

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

R.A., Appellant	)	
	)	
and	)	<b>Docket No. 22-0634</b>
	)	<b>Issued: December 1, 2022</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS AND BORDER PROTECTION,</b>	)	
<b>U.S. BORDER PATROL,</b>	)	
<b>Truth or Consequences, NM, Employer</b>	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 14, 2022 appellant filed a timely appeal from a March 2, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0634.

On December 29, 2020 appellant, then a 32-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2020 he sustained possible blood pathogen transfer, hearing damage, and post-traumatic stress disorder after an exchange of gunfire and follow up care to the wounded subject while in the performance of duty.

By decision dated February 9, 2021, OWCP accepted that the December 16, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP received additional evidence including emergency room records from Dr. John Green, a Board-certified internist and discharge instructions for a viral illness.

On February 28, 2022 appellant requested reconsideration of OWCP's decision dated February 9, 2021. He asserted that he submitted sufficient evidence to establish that he actually experienced the incident alleged to have caused the injury and referenced his supervisor's affirmative comments on the Form CA-1, an investigation report, photographs of the incident, and treatment at a medical center. He reported submitting emergency room records that diagnosed a viral infection, unspecified, and attached doctor's notes documenting his emergency room visit.

By decision dated March 2, 2022, 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 has duly considered this matter and finds that this case is not in posture for decision.

The Board finds that OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

In denying appellant's February 28, 2020 reconsideration request, OWCP did not analyze whether it was sufficient to demonstrate clear evidence of error. The March 2, 2022 decision simply noted: "We did consider your request under 20 C.F.R. § 10.607(b) to determine whether you presented clear evidence that [OWCP's] last merit decision was incorrect." However, OWCP did not address appellant's contentions raised in his reconsideration request. Furthermore, it provided no discussion relative to the evidence submitted.<sup>5</sup>

The Board finds that OWCP did not 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.<sup>6</sup> The Board will,

---

<sup>1</sup> *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.

<sup>2</sup> 5 U.S.C. § 8124(a).

<sup>3</sup> 20 C.F.R. § 10.126.

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

<sup>5</sup> *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).

<sup>6</sup> 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (September 2020).

therefore, set aside OWCP's March 2, 2022 decision and remand the case for an appropriate decision, with findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request.<sup>7</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the March 2, 2022 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this order of the Board.

Issued: December 1, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

---

<sup>7</sup> *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.