

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

M.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albuquerque, NM, Employer**

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**Docket No. 13-1783
Issued: January 2, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On July 24, 2013 appellant filed a timely appeal from the February 27, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which found that his request was untimely and did not present clear evidence of error. The appeal was docketed as No. 13-1783.

In this case, by decision dated February 10, 2012, OWCP denied appellant's claim for a traumatic injury on October 26, 2011. Appellant subsequently requested reconsideration on February 11, 2013 and submitted additional evidence. In a February 27, 2013 decision, OWCP denied his request for reconsideration finding that it was not timely filed and failed to present clear evidence of error.

The Board finds that appellant's request for reconsideration was timely. Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP decision for which review is sought.¹ In this case, the last merit decision was dated February 10, 2012 and appellant's request for reconsideration was received by OWCP on Monday, February 11, 2013. In computing the time for requesting reconsideration, the last day of the period shall be included unless it is a Saturday,

¹ 20 C.F.R. § 10.607(a). This provision became effective August 29, 2011. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

a Sunday or a legal holiday.² As February 10, 2013 was a Sunday, appellant had until Monday, February 11, 2013 to request reconsideration. Thus, his request was timely received by OWCP.

Because appellant filed a timely reconsideration request, OWCP should have reviewed his request under the standard for a timely request,³ as opposed to the standard for untimely requests.⁴ The clear evidence of error standard utilized by OWCP in its February 27, 2013 decision is appropriate only for untimely reconsideration requests. The Board will set aside OWCP's February 27, 2013 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the February 27, 2013 decision is set aside and remanded.

Issued: January 2, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

² *Debra McDavid*, 57 ECAB 149 (2005).

³ 20 C.F.R. § 10.606(b)(3).

⁴ Section 10.607(b) states that OWCP will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must establish that OWCP's decision was, on its face, erroneous. 20 C.F.R. § 10.607(b).