

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rockford, IL, Employer**

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**Docket No. 14-625
Issued: July 29, 2014**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

On January 28, 2014 appellant filed a timely appeal from a December 10, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error. The Board docketed the appeal as No. 14-625.

This case has previously been on appeal to the Board. In the most recent appeal, by decision dated August 16, 2012, the Board affirmed a January 31, 2012 OWCP decision denying modification of its termination of appellant's compensation effective April 30, 1998 for refusing suitable work under 5 U.S.C. § 8106(c).¹ On November 6, 2012 appellant requested

¹ Docket No. 12-807 (issued August 16, 2012). OWCP accepted that appellant sustained bilateral plantar fasciitis and bilateral tarsal tunnel syndrome causally related to factors of his federal employment. In decisions dated April 30, 1998 and March 30, 1999, it terminated his compensation for refusing an offer of suitable work. In a prior appeal, the Board set aside a July 16, 2001 decision denying appellant's request for reconsideration of the termination decision under section 8128. Docket No. 02-1027 (issued May 1, 2003). On October 27, 2004 the Board affirmed an October 31, 2003 decision denying modification of the termination of his compensation for refusing suitable work. Docket No. 04-805 (issued October 27, 2004). In decisions dated March 2, 2006 and November 7, 2007, the Board affirmed OWCP decisions denying his requests for reconsideration under section 8128. Docket No. 06-165 (issued March 2, 2006); Docket No. 07-1530 (issued November 7, 2007). On July 18, 2008 the Board dismissed appellant's petition for reconsideration of the November 7, 2007 decision as untimely. Order Dismissing Petition for Reconsideration, Docket No. 07-1530 (issued July 18, 2008).

reconsideration. In a merit decision dated March 7, 2013, OWCP denied modification of its January 31, 2012 decision.

In a letter dated August 27, 2013, received by OWCP on September 10, 2013, appellant requested reconsideration.

By decision dated December 10, 2013, OWCP denied appellant's request for reconsideration after finding that it was not timely filed within one year of the August 16, 2012 decision.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely. Sections 10.607(a) of the implementing regulations provide that an application for review must be received within one year of the date of OWCP's decision for which review is sought.² The Board notes that the last merit decision was dated March 7, 2013 and appellant's request for reconsideration was received September 10, 2013. As this request was received within one year of the last merit decision, it was timely filed. The case will be remanded for OWCP to apply the standard for reviewing timely requests for reconsideration.³ The clear evidence of error standard utilized by OWCP in its December 10, 2013 decision is appropriate only for untimely reconsideration requests.⁴ After such further development as OWCP deems necessary, it should issue an appropriate decision on appellant's claim under section 8128(a).

² 20 C.F.R. § 10.607(a).

³ *See id.* at § 10.606(b)(3).

⁴ Section 10.607(b) provides 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).

IT IS HEREBY ORDERED THAT the December 10, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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