

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, a 57-year old crane operator, filed a claim for traumatic injury on August 27, 2009, alleging that he sustained an injury to his right shoulder on August 25, 2009 while climbing a ladder. OWCP initially handled the claim administratively to allow medical payments up to \$1,500.00 for a right shoulder injury and did not formally adjudicate the merits of the claim.

By letter dated October 30, 2009, OWCP informed appellant that, because he had submitted evidence supporting a claim for a back and neck injury sustained on August 25, 2009, it required additional factual and medical evidence. It asked him to submit a detailed factual statement describing how the August 25, 2009 incident related to the alleged back and neck conditions, a comprehensive medical report containing diagnosed medical conditions stemming from the August 25, 2009 work incident, and an explanation of how the incident caused these conditions.

By decision dated December 7, 2009, OWCP denied the claim, finding that he failed to submit medical evidence sufficient to establish that he sustained a right shoulder, back or neck injury in the performance of duty on August 25, 2009.

By letter dated February 11, 2010, appellant's attorney requested an oral hearing.

By decision dated March 1, 2010, OWCP denied appellant's request for a hearing as untimely.

By letter dated December 5, 2010, counsel requested reconsideration of the December 7, 2009 OWCP decision. The letter contained a fax date receipt indicating that it was received by OWCP on December 7, 2010.

By decision dated December 17, 2010, OWCP denied appellant's request for reconsideration without a merit review, finding the request was untimely requested reconsideration and that appellant had not established clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of FECA² does not entitle an employee to a review of OWCP's decision as a matter of right.³ This section, vesting OWCP with discretionary authority to determine whether it will review an award for or against compensation, provides:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may: (1) end, or increase the

² 5 U.S.C. § 8128(a).

³ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

compensation awarded; or (2) award compensation previously refused or discontinued.”

OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).⁴ 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.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted by OWCP under 5 U.S.C. § 8128(a).⁶

In computing the time for requesting reconsideration, the date of the event from which the designated period of time begins to run shall not be included when computing the time period. However, the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.⁷

ANALYSIS

OWCP improperly determined that appellant failed to file a timely application for review. It issued its last merit decision in this case on December 7, 2009. Appellant requested reconsideration on December 7, 2010.

In the December 7, 2009 decision, OWCP, denied appellant’s claim for benefits for injuries to his right shoulder, back and neck which he allegedly sustained on August 25, 2009. The appeal rights accompanying that decision advised appellant that he could request reconsideration within one year of the date of the decision. Counsel submitted a letter requesting reconsideration which bore a date receipt indicating that it had been faxed and received by OWCP on December 7, 2010. As the one year time period began to run on December 8, 2009, the last day of the one-year time period was December 7, 2010. Therefore, appellant’s request was timely pursuant to section 10.607 of OWCP regulations.⁸ The case will be remanded for OWCP to further review his December 7, 2010 reconsideration request in accordance with its regulations and procedures.

⁴ Although it is a matter of discretion on the part of OWCP whether to review an award for or against payment of compensation, it has stated that a claimant may obtain review of the merits of a claim by: (1) showing that OWCP erroneously applied or interpreted a point of law, or (2) advances a relevant legal argument not previously considered by OWCP; or (3) submitting relevant and pertinent new evidence not previously considered by OWCP. See 20 C.F.R. § 10.606(b).

⁵ *Id.* at § 10.607(b).

⁶ See cases cited *supra* note 2.

⁷ *David McDavid*, 57 ECAB 149 (2005). The Board found that the time for requesting reconsideration of OWCP’s March 19, 2004 decision began to run on March 20, 2004 and thus would have expired on March 19, 2005, had this date not been a Saturday. Appellant’s request for reconsideration was received on the next business day Monday, March 21, 2005 and was therefore timely filed.

⁸ See *supra* note 5.

CONCLUSION

The Board finds that OWCP erred in finding appellant's December 7, 2010 reconsideration request untimely.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2010 is set aside. The case is remanded to the OWCP for further proceedings consistent with this decision of the Board.

Issued: October 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board