

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

R.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 12-1464
Issued: January 30, 2013**

Appearances:
Russell D. Christian, 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 June 27, 2012 appellant, through his attorney, filed a timely appeal from the April 16, 2012 decision of the Office of Workers' Compensation Programs' (OWCP), which found that his reconsideration request was untimely and did not present clear evidence of error. The appeal was docketed as number 12-1464.

In this case, in a decision dated February 9, 2011, OWCP denied appellant's claim for a traumatic injury. In an appeal request form dated and postmarked February 9, 2012, appellant's representative requested reconsideration and submitted additional evidence. In an April 16, 2012 decision, OWCP denied appellant's request for reconsideration finding that it was not timely filed as it was not received until February 10, 2012 and that it also failed to present clear evidence of error.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹ OWCP procedures, however, provide that, for decisions issued on

¹ 20 C.F.R. § 10.607(a).

or after June 1, 1987 through August 28, 2011, the one-year period begins on the date of the original decision and the application for reconsideration must be mailed to OWCP within one year of the date of OWCP's decision for which review is sought.² The Board notes that the last merit decision was dated February 9, 2011 and appellant's request for reconsideration was postmarked on February 9, 2012, the request was made within one year from the February 9, 2011 merit decision.³ 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 April 16, 2012 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision on the timely reconsideration request.

IT IS HEREBY ORDERED THAT the April 16, 2012 decision is set aside and the case remanded for further action consistent with this order of the Board.

Issued: January 30, 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

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(e) (October 2011). The Board has held that the envelope bearing the postmark is *prima facie* evidence of the date of mailing. *See Wanda E. Maisonet*, 48 ECAB 212 (1996).

³ 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. *Debra McDavid*, 57 ECAB 149 (2005).

⁴ *See* 20 C.F.R. § 10.606(b)(3).