

postmarked as sent on August 26, 2011, appellant requested reconsideration of OWCP's August 26, 2010 decision. In support of her request, she submitted a new report of Dr. Hosea Brown, III, an attending Board-certified internist. In a September 6, 2011 decision, OWCP denied appellant's request for further review of the merits of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error. OWCP indicated that appellant's August 26, 2011 reconsideration request was made more than a year after OWCP's August 26, 2010 decision. It found that the evidence submitted by appellant did not clearly show error in its August 26, 2010 decision.

The Board has considered the matter and finds that the August 26, 2011 postmarked request constituted a timely request for reconsideration. OWCP regulations at 20 C.F.R. § 10.607(a), provide that "an application for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought" and that, "if submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed." In computing the time for requesting reconsideration, the date of the event from which the designated time period begins to run shall not be included when computing the time period. However, the last day of the period shall be included unless it is a Saturday, a Sunday or a legal holiday.³ Thus, the time for requesting reconsideration of OWCP's August 26, 2010 decision began to run on August 27, 2010 and ended on August 26, 2011. The Board finds that appellant's request was timely, as it was postmarked on August 26, 2011, and thus was clearly made within one year of the August 26, 2010 decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.⁴ The "clear evidence of error" standard utilized by OWCP in its September 6, 2011 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

³ *Debra McDavid*, 57 ECAB 149 (2005); see *John B. Montoya*, 43 ECAB 1148 (1992).

⁴ See 20 C.F.R. § 10.606(b)(2).

IT IS HEREBY ORDERED THAT the September 6, 2011 decision of the Office of Workers' Compensation Programs' is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 25, 2012
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