

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

S.F., Appellant)	
)	
and)	Docket No. 23-0569
)	Issued: January 2, 2024
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Fort Worth, TX,)	
Employer)	
)	

Appearances:
Appellant, pro se
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 March 15, 2023 appellant filed a timely appeal from a March 10, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 23-0569.

On December 28, 2020 appellant, then a 62-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she experienced stiffness, soreness, and tenderness in her left elbow due to factors of her federal employment. She related that on September 8, 2020 she was using a dustpan to pick up trash and experienced left elbow tightness, stiffness, and tenderness, and on November 12, 2020 she bumped her left elbow on a restroom stall door while cleaning it which agitated her injury and caused weakness and inflammation. Appellant did not stop work.

In a January 13, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. In a second development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to submit the requested evidence.

By decision dated March 23, 2021, OWCP found that the evidence was sufficient to establish that the employment factors occurred as described. However, it denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed medical condition and the accepted factors of her federal employment.

On December 30, 2021 appellant requested reconsideration of the March 23, 2021 decision and submitted additional evidence.

By decision dated February 28, 2022, OWCP denied modification of its March 23, 2021 decision. It noted that appellant's medical evidence did not contain discussion regarding whether her prior injuries in OWCP File No. xxxxxx687, accepted for bilateral carpal tunnel syndrome (CTS) and bilateral tenosynovitis of the hand and wrist, and OWCP File No. xxxxxx572, accepted for cervical disc disorder at C4-5 with radiculopathy and cervical spondylosis, could have caused or contributed to her current diagnosed conditions.

Appellant continued to submit evidence, including a September 7, 2022 report from Dr. Matthew Fournier, a Board-certified orthopedic surgeon, who noted that she presented for treatment of left elbow pain. Dr. Fournier diagnosed left lateral epicondylitis and related that her repetitive lifting of packages at work was directly causative of her condition.

In an October 12, 2022 visit note, Dr. Stephanie Y. Chiu, a Board-certified family practitioner, assessed right middle toe pain, bilateral CTS, chronic neck pain, bilateral knee pain, and left elbow joint pain.

In a November 15, 2022 visit note, Dr. Chiu noted that appellant's pain had resolved and diagnosed lateral epicondylitis of the left humerus.

On March 6, 2023 appellant requested reconsideration of the February 28, 2022 decision. She requested that OWCP examine the statement on causal relationship contained in Dr. Fournier's September 7, 2022 report.

By decision dated March 10, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, finding that it was untimely filed, and failed to demonstrate clear evidence of error. It noted, "The basis for this decision is [appellant] failed to submit a statement containing any clear evidence of error. [She] submitted only medical evidence which does not prove clear evidence of error."

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

OWCP did not make findings regarding the evidence appellant submitted in support of the reconsideration request.¹ It summarily denied her request for reconsideration without complying

¹ See *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).

with the review requirement of FECA and its implementing regulations.² As noted, section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the director of OWCP shall contain findings and facts and a statement of reasons.⁴ 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.⁵

In its March 10, 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 understand the basis for the decision, *i.e.*, why the evidence submitted in connection with the request for reconsideration did not demonstrate clear evidence of error in the February 28, 2022 decision, and was insufficient to warrant further merit review.⁶ It did not address the medical evidence submitted by appellant in support of her request for reconsideration. The 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.⁷

The Board will therefore set aside OWCP's March 10, 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. § 10.126, to be followed by an appropriate decision on appellant's request for reconsideration.

² See *I.L.*, Docket No. 23-0329 (issued August 1, 2023); *L.J.*, Docket No. 23-0282 (issued May 26, 2023); *M.G.*, Docket No. 21-0893 (issued December 27, 2021); see also 20 C.F.R. § 10.607(b).

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, 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).

⁶ 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).

⁷ See *Order Remanding Case, B.J.*, Docket No. 23-1002 (issued November 17, 2023).

IT IS HEREBY ORDERED THAT the March 10, 2023 decision of the Office of Workers' Compensation is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 2, 2024
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