

FACTUAL HISTORY

This case was previously before the Board.² By decision dated January 3, 2012, the Board affirmed a March 17, 2011 OWCP merit decision which denied appellant's claim for a recurrence of disability due to a change in the nature and extent of her light-duty job requirements or a change in the nature and extent of her employment-related condition. The facts of the case, as set forth in the prior decision, are hereby incorporated by reference.

On August 7, 2012 appellant, through her attorney, requested reconsideration of the January 3, 2012 decision. He submitted a July 19, 2012 medical report from Dr. Thomas Paul McDermott, Jr., a Board-certified hand surgeon. In a February 11, 2013 letter, counsel indicated that appellant had not yet received confirmation of her request for reconsideration.

By letter dated April 3, 2013, OWCP acknowledged receipt of appellant's request for reconsideration dated August 7, 2012.

By decision dated May 7, 2013, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error. The decision stated that her request was received on February 19, 2013.

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.³ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁴ The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board and any merit decision following action by the Board.⁵

ANALYSIS

In its May 7, 2013 decision, OWCP denied appellant's August 7, 2012 request for reconsideration finding that it was untimely filed and failed to present clear evidence of error.

² Docket No. 11-1324 (issued January 3, 2012). On July 2, 2003 appellant, then a 40-year-old secretary, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to factors of her federal employment, including constant typing and computer work. OWCP accepted the claim for bilateral carpal tunnel syndrome and authorized release surgeries performed on July 3 and August 7, 2003.

³ 20 C.F.R. § 10.607(a).

⁴ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁵ *See D.G.*, 59 ECAB 455 (2008); *Veletta C. Coleman*, 48 ECAB 367 (1997); *Leon D. Faidley, Jr.*, *supra* note 4 at 111 (1989).

The Board finds that it improperly determined that appellant's request for reconsideration was not timely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.607.

On January 3, 2012 the Board issued a decision affirming a March 17, 2011 OWCP merit decision which denied appellant's claim for a recurrence of disability. Accordingly, appellant had one year from January 3, 2012 to make a timely request for reconsideration.⁶ In its May 7, 2013 decision, OWCP stated that her request for reconsideration was received on February 19, 2013. It determined that the request was not within the one-year time limitation. The record, however, establishes that the request was filed on August 7, 2012 as confirmed by an April 3, 2013 letter from OWCP to appellant's counsel. The Board finds that the August 7, 2012 request for reconsideration was within one year of the last merit decision dated January 3, 2012. Appellant's request for reconsideration is therefore timely.

The Board finds that OWCP improperly denied appellant's reconsideration request by applying the legal standard for cases where reconsideration is requested after more than one year has elapsed.⁷ OWCP should have applied the standard reserved for timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3).⁸ Since OWCP erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard, the Board will remand the case for review of the evidence under the proper standard of review for a timely reconsideration request.⁹

CONCLUSION

The Board finds that OWCP improperly refused to reopen appellant's case for further review of her claim on the grounds that her request was untimely filed and failed to demonstrate clear evidence of error.

⁶ *See id.* A right to reconsideration within one year accompanies any subsequent merit decision on the issues.

⁷ *See C.J.*, Docket No. 12-1570 (issued January 16, 2013).

⁸ 20 C.F.R. § 10.606(b)(3) of OWCP regulations provide that an application for reconsideration must be in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.

⁹ In light of the disposition of this case, the Board will not address counsel's arguments on appeal.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 17, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board