

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

F.K., Appellant)	
)	
and)	Docket No. 22-1239
)	Issued: December 13, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Richmond, VA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On August 8, 2022¹ appellant filed a timely appeal from a February 8, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1239.

On March 4, 2020 appellant, then a 35-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2020 she sustained head, left hand, and wrist injuries and developed anxiety when she was assaulted by a coworker while in the performance of duty.

By decision dated April 9, 2020, OWCP accepted that the February 14, 2020 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the accepted employment incident.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from February 8, 2022, the date of OWCP's last decision, was August 7, 2022. As this fell on a Sunday, appellant had until Monday, August 8, 2022 to file a timely appeal. *See id.*, at § 501.3(f)(1).

On June 1, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 31, 2020. By decision dated November 13, 2020, OWCP's hearing representative affirmed the April 9, 2020 decision.

On November 16, 2021 appellant requested reconsideration. She provided factual and medical evidence in support of her request.

By decision dated February 8, 2022, OWCP denied appellant's request for reconsideration of the merits of her 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.² 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.³ 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.⁴ 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.⁵

In denying appellant's reconsideration request, OWCP failed to analyze whether it was sufficient to demonstrate clear evidence of error. The February 8, 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." OWCP did not address the evidence submitted in support of her reconsideration request.⁶

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 she had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁷ The Board will, therefore, set aside OWCP's February 8, 2022 decision and remand the case for findings of fact

² *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.

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ *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).

⁷ 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 5 at Chapter 2.1602.5(a) (September 2020).

and a statement of reasons, to be followed by an appropriate decision regarding appellant's reconsideration request.⁸ Accordingly,

IT IS HEREBY ORDERED THAT the February 8, 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 13, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Order Remanding Case, D.R.*, Docket No. 21-1229 (issued July 6, 2022); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also *id.* at § 10.607.