

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

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Plainfield, NJ, Employer**

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**Docket No. 11-2133
Issued: May 9, 2012**

Appearances:

Aaron Aumiller, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

COLLEEN DUFFY KIKO, Judge

On September 21, 2011 appellant filed a timely appeal of a March 25, 2011 decision of the Office of Workers' Compensation Programs (OWCP), finding that her application for reconsideration was untimely and failed to show clear evidence of error. The appeal was docketed as No. 11-2133.

In the March 25, 2011 decision, OWCP states that appellant, through her representative, submitted a reconsideration request dated March 9, 2011, which was more than one year after the last final decision on the merits of the claim for compensation dated January 20, 2010. It stated that although the representative asserted in the March 9, 2011 letter that he had requested reconsideration on November 17, 2010, the only documentation received on that date was a change of address request.

But the record contains a November 9, 2010 letter from appellant's representative, received by OWCP on November 15, 2010 entitled "request for reconsideration." Appellant indicated that in support of reconsideration of the January 20, 2010 decision she was submitting evidence from Dr. Michael Bercik, an orthopedic surgeon, and on November 15, 2010 OWCP received an October 5, 2009 report from Dr. Bercik.

The Board finds that appellant submitted a timely application for reconsideration of the January 20, 2010 OWCP decision.¹ Since OWCP incorrectly found the application for reconsideration was untimely, the case will be remanded to OWCP for a proper decision regarding the timely reconsideration request. After such development as OWCP deems necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2011 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: May 9, 2012
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

¹ A claimant has one year from the date of an adverse final decision to timely request reconsideration. 20 C.F.R. § 10.607(a).