

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

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**S.C., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
CUSTOMS & BORDER PATROL, Reston, VA,  
Employer**

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**Docket No. 12-765  
Issued: August 28, 2012**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On February 22, 2012 appellant filed a timely appeal from the September 1, 2011 decision of the Office of Workers' Compensation Programs' (OWCP), which found that appellant's request was untimely and did not present clear evidence of error. The appeal was docketed as No. 12-765.

In this case, OWCP denied appellant's claim for a traumatic injury on March 26, 2010. Following a telephonic hearing, an OWCP hearing representative decision, in an August 23, 2010 decision, denied appellant's claim finding that he did not submit sufficient medical evidence to show that his claimed condition was causally related to particular work factors on October 1, 2009. In a July 20, 2011 letter, appellant requested reconsideration and provided additional factual information. The request was received by OWCP on July 26, 2011. In a decision dated September 1, 2011, OWCP found that the request was untimely filed and failed to present clear evidence of error.<sup>1</sup>

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<sup>1</sup> The Board notes that OWCP indicated appellant was appealing a decision dated March 26, 2011. However, this appears to be a typographical error, as the most recent decision was the August 23, 2010 OWCP hearing representative decision.

The Board has duly considered the matter and finds that appellant's July 20, 2011 letter constituted a timely reconsideration request. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be sent within one year of the date of OWCP decision for which review is sought.<sup>2</sup> The Board notes that the most recent merit decision was dated August 23, 2010 and appellant's request for reconsideration was made on July 20, 2011, and received on July 26, 2011, less than one year from the August 23, 2010 merit decision. The Board finds that OWCP improperly reviewed his request under the clear evidence of error standard, a standard reserved for untimely reconsideration requests.<sup>3</sup> As appellant made a timely request for reconsideration of the August 23, 2010 merit decision, OWCP should have reviewed his request under the standard for a timely request.<sup>4</sup> The Board will set aside OWCP's September 1, 2011 decision and remand the case for an appropriate final decision on his timely request for reconsideration under 5 U.S.C. § 8128(a).

**IT IS HEREBY ORDERED THAT** the September 1, 2011 decision is set aside and the case remanded for further action consistent with this order.

Issued: August 28, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>2</sup> 20 C.F.R. § 10.607(a).

<sup>3</sup> *See id.* at § 10.607(b).

<sup>4</sup> *See id.* at § 10.606(b)(2).