United States Department of Labor Employees' Compensation Appeals Board

F.T., Appellant	
and) Docket No. 11-720
U.S. POSTAL SERVICE, POST OFFICE, Raleigh, NC, Employer) Issued: September 28, 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 22, 2011¹ appellant filed a timely appeal from a July 27, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely filed and failing to demonstrate clear evidence of error. Because more than 180 days has elapsed from the last OWCP merit decision dated July 21, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of her claim pursuant to 20 C.F.R. §§ 501.2 and 501.3. The only decision properly before the Board is the July 27, 2010 decision denying her request for reconsideration as untimely.

The Board has duly considered the matter and notes, as stated above, that the most recent OWCP merit decision is dated July 21, 2009. Appellant's request for reconsideration was postmarked July 20, 2010. OWCP regulations provide: "An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's decision was issued on July 27, 2010, the 180-day computation begins July 28, 2010. One hundred and eighty days from July 28, 2010 was January 24, 2010. Since using January 28, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 22, 2011, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed." Appellant's request for reconsideration was postmarked on the 365th day, *i.e.*, July 20, 2010. The Board finds that this is a timely request for reconsideration of OWCP's July 21, 2009 merit decision.

On remand, OWCP should weigh the evidence submitted with appellant's request for reconsideration in accordance with the standards for a timely request for reconsideration and issue an appropriate decision.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 27, 2010 is set aside and remanded for further development consistent with this order of the Board.

Issued: September 28, 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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² 20 C.F.R. § 10.607(a).