

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

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D.M., Appellant)	
)	
and)	Docket No. 23-1154
)	Issued: February 29, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, El Paso, TX, 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 September 10, 2023 appellant filed a timely appeal from a March 14, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1154.

This case has previously been before the Board.¹ The facts and circumstances set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On November 8, 2019 appellant, then a 49-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that she sustained recurrent major depressive disorder and generalized anxiety disorder causally related to factors of her federal employment. She did not stop work.

By decision dated July 21, 2020, OWCP denied appellant's emotional condition claim. It found that she had not factually established the occurrence of the alleged employment incidents.

¹ *Order Remanding Case, D.M.*, Docket No. 22-1194 (issued December 1, 2022).

On August 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 27, 2021, OWCP's hearing representative affirmed the July 21, 2020 decision.

In a statement dated January 27, 2022, received by OWCP on February 7, 2022, appellant requested reconsideration, and submitted additional evidence and argument.

By decision dated February 16, 2022, OWCP denied appellant's reconsideration request as she had not raised an argument or submitted evidence sufficient to warrant reopening the case for further merit review under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By order dated December 1, 2022, the Board set aside OWCP's February 16, 2022 decision and remanded the case for OWCP to apply the standard utilized for untimely reconsideration requests.²

By decision dated March 14, 2023, OWCP denied appellant's request for reconsideration as it was untimely and failed to demonstrate clear evidence of error. It advised that the evidence submitted did not manifest on its face that OWCP committed error.

The Board, having duly considered the matter, finds that the case is not in posture for decision.

OWCP did not make findings regarding the evidence appellant submitted in support of the reconsideration request.³ It summarily denied her request for reconsideration without complying with the review requirement of FECA and its implementing regulations.⁴ Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation.⁵ OWCP's regulations at 20 C.F.R. § 10.126 further provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁶ As well, its procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim, and the kind of evidence which would overcome it.⁷

In the March 14, 2023 decision, OWCP did not discharge its responsibility to set forth findings of fact, and a clear statement of reasons explaining the disposition so that appellant could

² *Id.*

³ See *Order Remanding Case, M.D.*, Docket No. 23-0312 (issued August 7, 2023); *Order Remanding Case, S.G.*, Docket No. 22-1136 (issued January 17, 2023); *Order Remanding Case, J.K.*, Docket No. 20-0556 (issued April 13, 2020); *Order Remanding Case, T.B.*, Docket No. 20-0426 (issued July 27, 2020).

⁴ See *M.G.*, Docket No. 21-0893 (issued December 27, 2021); *Order Remanding Case, W.D.*, Docket No. 20-0859 (issued November 20, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁵ 5 U.S.C. § 8124(a).

⁶ 20 C.F.R. § 10.126.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

understand the basis for its decision that the evidence submitted in connection with the request for reconsideration did not demonstrate clear evidence of error in the January 27, 2021 decision.⁸ This case must therefore be remanded to OWCP for an appropriate decision on appellant's request for reconsideration that describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the request for reconsideration pursuant to the relevant standards.⁹

The Board will therefore set aside OWCP's March 14, 2023 decision and remand the case for findings of fact and a statement of reasons, pursuant to the standards set forth in 20 C.F.R. §§ 10.500(a) and 10.126, to be followed by an appropriate decision on appellant's request for reconsideration. Accordingly,

IT IS HEREBY ORDERED THAT the March 14, 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 29, 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

⁸ Pursuant to 5 U.S.C. § 8128(a), OWCP has the discretion to reopen a case for further merit review. A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought. 20 C.F.R. § 10.607(a). When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error. If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review. *See* 20 C.F.R. § 10.607(b); *L.C.*, Docket No. 18-1407 (issued February 14, 2019).

⁹ *See Order Remanding Case, M.D.*, *supra* note 3; *R.T.*, Docket No. 19-0604 (issued September 13, 2019).