United States Department of Labor Employees' Compensation Appeals Board

J.G., Appellant and))))	Docket No. 11-366 Issued: September 28, 2011
DEPARTMENT OF THE NAVY, NAVAL AIR WEAPONS STATION, China Lake, CA, Employer)))	
Appearances: Appellant, pro se Office of Solicitor, for the Director		Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On November 30, 2010 appellant filed an application for review of a November 5, 2010 decision of the Office of Workers' Compensation Programs (OWCP) which denied his August 13, 2010 request for reconsideration on the grounds that the request was untimely filed and the evidence failed to establish clear evidence of error. The appeal was docketed as No. 11-366.

In a May 18, 2010 decision, the Board affirmed OWCP decisions dated December 19, 2008 and March 20, 2009 which denied appellant's claim for an attendant allowance and denied his request for reconsideration.¹ On August 13, 2010 appellant requested reconsideration from the May 18, 2010 decision and submitted evidence in support of his claim. In a November 5, 2010 decision, OWCP denied the request finding that his reconsideration request was not filed within one year of OWCP's December 19, 2008 merit decision.

The Board has considered the matter and finds that the August 13, 2010 request constituted a timely request for reconsideration. OWCP regulations provide that "[a]n application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought." OWCP procedures note that the one-year time limit for requesting

¹ Docket No. 09-1497 (issued May 18, 2010).

² 20 C.F.R. § 10.607(a).

reconsideration begins on the date of the original decision and also accompanies any subsequent merit decision on the issues, including "any merit decision by the [Board]." As the May 18, 2010 decision of the Board was a merit decision, appellant had one year from May 18, 2010 to request reconsideration. The Board finds that his request was timely, as it was dated August 13, 2010 and received on August 19, 2010, and was clearly made within one year of the Board's May 18, 2010 decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration. The "clear evidence of error" standard utilized by OWCP in its November 5, 2010 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the November 5, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this order.

Issued: September 28, 2011 Washington, DC

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

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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

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³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

⁴ See 20 C.F.R. § 10.606(b)(2).