

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

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**T.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Washington, DC, Employer**

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**Docket No. 11-732  
Issued: November 29, 2011**

*Appearances:*  
*Appellant, pro se*  
*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 January 28, 2011 appellant timely appealed the September 15, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which terminated her compensation benefits. She also timely appealed the December 22, 2010 nonmerit decision denying her request for a hearing.<sup>1</sup> The Board assigned the appeal Docket No. 11-732.

After OWCP terminated appellant's compensation on September 15, 2010, she submitted new evidence and requested a hearing before the Branch of Hearings and Review. Appellant's request was undated. However, it bears a time stamp indicating that the Branch of Hearings and Review received the request on November 1, 2010. The imaged record does not include a copy of the envelope that appellant presumably used to submit her hearing request.

The regulations clearly specify that "[t]he hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."<sup>2</sup> The Branch of Hearings and Review denied the request as untimely based

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<sup>1</sup> Pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8193, and 20 C.F.R. §§ 501.2(c) and 501.3 (2011), the Board has jurisdiction over the merits of this case. The record forwarded to the Board includes evidence received after OWCP issued its December 22, 2010 decision. The Board's appellate review is limited to evidence that was in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c).

<sup>2</sup> 20 C.F.R. § 10.616(a).

on the November 1, 2010 date stamp. The applicable regulation does not measure timeliness based on the date of receipt, but instead based on the postmark. Because the Branch of Hearings and Review did not retain a copy of the envelope, the Board is unable to determine whether appellant's hearing request was timely filed.<sup>3</sup> Accordingly, the case will be remanded to the Branch of Hearings and Review. If the date of the postmark cannot be determined, OWCP should presume that the request was timely and grant the request for hearing, as it was OWCP's responsibility to keep the envelope or otherwise keep evidence of the date of mailing in the case record.<sup>4</sup>

**IT IS HEREBY ORDERED THAT** the December 22, 2010 decision of the Branch of Hearings and Review is set aside, and the case is remanded for further action consistent with this order of the Board, to include a *de novo* decision on the merits.

Issued: November 29, 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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<sup>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings & Reviews of the Written Record*, Chapter 2.1601.3b (October 1992).

<sup>4</sup> *Carolyn O'Neal*, 53 ECAB 645 (2002).