. Koromilas, 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

⁴ *B.M.*, *supra* note 2; *K.B.*, *supra* note 2; *see G.D.*, *supra* note 2.