

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Federal Way, WA, Employer**

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**Docket No. 14-746
Issued: October 17, 2014**

Appearances:
Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On February 14, 2014 appellant, through counsel, filed a timely appeal from an October 1, 2013 decision of the Office of Workers' Compensation Programs (OWCP), which found that his reconsideration request was untimely filed and did not present clear evidence of error. The appeal was docketed as number 14-746.

OWCP initially denied appellant's occupational disease claim on April 5, 2012. Appellant, through counsel, requested a telephonic hearing, after which an OWCP hearing representative issued a September 19, 2012 decision that affirmed the April 5, 2012 decision. Appellant's counsel requested reconsideration on September 18, 2013. The request was received by OWCP on September 19, 2013. Appellant's counsel submitted new arguments and new medical evidence. In its October 1, 2013 decision, OWCP found that the request was untimely filed and failed to present clear evidence of error.

The Board has duly considered the matter and finds 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 decision for which review is sought.¹ In this case, appellant sought review of the September 19, 2012 decision and his request for reconsideration was received by OWCP on September 19, 2013. In

¹ 20 C.F.R. § 10.607(a).

computing the time for requesting reconsideration, the date of the event from which the designated time period begins to run shall not be included when computing the time period. However, the last day of the period shall be included unless it is a Saturday, a Sunday or a legal holiday.² Thus, the time for requesting reconsideration of OWCP's September 19, 2012 decision began to run on September 20, 2012, and ended on September 19, 2013. Thus, the reconsideration request was timely as it was received by OWCP on September 19, 2013, exactly one year after the last merit decision. Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.³ The "clear evidence of error" standard utilized by OWCP in its October 1, 2013 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the October 1, 2013 decision is set aside and remanded.

Issued: October 17, 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

² *Debra McDavid*, 57 ECAB 149 (2005); *John B. Montoya*, 43 ECAB 1148 (1992).

³ *See* 20 C.F.R. § 10.606(b).