

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

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**A.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 14-1617  
Issued: December 23, 2014**

*Appearances:*  
*Keith Combs, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On July 14, 2014 appellant, through his representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated June 23, 2014 which denied his reconsideration request on the grounds that it was untimely filed and failed to establish clear evidence of error. Because more than 180 days elapsed between the last merit decision dated October 29, 2012 and the filing of this appeal on July 14, 2014, the Board lacks jurisdiction to review the merits of his claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

**FACTUAL HISTORY**

Appellant, a 45-year-old mail processing clerk, filed a Form CA-2 claim for benefits on August 1, 2012, alleging that he developed a bilateral carpal tunnel condition causally related to employment factors.

In a July 30, 2012 report, Dr. Raj K. Gupta, a specialist in general surgery, stated that he had treated appellant on several occasions for bilateral carpal tunnel syndrome with severe nerve compression. He advised that appellant had undergone surgery on both hands and was improving. Dr. Gupta stated that appellant's work entailed repetitive motions which involved the use of vibratory tools and heavy lifting. He opined that appellant would not be able to do that type of work on a permanent basis.

By letter dated September 21, 2012, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition.

By decision dated October 29, 2012, OWCP denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained a bilateral carpal tunnel condition in the performance of duty.

On August 19, 2013 OWCP received appellant's request for reconsideration of the October 29, 2012 decision. In this handwritten statement, appellant printed his name, OWCP file number, and date of OWCP decision from which reconsideration was requested. He stated: "I want to file a reconsideration of the decision dated October 29, 2012."

Appellant also submitted a new April 24, 2013 medical report from Dr. Raj Goswami, Board-certified in internal medicine.

By letter dated March 30, 2014, appellant again requested reconsideration.

By decision dated June 23, 2014, OWCP denied appellant's March 30, 2014 request for reconsideration without a merit review, finding the request was untimely and that he had not established clear evidence of error. It found that there was no evidence submitted to establish that its last merit decision was in error.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA<sup>1</sup> does not entitle an employee to a review of an OWCP decision as a matter of right.<sup>2</sup>

OWCP, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, it 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>3</sup> The Board has found that the imposition of this

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<sup>1</sup> 5 U.S.C. § 8128(a).

<sup>2</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>3</sup> 20 C.F.R. § 10.607(a).

one-year time limitation does not constitute an abuse of the discretionary authority granted by OWCP under 5 U.S.C. § 8128(a).<sup>4</sup>

Section 10.607(b) of OWCP's regulations 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.<sup>5</sup>

A claimant may apply for reconsideration of a final decision regardless of the date of injury or death. While no special form is required, the request must be in writing, be signed and dated by the claimant or the authorized representative and be accompanied by relevant new evidence or argument not considered previously. The request should also identify the decision and the specific issue(s) for which reconsideration is being requested.<sup>6</sup>

### ANALYSIS

OWCP improperly determined in this case that appellant failed to file a timely application for review. The last merit decision in this case was issued on October 29, 2012. Appellant requested reconsideration on August 19, 2013.

In its October 29, 2012 decision, OWCP found that appellant had not sustained a bilateral carpal tunnel condition in the performance of duty. The appeal rights accompanying that decision advised appellant, *inter alia*, that he could request reconsideration with OWCP within one year of the decision, if the request was received within one year of the decision.

OWCP regulations require that the application for reconsideration be sent to a specific address as instructed by OWCP in the final decision. The application for reconsideration, including all supporting documentation, must be submitted in writing.<sup>7</sup> The word reconsideration does not need to be stated in the request for it to be considered valid, but sufficient detail should be provided to discern the decision being contested.<sup>8</sup>

The October 29, 2012 decision was properly mailed and a request for reconsideration was received on August 19, 2013. It was in writing, indicating that he wanted reconsideration, and was signed and dated, and provided the date of OWCP decision, as well as OWCP file number from which reconsideration was requested. Appellant's August 19, 2013 statement met the indicia necessary for a request for reconsideration.<sup>9</sup> This request for reconsideration was also accompanied by a new medical report dated April 24, 2013 from Dr. Goswani.

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<sup>4</sup> See cases cited *supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.607(b).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, 2.1602.2(a) (October 2011).

<sup>7</sup> 20 C.F.R. § 10.606.

<sup>8</sup> See *M.H.*, Docket No. 14-1389 (issued October 22, 2014).

<sup>9</sup> *Supra* note 5.

The Board finds that appellant's request for reconsideration was timely pursuant to section 10.607(a) and 10.606(b)(3) of OWCP's regulations.<sup>10</sup> The clear evidence of error standard utilized by OWCP in its June 23, 2014 decision is appropriate only for untimely reconsideration requests.<sup>11</sup> The case will be remanded for OWCP to further review appellant's August 19, 2013 reconsideration request in accordance with its regulations and procedures.

**CONCLUSION**

The Board finds that OWCP erred in finding appellant's August 18, 2013 reconsideration request untimely.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23, 2014 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 23, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> See 20 C.F.R. § 10.607(b)(3) and 10.607(a).

<sup>11</sup> See *R.M.*, Docket No. 14-625 (issued July 29, 2014).