

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

T.S., Appellant)	
)	
and)	Docket No. 23-0931
)	Issued: January 29, 2024
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL HIGHWAY ADMINISTRATION,)	
Nashville, TN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On June 26, 2023 appellant filed a timely appeal from a June 21, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0931.

On December 3, 2021 appellant, then a 46-year-old civil engineer, filed an occupational disease claim (Form CA-2) alleging that he developed neck and bilateral upper extremity and hand injuries due to factors of his federal employment, including repetitive typing and packing. He noted that he first became aware of his condition on November 12, 2021 and its relationship to his federal employment on December 3, 2021. Appellant did not stop work.

In support of his claim, appellant submitted various statements and a November 2, 2021 report of electromyography and nerve conduction velocity (EMG/NCV) study of the left upper extremity, which revealed carpal tunnel syndrome (CTS) on the left.

By decision dated January 13, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a causal relationship between the accepted employment factors and his diagnosed medical conditions.

OWCP thereafter received a January 26, 2022 report of EMG/NCV of the bilateral lower extremities, which was read as normal. It also received an October 24, 2022 operative report by Dr. Donald H. Lee, a Board-certified orthopedic hand surgeon, who performed a right-sided carpal tunnel release.

On April 16, 2023 appellant requested reconsideration of OWCP's January 13, 2022 decision.

By decision dated June 21, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

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

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.¹ 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.² Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.³ As well, OWCP's procedures provide that the reasoning behind its 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.⁴

In support of his request for reconsideration, appellant submitted a January 26, 2022 report of EMG/NCV and an October 24, 2022 operative report from Dr. Lee. In denying his reconsideration request, OWCP failed to analyze whether this evidence was sufficient to demonstrate clear evidence of error. The June 21, 2023 decision simply noted: "You did not present clear evidence of error." OWCP did not address the evidence submitted in support of appellant's reconsideration request.⁵

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether he had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁶ The Board will, therefore, set aside OWCP's June 21, 2023 decision and remand the case for findings of fact and

¹ *D.R.*, Docket No. 21-1229 (issued July 6, 2022); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

² 5 U.S.C. § 8124(a).

³ 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁵ *Order Remanding Case, P.W.*, Docket No. 21-1101 (issued March 30, 2023); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *see also Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

⁶ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. *Supra* note 4 at Chapter 2.1602.5(a) (September 2020).

a statement of reasons, to be followed by an appropriate decision regarding appellant's reconsideration request.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the June 21, 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: January 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

⁷ See *Order Remanding Case, D.R.*, *supra* note 1; *T.P.*, *supra* note 1; see also *id.* at § 10.607.