

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

R.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Los Angeles, CA, Employer**

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**Docket No. 13-1350
Issued: December 2, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 14, 2013 appellant filed a timely appeal from a nonmerit decision of the Office of Workers' Compensation Programs (OWCP) dated April 15, 2013 that denied his request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error.¹ The Board docketed the appeal as No. 13-1350.

The Board has reviewed the record on appeal and finds that the case must be remanded to OWCP for application of the appropriate standard of review because appellant's request for reconsideration was timely submitted.

The most recent merit decision of OWCP on the underlying issue in this case was issued on June 17, 2011.² In a reconsideration request dated June 13, 2012, date stamped by OWCP on June 18, 2012, appellant, through his attorney, requested reconsideration of the June 17, 2011

¹ On November 4, 2004 appellant, a work study student, filed a traumatic injury claim, alleging that he injured his back lifting boxes on October 28, 2004. OWCP accepted that claim for lumbar strain with radiculopathy.

² By decision dated January 8, 2013, OWCP indicated that an overpayment of compensation in the amount of \$5,172.30 had occurred because appellant was incorrectly reimbursed for nursing services. This decision was not appealed to the Board.

decision and submitted additional medical evidence. By decision dated April 15, 2013, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and failed to establish clear evidence of error.

The OWCP regulations in effect at the time OWCP issued the June 17, 2011 decision provided:

“An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.”³

The Board has long held that the one-year time limitation begins to run on the date following the date of the original OWCP decision.⁴ Thus, in the instant case, appellant's reconsideration request would be considered timely if submitted on June 17, 2012. However, June 17, 2012 was a Sunday, and the next business day was Monday, June 18, 2012, when appellant's reconsideration request and additional medical evidence were stamped received by OWCP.

As appellant's reconsideration request dated June 13, 2012 and stamped received on Monday, June 18, 2012 was made within one year of OWCP's merit decision dated June 17, 2011, the Board concludes that the request was timely. In its April 15, 2013 decision denying appellant's reconsideration request, OWCP applied the clear evidence of error legal standard. This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.⁵ Since OWCP erroneously reviewed the evidence submitted by appellant in support of her reconsideration request under the clear evidence of error standard, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(2).⁶

³ 20 C.F.R. § 10.607 (1999). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011).

⁴ *Darletha Coleman*, 55 ECAB 143 (2003).

⁵ *See Donna M. Campbell*, 55 ECAB 241 (2004).

⁶ Section 10.606(b)(2) provides that an application for reconsideration must show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or include the submission of relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(2).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2013 is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: December 2, 2013
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