

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

S.J., Appellant)	
)	
and)	
)	
DEPARTMENT OF THE ARMY, TANK-)	Docket No. 23-0179
AUTOMOTIVE AND ARMAMENTS)	Issued: May 23, 2023
COMMAND, ANNISTON ARMY DEPOT,)	
Anniston, AL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 19, 2022 appellant filed a timely appeal from a May 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0179.¹

On January 7, 2021 appellant, then a 52-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2020 she developed post-traumatic stress disorder (PTSD), moderate-to-severe depression, and anxiety causally related to factors of her federal employment, including "an extreme hostile work environment." On the

¹ The Board notes that, following the May 23, 2022 decision appellant submitted 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.*

reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on January 13, 2020.²

Appellant submitted medical and factual evidence in support of her claim.

By decision dated February 19, 2021, OWCP denied appellant's occupational disease claim, finding that the factors of her federal employment had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence.

On February 22, 2022 appellant requested reconsideration and submitted additional evidence.

By decision dated May 23, 2022, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that her reconsideration request was not received until February 22, 2022.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.³ OWCP's procedures further provide that when determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, Sunday, or legal holiday.⁴ One year following OWCP's February 19, 2021 merit decision was February 19, 2022, which was a Saturday. Additionally, Monday, February 21, 2022 was a legal holiday. Accordingly, appellant had until Tuesday, February 22, 2022 to request reconsideration. Because OWCP received her reconsideration request on February 22, 2022, the Board finds that it was timely filed.⁵ The clear evidence of error standard utilized by OWCP in its May 23, 2022 decision is appropriate only for untimely reconsideration requests.⁶ Therefore, the Board will set aside OWCP's May 23, 2022 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration. Accordingly,

² OWCP developed appellant's claim as an occupational disease claim.

³ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4a (September 2020).

⁴ Federal (FECA) Procedure Manual, *id.*

⁵ See *Order Remanding Case, B.W.*, Docket No. 20-1512 (issued August 24, 2021); *Order Remanding Case, J.H.*, Docket No. 18-1367 (issued July 17, 2019); *Order Remanding Case, C.B.*, Docket No. 13-1732 (issued January 28, 2014); *Steven E. Pratt*, Docket No. 93-443 (issued February 2, 1994).

⁶ See 20 C.F.R. § 10.607(b); see also *id.*

IT IS HEREBY ORDERED THAT the May 23, 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: May 23, 2023
Washington, DC

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

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

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