

FACTUAL HISTORY

On April 5, 2006 appellant, a 58-year-old postal employee, filed a recurrence of disability claim (Form CA-2) alleging that on January 5, 1996 she sustained a recurrence of disability due to her December 15, 1994 injury. She reported that she was in constant pain due to the injury and could not perform her regular duties.

The Office had accepted that appellant sustained bilateral wrist tendinitis and bilateral carpal tunnel syndrome on December 5, 1994. By decision dated May 2, 1997, the Office terminated her compensation on the grounds that she no longer had residuals of the accepted conditions.

By decision dated June 24, 2006, the Office denied appellant's claim for recurrence because the evidence was not sufficient to establish that her current medical condition was due to the accepted work injury.

Appellant disagreed and requested review of the written record on August 28, 2006.²

By decision dated November 24, 2006, the Branch of Hearings and Review affirmed the Office's July 24, 2006 decision because the evidence of record did not establish that her current conditions were causally related to her federal employment.

Appellant submitted a collection of medical reports and treatment notes on January 30, 2007 concerning medical treatment and consultation occurring between September 25, 2000 and January 8, 2007.

By letter dated November 20, 2007, appellant requested reconsideration of the November 24, 2006 merit decision. By decision dated January 15, 2008, the Office denied reconsideration because her request, received on December 10, 2007, was untimely and did not present clear evidence of error.

Appellant disagreed, and by letter dated March 28, 2008, she again requested reconsideration. She asserted that her November 20, 2007 reconsideration request was not untimely, as her letter was postmarked prior to November 24, 2007. The record does not contain a copy of the postmark.

By decision dated June 6, 2008, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the

² The record reflects that appellant also requested reconsideration on August 25, 2006.

³ 5 U.S.C. § 8101 *et seq.*

district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.⁴

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.⁵ Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

The Board finds that the case is not in posture for decision because the evidence does not support the conclusion that appellant's request was untimely. The last merit decision in appellant's case was dated November 24, 2006. Appellant's reconsideration request was dated November 20, 2007.

The record contains no envelope or copy bearing the postmark. It is the Office's responsibility to keep the envelope or provide evidence as to the postmark date.⁷ The Office procedure manual provides that, in determining the timeliness of a reconsideration request, the date of the request should be used if the envelope bearing the postmark is unavailable or illegible.⁸ As the record lacks evidence of the postmark or other evidence from which the date of the mailing could be established, the Office should have looked to the date of the letter to establish the timeliness of appellant's reconsideration request. In light of the Office's failure to preserve the evidence of mailing, the Board finds that the request was timely filed.

CONCLUSION

The Board finds that the case is not in posture for decision. The Board sets aside the Office's January 15 and June 6, 2008 decisions and remands the case for further action consistent with this decision.

⁴ 20 C.F.R. § 10.605.

⁵ *Donna L. Shahin*, 55 ECAB 192 (2003).

⁶ 20 C.F.R. § 10.608.

⁷ In determining the timeliness of a reconsideration request, the date of the request should be used if the envelope bearing the postmark is unavailable. *Algimantas Bumelis*, 48 ECAB 679, 680 (1997). Additionally, the Office's procedures require that an imaged copy of the envelope that enclosed the request for reconsideration should be in the case record. If there is no postmark, or if it is not legible, other evidence such as a certified mail receipt, a certificate of service and affidavits may be used to establish the mailing date. In the absence of such evidence, the date of the letter itself should be used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (June 2002); 20 C.F.R. § 10.607(a). *See also*, *Jack D. Johnson*, 57 ECAB 593 (2006); *Robin M. Taylor*, Docket No. 03-2239 (issued December 19, 2003).

ORDER

IT IS HEREBY ORDERED THAT the June 6 and January 15, 2008 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision.

Issued: May 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board