



## **FACTUAL HISTORY**

On July 22, 2009 appellant, then a 56-year-old nurse, sustained a hand injury when the privacy screen of the computer fell on her hand while she was at work. OWCP accepted appellant's claim on September 17, 2009 for a right thumb contusion.

Appellant filed a series of CA-7 forms seeking wage-loss compensation for the period August 30 to October 24, 2009.

OWCP denied appellant's claims for wage loss, by decision dated February 17, 2010, on the grounds that she had not submitted the required medical evidence to establish total disability.

Appellant requested an oral hearing on March 10, 2010 which was held on August 11, 2010.

By decision dated October 4, 2010, the hearing representative partially modified its prior decision and granted appellant four hours of compensation for each date that appellant received medical treatment during the period August 30 to October 24, 2009; however, it still denied her compensation for total disability on the grounds that the medical evidence she submitted did not support a finding of total disability.

On October 3, 2011 OWCP received appellant's reconsideration request. In support of her reconsideration request, appellant submitted her own affidavit, a report from a Dr. Peckham dated September 28, 2011 addressing her period of total disability, as well as a progress note dated October 19, 2009.

On October 18, 2011 OWCP declined to perform a merit review of appellant's case on the grounds that her request for reconsideration was untimely filed.

## **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle an employee to a review of OWCP's decision as a matter of right.<sup>2</sup> This section, vesting OWCP with discretionary authority to determine whether it will review an award for or against compensation, provides:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review, may--

- (1) end, decrease or increase the compensation previously awarded; or
- (2) award compensation previously refused or discontinued.”

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<sup>2</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).<sup>3</sup> As one such limitation, it has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>4</sup> The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted by OWCP under 5 U.S.C. § 8128(a).<sup>5</sup>

In computing the time for requesting reconsideration, the date of the event from which the designated period of time begins to run shall not be included when computing the time period. However, the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.<sup>6</sup>

### **ANALYSIS**

OWCP improperly determined that appellant failed to file a timely application for review. It issued its last merit decision in this case on October 4, 2010. Appellant requested reconsideration on October 3, 2011.

In the October 4, 2010 decision, OWCP denied appellant's claim for compensation for the period August 30 to October 24, 2009. The appeal rights accompanying that decision advised appellant that he could request reconsideration within one year of the date of the decision. Counsel submitted a reconsideration request which the record reflects was received by OWCP on October 3, 2011. As the one-year time period began to run on October 5, 2010, the last day of the one-year time period was October 4, 2011. Therefore, appellant's request was timely pursuant to section 10.607 of OWCP regulations.<sup>7</sup>

The Board also notes that appellant did submit additional medical evidence with her timely request for reconsideration, which addressed appellant's claim of total disability. The case will be remanded for OWCP to further review her October 3, 2011 reconsideration request in accordance with its regulations and procedures.

### **CONCLUSION**

The Board finds that OWCP erred in finding appellant's October 3, 2011 reconsideration request was untimely filed.

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<sup>3</sup> Although it is a matter of discretion on the part of OWCP whether to review an award for or against payment of compensation, it has stated that a claimant may obtain review of the merits of a claim by: (1) showing that OWCP erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by OWCP; or (3) constituting relevant and pertinent new evidence not previously considered by OWCP. *See* 20 C.F.R. § 10.606(b).

<sup>4</sup> *Id.* at § 10.607(b).

<sup>5</sup> *See* cases cited *supra* note 2.

<sup>6</sup> *David McDavid*, 57 ECAB 149 (2005).

<sup>7</sup> *See supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 18, 2011 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 13, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board