

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

_____)	
S.P., Appellant)	
)	
and)	Docket No. 20-0511
)	Issued: December 2, 2020
U.S. POSTAL SERVICE, Dr. CAESAR A.W.)	
CLARK, SR., POST OFFICE, Dallas, TX,)	
Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 6, 2020 appellant filed a timely appeal from a December 18, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 20-0511.¹

On March 16, 2013 appellant, then a 39-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained right knee pain, swelling, and stiffness due to factors of her federal employment, including repetitive standing, stooping, bending, climbing, and walking. She noted that she had sustained an aggravation of her preexisting right knee condition. OWCP accepted appellant's claim for derangement of the right knee medial meniscus, and derangement of the right lateral meniscus.

¹ The Board notes that, following the December 18, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

By decision dated May 17, 2017, OWCP granted appellant a schedule award for 13 percent permanent impairment of the right lower extremity, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On June 15, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 8, 2017.

By decision dated December 21, 2017, OWCP's hearing representative affirmed the May 17, 2017 decision.

On February 28, 2018 OWCP expanded the acceptance of the claim to include tear of the right knee medial meniscus, and old disruption of the right knee medial collateral ligament.

On June 25, 2018 appellant requested reconsideration of the December 21, 2017 decision. She included a copy of a January 29, 2018 report from Dr. William Tontz, Jr., a Board-certified orthopedic surgeon and district medical adviser (DMA). Dr. Tontz opined that the anterior cruciate ligament (ACL) tear was a part of the knee condition and related to the work injury. Appellant argued that she was rated as having 13 percent permanent impairment because she was not given credit for the ACL injury, despite the DMA concurring with her physician that the ACL injury was related.

In a letter dated November 12, 2018 and received on November 19, 2018, appellant repeated her request for reconsideration. On October 9, 2019 OWCP received another copy of her request for reconsideration.

By decision dated December 18, 2019, OWCP denied appellant's request for reconsideration, finding that it neither raised a substantive legal argument nor provided new and relevant medical evidence and, therefore, was insufficient to require merit review.

OWCP has a timeliness goal for issuing reconsideration decisions within 90 days from the receipt of the request.³ The Board has explained that a delay in the issuance of a reconsideration decision by OWCP can impact appellant's ability to submit additional evidence or argument and bring a timely request for reconsideration before OWCP. An untimely request for reconsideration is subject to review under the clear evidence of error standard, a much higher burden of proof.⁴ In the present case, OWCP issued its December 18, 2019 decision more than 90 days after appellant's June 25, 2018 request for reconsideration, and more than one year after its December 21, 2017 merit decision. Under such circumstance, to preserve appellant's right to file a timely request for reconsideration and to afford the ability to present further evidence or argument to establish the claim, the case will be remanded to OWCP for a merit review of the evidence of record followed

² A.M.A., *Guides* (6th ed. 2009).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2 (October 2011).

⁴ *See E.I.*, Docket No. 18-0634 (issued January 23, 2019).

by an appropriate decision.⁵ Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the December 18, 2019 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: December 2, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁵ See *J.S.*, Docket No. 19-1147 (issued December 17, 2019).