

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHIL D. FIELDER and U.S. POSTAL SERVICE,
MAIN POST OFFICE, St. Louis, MO

*Docket No. 01-892; Submitted on the Record;
Issued October 23, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.

On February 10, 1999 appellant filed an occupational disease claim alleging that he sustained a bilateral shoulder and right knee injuries causally related to his duties as a mailhandler. By decision dated September 10, 1999, the Office denied the claim on the grounds that fact of injury was not established.

In an undated letter, stamped as received by the Office on September 12, 2000, appellant, through his representative, requested reconsideration and submitted additional evidence. By decision dated December 28, 2000, the Office determined that the request was untimely and failed to show clear evidence of error.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed his appeal on January 26, 2001, the only decision over which the Board has jurisdiction on this appeal is the December 28, 2000 decision denying his request for reconsideration.

The Board finds that the case is not in posture for decision.

Section 10.607(a) provides:

“An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time

¹ See 20 C.F.R. § 501.3(d).

period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.”

The Office merit decision was dated September 10, 1999. Since September 10, 2000 falls on a Sunday, appellant had until September 11, 2000 to file a timely request for reconsideration.

The Office found the request for reconsideration untimely because it was received by the Office on September 12, 2000. The Office determined that the request itself was not dated and that no envelope “remained attached” to the document requesting reconsideration, which was accompanied by medical evidence.

Under section 10.607(a), the proper procedure is to determine if the request was submitted by mail,² and then to determine the mailing date. The postmark date is the best evidence of the mailing date, and the Office is clearly in the best position to retain evidence of the postmark date in the record. When the Office does not retain the envelope or other evidence of the mailing date, and the date of the reconsideration request cannot be ascertained,³ the Office that should secure “other evidence,” pursuant to section 10.607(a), to establish the mailing date. In this case the reconsideration request was received one day after the one-year time period. An affidavit from appellant’s representative that the request was mailed on a specific date within one year would be sufficient to establish timeliness, absent other probative evidence on the issue.

Accordingly, the case will be remanded to the Office to secure the necessary evidence to make an appropriate finding on whether the reconsideration request was timely. After such further development as the Office deems necessary, it should issue an appropriate decision.

² Appellant’s representative indicated on appeal that the request was mailed. If a request for reconsideration is hand delivered, the Office should keep evidence in the record to substantiate the method and date of delivery.

³ Current Office procedures indicate that if the postmark is not available, the date of the letter itself should be used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1996).

The decision of the Office of Workers' Compensation Programs dated December 28, 2000 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
October 23, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member