

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

K.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, OR, Employer**

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**Docket No. 13-1313
Issued: October 23, 2013**

Appearances:
Appellant, pro se
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 15, 2013 appellant filed a timely appeal from the December 10, 2012 nonmerit decision of the Office of Workers' Compensation Programs' (OWCP), which found that her reconsideration request was untimely and did not present clear evidence of error. The appeal was docketed as number 13-1313.

In this case, OWCP denied appellant's claim for a traumatic injury on June 15, 2011. It found that the medical evidence did not establish that the January 8, 2011 employment incident caused an injury. Appellant subsequently requested reconsideration on September 12, 2011. On October 28, 2011 OWCP denied modification of the June 15, 2011 decision.

The Board notes that appellant then requested reconsideration on October 22, 2012. The request was received by OWCP on October 29, 2012. Appellant submitted new arguments and medical evidence in support of her claim. In a decision dated December 10, 2012, OWCP found that the request was untimely filed and failed to present clear evidence of error.

The record reflects 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 The

¹ 20 C.F.R. § 10.607(a).

Board notes that the last merit decision was dated October 28, 2011 and appellant's request for reconsideration was received by OWCP on October 29, 2012. The Board notes that the one year from October 28, 2011 would be Sunday, October 28, 2012. However, as the 365th day fell, on a Sunday, appellant had until Monday, October 29, 2012 for her request to be timely received.² As appellant's request was received on October 29, 2012, it was timely filed.

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 October 28, 2011, OWCP should have reviewed her request under the standard for a timely request,³ as opposed to the standard for untimely requests.

The Board will set aside OWCP's December 10, 2012 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the December 10, 2012 decision is set aside and remanded.

Issued: October 23, 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 See *John B. Montoya*, 43 ECAB 1148 (1992) (in computing a time period the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday).

³ See 20 C.F.R. § 10.606(b).