



delivering a package. The employing establishment controverted the claim. It stated that her account of the alleged injury was contradicted by her husband's telephone call to the employing establishment, calling in sick on her behalf.

By letter dated August 15, 2011, Lynda DeAngelis, postmaster, controverted appellant's claim. She noted that appellant filed a claim one month after she was out on sick leave. Ms. DeAngelis asserted that appellant's husband had called her supervisor on July 12, 2011 and told her that appellant would be out on sick leave on that date. He stated that he took her to the hospital on July 11, 2011 because she had a headache and was experiencing pain in her side. Ms. DeAngelis further asserted that appellant and her husband believed that she was having a mild stroke and did not state that she was having problems with her back until several weeks later. Neither appellant nor her husband mentioned that she injured herself while delivering mail prior to August 11, 2011, the date for which she filed her claim.

By letter dated August 26, 2011, OWCP advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that appellant had 30 days to submit the requested information.

By decision dated September 30, 2011, OWCP denied appellant's claim, finding that she failed to establish fact of injury.

On October 17, 2011 appellant requested an oral hearing.

In a letter dated October 14, 2011, received by OWCP on October 25, 2011, appellant asserted that she injured her lower back on July 11, 2011 while lifting a tray of mail weighing 40 to 50 pounds. She subsequently felt pain while delivering a parcel. Appellant stated that she filed a Form CA-2 claim because she felt pain in her left side from a hernia, for which she was scheduled to have surgery on August 22, 2011. She stated that she became confused while dealing with the process of filing claims.

By decision dated January 26, 2012, an OWCP hearing representative affirmed the September 30, 2011 decision.

On January 28, 2013 OWCP received a request for reconsideration of the January 26, 2012 decision.

In a statement dated January 25, 2013, received by OWCP on January 28, 2013, appellant's coworker, Sherry Bundick, stated that appellant was unable to work due to an injury that occurred at work in July 2011. She stated that appellant was injured while lifting a tub of mail which she intended to load into her mail truck; that marked the last time she saw her, as she left work in October 2011.

In a statement dated January 26, 2013, received by OWCP on January 28, 2013, appellant's coworker, Diane Bennett, stated that in July 2011 she observed appellant crying and asked her what was wrong. Appellant told her that she hurt her back while lifting a tub of mail. Ms. Bennett responded by telling her to go to the hospital, which she did after finishing her route. She asserted that on the following day appellant's husband came into the worksite and told her supervisor that appellant was in the hospital and that he needed help reporting and processing an injury claim. Ms. Bennett subsequently visited appellant at the hospital; appellant told her that her physician had opined that her injuries were directly related to her job.

By decision dated February 4, 2013, OWCP denied appellant's request for reconsideration without a merit review, finding that the request was untimely and that appellant had not established clear evidence of error.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA<sup>2</sup> does not entitle an employee to a review of an OWCP decision as a matter of right.<sup>3</sup> This section, vesting OWCP with discretionary authority to determine whether it will review an award for or against compensation, provides:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may--

(1) end, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a).<sup>4</sup> As one such limitation, OWCP has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.<sup>5</sup> The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted by OWCP under 5 U.S.C. § 8128(a).<sup>6</sup>

In computing the time for requesting reconsideration, the date of the event from which the designated period of time begins to run shall not be included when computing the time period. However, the last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday.<sup>7</sup>

### **ANALYSIS**

Appellant's attorney contends on appeal that the request for reconsideration was timely because the one-year deadline fell on January 26, 2013, a Saturday, and that therefore the

---

<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>4</sup> Thus, although it is a matter of discretion on the part of OWCP whether to review an award for or against payment of compensation, OWCP has stated that a claimant may obtain review of the merits of a claim by: (1) showing that OWCP erroneously applied or interpreted a point of law; or (2) advances a relevant legal argument not previously considered by OWCP; or (3) constituting relevant and pertinent new evidence not previously considered by OWCP. *See* 20 C.F.R. § 10.606(b).

<sup>5</sup> 20 C.F.R. § 10.607(b).

<sup>6</sup> *See* cases cited *supra* note 3.

<sup>7</sup> *Debra McDavid*, 57 ECAB 1637 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488 (2000); *John B. Montoya*, 43 ECAB 1148 (1992).

deadline for receiving the appeal request would flow to the next nonlegal holiday, nonweekend day, which was January 28, 2013. As OWCP received the reconsideration request on that date, it was timely filed and should have issued a decision on the merits of the claim.

The Board will set aside OWCP's January 13, 2013 decision. The time for requesting reconsideration of OWCP's January 26, 2012 decision began to run on January 27, 2012, and would have expired on January 26, 2013, had this date not been a Saturday. January 26 and 27, 2013 fell on Saturday and Sunday, with January 28, 2013 as the next business day. Appellant's request for reconsideration was received by the close of business on January 28, 2013, rendering it timely filed. The case will be remanded to OWCP for consideration of appellant's request under the standard for reviewing timely requests for reconsideration.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant's January 28, 2013 request for reconsideration was timely filed.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 4, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for application of the proper standard for reviewing a timely request for reconsideration.<sup>9</sup>

Issued: September 20, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>8</sup>*Id.*

<sup>9</sup> This standard is found at 20 C.F.R. § 10.606(b)(2).