

within one year of the date of OWCP's decision for which review is sought,² as determined by the postmark on the envelope, if available. Otherwise the date of the letter should be used.³ In this case, the postmark on the envelope containing the reconsideration request is illegible. The Board notes that the last merit decision was dated June 27, 2011 and appellant's request for reconsideration was dated June 22, 2012, within one year from the June 27, 2011 merit decision. The Board finds that OWCP improperly reviewed the evidence under section 8128 and the clear evidence of error standard. As appellant made a timely request for reconsideration of the last merit decision, which was dated June 27, 2011, OWCP should have reviewed her request under the standard for a timely request, as opposed to the standard for untimely requests.⁴

The Board will set aside OWCP's September 20, 2012 decision and remand the case for an appropriate final decision on appellant's claim under 5 U.S.C. § 8128(a).

IT IS HEREBY ORDERED THAT the September 20, 2012 decision is set aside and remanded.

Issued: November 26, 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 FECA Procedure Manual, Part 2 -- Reconsiderations, *Time limitations*, Chapter 2.1602.4(e) (October 2011).

³ *Id.* OWCP procedures require that an imaged copy of the envelope that enclosed the request for reconsideration should be in the case record. If there is no postmark, or it is not legible, other evidence such as a certified mail receipt, a certificate of service and affidavits may be used to establish the mailing date. In the absence of such evidence, the date of the letter itself should be used. *Jack D. Johnson*, 57 ECAB 593 (2006).

⁴ Section 10.607(b) states that OWCP will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by OWCP in its most recent merit decision. The reconsideration request must establish that OWCP's decision was, on its face, erroneous. 20 C.F.R. § 10.607(b).