United States Department of Labor Employees' Compensation Appeals Board

D.G., Appellant)
and) Docket No. 10-1684
U.S. POSTAL SERVICE, DETACHED CARRIER UNIT, Grants Pass, OR, Employer) Issued: May 12, 2011
)
Appearances: Appellant, pro se	Case Submitted on the Record
Office of Solicitor, for the Director	

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On June 9, 2010 appellant filed an application for review of a March 2, 2010 decision of the Office of Workers' Compensation Programs denying her request for reconsideration on the grounds that it was untimely filed within one year of the Office's December 30, 2008 decision.

The Board, having duly reviewed the case record, notes that the case is not in posture for a decision. Section 8128(a) of the Federal Employees' Compensation Act¹ does not entitle a claimant to a review of an Office decision as a matter of right. The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a). As one such limitation, it has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.²

In its December 30, 2008 decision, the Office denied appellant's claim for compensation. In a letter dated December 22, 2009 and received by the Office on January 11, 2010, appellant requested reconsideration. The envelope in which appellant's December 22, 2010

¹ 5 U.S.C. § 8128(a).

² Darletha Coleman, 55 ECAB 143, 144 (2003). See also 20 C.F.R. § 10.607(a).

reconsideration request was sent has two postmark dates stamped on the envelope: December 23, 2009 and January 5, 2010. On March 2, 2010 the Office denied appellant's reconsideration request, finding that it was postmarked January 5, 2010 and therefore filed after the expiration of the one-year limit. Under the Office's regulations and procedures, the timeliness of a request for reconsideration is determined on the basis of the postmark of the envelope containing the request.³ The Office did not explain why it chose the later January 5, 2010 postmark date as the appropriate date instead of the earlier December 23, 2009 postmark date. The Board finds that, since the envelope containing the reconsideration request bears a postmark within one year of December 30, 2008, appellant's reconsideration request was timely filed. The case must be remanded for the Office to consider appellant's request for reconsideration under the standard for reviewing timely requests for reconsideration.⁴ After such further development as the Office deems necessary, it should issue an appropriate decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the March 2, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this order of the Board.

Issued: May 12, 2011 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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³ 20 C.F.R. § 10.607(a). *See Karen J. Meuller*, 45 ECAB 704 (1994); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (September 2010).

⁴ See 20 C.F.R. § 10.606(b)(2).