

on the November 1, 2010 date stamp. The applicable regulation does not measure timeliness based on the date of receipt, but instead based on the postmark. Because the Branch of Hearings and Review did not retain a copy of the envelope, the Board is unable to determine whether appellant's hearing request was timely filed.³ Accordingly, the case will be remanded to the Branch of Hearings and Review. If the date of the postmark cannot be determined, OWCP should presume that the request was timely and grant the request for hearing, as it was OWCP's responsibility to keep the envelope or otherwise keep evidence of the date of mailing in the case record.⁴

IT IS HEREBY ORDERED THAT the December 22, 2010 decision of the Branch of Hearings and Review is set aside, and the case is remanded for further action consistent with this order of the Board, to include a *de novo* decision on the merits.

Issued: November 29, 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

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings & Reviews of the Written Record*, Chapter 2.1601.3b (October 1992).

⁴ *Carolyn O'Neal*, 53 ECAB 645 (2002).