

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

C.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Canandaigua, NY, Employer)

Docket No. 13-2070
Issued: April 15, 2014

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 9, 2013¹ appellant filed a timely appeal from a March 12, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration. The Board docketed the appeal as No. 13-2070.²

In its March 12, 2013 decision, OWCP found that appellant's request for reconsideration was untimely filed and failed to show clear evidence of error. In finding that the application was

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2) (2009). As OWCP's decision was issued on March 12, 2013, the 180-day computation begins March 13, 2013. One hundred and eighty days from March 12, 2013 was September 9, 2013. Since using September 10, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the commercial carrier's delivery mark is considered the date of filing. The date of the commercial carrier's delivery mark is September 9, 2013, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² Pursuant to 20 C.F.R. § 501.5(b), appellant submitted a timely request for oral argument before the Board. By order dated February 26, 2014, the Board denied the request on the grounds that the arguments raised on appeal could be adequately addressed in a decision based on the review of the record and, thus, oral argument would further delay the issuance of a Board decision. *Order Denying Request for Oral Argument*, Docket No. 13-2070 (issued February 26, 2014).

untimely, OWCP stated that the application had been received on December 12, 2012, which was more than one year following the issuance of OWCP's November 23, 2011 decision. However, the record reflects that the reconsideration request was stamped as received on November 21, 2012, prior to the expiration of the one-year time limit.

Pursuant to OWCP regulations at 20 C.F.R. § 10.607(a), for OWCP decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.³ In this case, the request was received November 21, 2012, which is less than one year after the issuance of the November 23, 2011 OWCP merit decision.

Since the application for reconsideration was within one year of OWCP's decision for which review is sought, it is timely. OWCP reviewed the application under a clear evidence of error standard appropriate for an untimely request. The case will accordingly be remanded for proper consideration of the timely reconsideration request pursuant to the criteria set forth in 20 C.F.R. § 10.606(b)(3). Following any necessary further development, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 12, 2013 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 15, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

³ 20 C.F.R. § 10.607(a) (2011); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). For decisions issued prior to August 29, 2011, the date of mailing was used to determine timeliness. *See* 20 C.F.R. § 10.607(a) (2010).