

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

_____)	
D.O., Appellant)	
)	
and)	Docket No. 24-0565
)	Issued: August 8, 2024
U.S. POSTAL SERVICE, NORTH TEXAS PROCESSING & DISTRIBUTION CENTER, Coppell, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On May 6, 2024 appellant filed a timely appeal from a March 1, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0565.¹

On November 10, 2021 appellant, then a 58-year-old mail dock clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a lumbar condition due to factors of her federal employment, including repetitively throwing mail into all-purpose containers (APC), wires, and hampers, pushing containers, keying stations, keying flats, and moving mail with pallet jacks. She noted that she first became aware of her condition on August 21, 2019, and realized its relationship to her federal employment on September 23, 2021. Appellant stopped work on September 24, 2021, and returned to work on September 25, 2021.

By decision dated February 16, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

¹ The Board notes that, following the March 1, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

On March 1, 2022 appellant requested review of the written record by a representative of OWCP's Branch of Hearing and Review.

Following a preliminary review, by decision dated April 27, 2022, OWCP's hearing representative vacated the February 16, 2022 decision, reversed it in part, and remanded the case for additional medical development. The hearing representative instructed OWCP to accept the claim for lumbar sprain and remanded the case for further development regarding the additional diagnosed medical conditions.

By decision dated May 6, 2022, OWCP accepted appellant's claim for lumbar sprain. It also subsequently further developed her claim, which included referring her to a second opinion physician.

By decision dated July 21, 2022, OWCP denied appellant's claim for additional degenerative lumbar conditions as causally related to the accepted factors of her federal employment. On November 14, 2022 appellant requested reconsideration.

By decision dated December 12, 2022, OWCP denied modification of the July 21, 2022 decision.

On February 27, 2024 appellant requested reconsideration. The record indicates that appellant submitted medical evidence from December 2022 through February 2024, including a magnetic resonance imaging (MRI) scan of the lumbar spine dated January 26, 2023; a February 26, 2024 report; a work capacity evaluation (Form OWCP-5c); and a February 27, 2024 report titled "appeal of reconsideration denial" from Dr. Jeffery Fritz, a Board-certified anesthesiologist.

By decision dated March 1, 2024, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It advised that the evidence submitted did not manifest on its face that OWCP committed error.

The Board, having duly considered the matter, 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 further 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 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.⁵

² *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *Order Remanding Case, 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).

In the March 1, 2024 decision, OWCP did not discharge its responsibility to set forth findings of fact, and a clear statement of reasons explaining the disposition so that appellant could understand the basis for its decision that the evidence submitted did not demonstrated clear evidence of error in the July 21, 2022 decision.⁶ This case must therefore be remanded to OWCP for an appropriate decision on appellant's request for reconsideration that describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the request for reconsideration pursuant to relevant standards.⁷

The Board will, therefore, set aside OWCP's March 1, 2024 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding appellant's reconsideration request. Accordingly,

IT IS HEREBY ORDERED THAT the March 1, 2024 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: August 8, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁶ Pursuant to 5 U.S.C. § 8128(a), OWCP has the discretion to reopen a case for further merit review. A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought. 20 C.F.R. § 10.607(a). When a claimant's request for reconsideration is untimely filed, it must nevertheless undertake a limited review to determine whether it demonstrates clear evidence of error. If a request for reconsideration demonstrates clear evidence of error, OWCP will reopen the case for merit review. *See* 20 C.F.R. § 10.607(b); *L.C.*, Docket No. 18-1407 (issued February 14, 2019).

⁷ *Order Remanding Case, M.D.*, *supra* note 2; *R.T.*, Docket No. 19-0604 (issued September 13, 2019).