

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

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<b>D.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1194</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, El Paso, TX, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On August 15, 2022 appellant filed a timely appeal from a February 16, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-1194.

On November 8, 2019 appellant, then a 49-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that she sustained recurrent major depressive disorder and generalized anxiety disorder causally related to factors of her federal employment. She did not stop work.

By decision dated July 21, 2020, OWCP denied appellant's emotional condition claim. It found that she had not factually established the implicated employment factors.

On August 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 27, 2021, OWCP's hearing representative affirmed the July 21, 2020 decision.

In a statement dated January 27, 2022, received by OWCP on February 7, 2022, appellant requested reconsideration.

By decision dated February 16, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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

Section 10.607(a) of OWCP's regulations provides that a request for reconsideration must be received within one year of the date of OWCP's last merit decision for which review is sought.<sup>1</sup> Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS).<sup>2</sup> The Board has duly considered the matter and finds that appellant's request for reconsideration was untimely filed as it was not received until February 7, 2022, which is more than one year after the January 27, 2021 merit decision.

OWCP will consider an untimely request for reconsideration only if it demonstrates clear evidence of error on the part of its most recent decision. The request must establish, on its face, that such decision was erroneous.<sup>3</sup> The standard utilized by OWCP in its February 16, 2022 decision is appropriate only for timely reconsideration requests. As appellant filed an untimely reconsideration request, the case will be remanded to OWCP for application of the correct standard for reviewing untimely reconsideration requests, the clear evidence of error standard.<sup>4</sup> After this and other such further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

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<sup>1</sup> 20 C.F.R. § 10.607(a).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

<sup>3</sup> *Id.* at § 10.607. *See also* C.B., Docket No. 17-0933 (issued July 17, 2017); A.B., Docket No. 15-0521 (issued June 13, 2016).

<sup>4</sup> *Id.* at § 10.606(b). *See also* M.D., *Order Remanding Case*, Docket No. 19-1957 (issued June 22, 2020); C.M., Docket No. 17-0877 (issued September 21, 2017).

**IT IS HEREBY ORDERED THAT** the February 16, 2022 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 1, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy 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