

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, MI, Employer**

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**Docket No. 18-0627
Issued: February 21, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On January 30, 2018 appellant filed a timely appeal from a January 5, 2018 nonmerit decision Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 18-0627.

On September 1, 2015 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim alleging that on August 31, 2015 he was attacked with a gun by three 17-year-old boys while in the performance of duty. He further alleged that this event caused an emotional condition.

By decision dated November 13, 2015, OWCP found that the evidence of record supported that the August 31, 2015 incident occurred as described, and that this incident constituted a compensable factor of employment. It denied appellant's emotional condition claim, however, finding that the medical component of fact or injury had not been met as there was no medical evidence from a psychiatrist or licensed psychologist diagnosing an emotional condition.

On January 19, 2016 appellant requested reconsideration of the November 13, 2015 merit decision. OWCP did not issue its nonmerit decision denying appellant's request for reconsideration until January 5, 2018, approximately 24 months after the reconsideration request was made. Its procedures provide:

“When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board,

OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared. There is no obligation to conduct a merit review on insufficient evidence if the maximum 180-day time limit for requesting review by the Board will have expired within the 90-day period following OWCP's receipt of the claimant's reconsideration request."¹

The Board, having duly considered the matter, finds that OWCP's delay of approximately 24 months in issuing a decision on denying appellant's reconsideration request effectively precluded him from appealing OWCP's most recent merit decision to the Board.² Had OWCP acted upon his request within 90 days, he would have still been able to seek Board review of the November 13, 2015 merit decision.³

Accordingly, the case will be remanded to OWCP to issue an appropriate decision on the merits of the claim in order to preserve appellant's appeal rights.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (February 2016). The 180-day limit for requesting review by the Board of the November 13, 2015 merit decision expired on May 11, 2016. The 90-day period following appellant's January 19, 2016 request for reconsideration expired on April 18, 2016 which was within the 180-day limit for requesting review by the Board.

² See 20 C.F.R. §§ 501.2(c) and 501.3. For final adverse OWCP decisions issued on or after November 19, 2008, a claimant has 180 days to file an appeal with the Board. See 20 C.F.R. § 501.3(e).

³ See *K.A.*, Docket No. 16-1392 (issued November 7, 2016); *Geoma R. Munn*, 50 ECAB 242 (1999); *Debra E. Stoler*, 43 ECAB 561 (1992) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: February 21, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board