

untimely filed because it was received on April 4, 2013 and therefore was not received within one year of April 4, 2012.³

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁴ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁵ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ The one-year period begins on the date of the original decision, and an application for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought for merit decisions issued on or after August 29, 2011.⁷ However, OWCP may not deny an application for review solely on the grounds that the application was not timely filed. When an application for review is not timely filed, it must nevertheless undertake a limited review to determine whether the application establishes "clear evidence of error."⁸

In its April 29, 2013 decision, OWCP improperly determined that appellant filed an untimely request for reconsideration of its April 4, 2012 decision. Appellant's reconsideration was received by OWCP on April 4, 2013, a period of 365 days after its April 4, 2012 decision. Therefore, it was received precisely within one year. Because OWCP improperly determined that her reconsideration request was untimely, it improperly applied the clear evidence of error standard for reconsideration requests. The April 29, 2013 decision of OWCP must be set aside and the case remanded to OWCP in order to perform a review of appellant's reconsideration request under the standards for timely reconsideration requests, to be followed by the issuance of an appropriate decision.

³ Appellant's reconsideration request was entered into the Integrated Federal Employees' Compensation System on April 4, 2013 and therefore is considered to have been received on that date. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (October 2011).

⁴ Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ *Id.* at § 10.607(a).

⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

⁸ *See* 20 C.F.R. § 10.607(b); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

IT IS HEREBY ORDERED THAT the April 29, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 28, 2014
Washington, DC

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

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

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