

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

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**M.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Charlotte, NC, Employer**

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**Docket No. 11-970  
Issued: August 12, 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 March 8, 2011 appellant filed a timely appeal from a December 16, 2010 Office of Workers' Compensation Programs' decision which denied his recurrence claim. Appellant also appealed a February 16, 2011 Office decision that denied his request for an oral hearing on the grounds that it was untimely filed. The appeal was docketed as 11-970.

The Board, having duly reviewed the case record, notes that the Office erred in finding that appellant's hearing request was not timely. Section 8124(b)(1) of the Federal Employees' Compensation Act states unequivocally that a claimant not satisfied with a decision of the Office has a right, upon timely request, to a hearing before a representative of the Office.<sup>1</sup> A claimant is not entitled to a hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark or other carrier's date marking of the request.<sup>2</sup>

Following the December 16, 2010 Office decision, appellant requested an oral hearing on January 16, 2011. The envelope containing the hearing request was postmarked

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<sup>1</sup> 5 U.S.C. § 8124(b)(1). *See A.B.*, 58 ECAB 546 (2007); *Joe Brewer*, 48 ECAB 411 (1997).

<sup>2</sup> 20 C.F.R. § 10.616(a); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (June 1997).

January 16, 2011. By decision dated February 16, 2011, the Office denied appellant's hearing request as untimely filed. The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday.<sup>3</sup> The 30-day time period for determining the timeliness of appellant's hearing request began on December 17, 2010 and ended on January 15, 2011, a Saturday. The first regular business day after January 15, 2011 was Tuesday January 18, 2011.<sup>4</sup> As appellant's hearing request was postmarked January 16, 2011, his hearing request was timely.

Inasmuch as appellant's hearing request was timely filed, the Board will set aside the February 16, 2011 decision and remand the case for the Office to schedule an oral hearing.<sup>5</sup>

**IT IS HEREBY ORDERED THAT** the February 16, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this order of the Board.

Issued: August 12, 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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<sup>3</sup> *John B. Montoya*, 43 ECAB 1148 (1992); *see Donna A. Christley*, 41 ECAB 90 (1989).

<sup>4</sup> Monday, January 17, 2011, was a federal holiday.

<sup>5</sup> In view of the Board's decision regarding the timeliness of appellant's request for a hearing before the Office, it is not necessary to consider appellant's request for an oral argument before the Board.