



## ISSUE

The issue is whether OWCP properly determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.

## FACTUAL HISTORY

On September 7, 2012 appellant, then a 46-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained a neck and shoulder injury as a result of her federal employment. On the claim form, she referred to work activity on June 30 and July 1, 2012.

By decision dated December 6, 2012, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On December 6, 2013 OWCP received a letter from appellant dated November 3, 2013 and additional evidence. Appellant noted that her claim had been denied on December 6, 2012 and she identified OWCP claim number. She stated that the letter and additional documents were "submitted in request for reconsideration" of her claim. The medical evidence submitted on December 6, 2013 included a July 11, 2013 report from Dr. Manuel Kelley, a Board-certified family practitioner, and an undated report from Dr. Obama Asemota, a surgeon.

On December 8, 2013 OWCP received an appeal request form dated December 5, 2013 from the December 6, 2012 decision. Appellant checked "reconsideration" on the form.

By decision dated June 10, 2014, OWCP found that appellant's request for reconsideration was untimely. According to it, the request for reconsideration was not received until December 8, 2013. OWCP denied the request on the grounds that it did not show clear evidence of error.

## LEGAL PRECEDENT

FECA provides that OWCP may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.<sup>3</sup> The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>4</sup>

According to 5 U.S.C. § 8128(a), a claimant is not entitled to a review of an OWCP decision as a matter of right.<sup>5</sup> This section vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.<sup>6</sup> OWCP, through

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<sup>3</sup> 5 U.S.C. § 8128(a).

<sup>4</sup> 20 C.F.R. § 10.605.

<sup>5</sup> *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>6</sup> Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA. As one such limitation, 20 C.F.R. § 10.607 provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> According to OWCP procedures, the date received is the determined by the document received date in the Integrated Federal Employees' Compensation System (iFECS).<sup>8</sup>

### ANALYSIS

In the present case, OWCP has made an improper finding that appellant's application for reconsideration was untimely. The last merit decision was dated December 6, 2012. Appellant has one year to timely request reconsideration. The one-year time limitation begins to run on the date following the date of the original OWCP decision.<sup>9</sup> Therefore, appellant had until December 6, 2013 to timely file an application for reconsideration.

On December 6, 2013 OWCP received a request dated November 13, 2013 for reconsideration of the December 6, 2012 decision. Appellant identified OWCP's decision and its file number. She stated that she was requesting reconsideration and submitted additional evidence. Also received was a single appeal request form which was dated December 5, 2013 and received on December 8, 2013. As noted in OWCP procedures, an application for reconsideration does not have to be on an appeal request form.<sup>10</sup> In this case, appellant's reconsideration request was dated November 13, 2013 and received by OWCP on December 6, 2013 making the request timely.

The Board accordingly finds that appellant filed a timely application for reconsideration on December 6, 2013. OWCP reviewed the evidence under a clear evidence of error standard, which is appropriate only for untimely applications for reconsideration.<sup>11</sup> The case will accordingly be remanded to OWCP for proper review of the timely application for reconsideration and issuance of an appropriate decision.<sup>12</sup>

### CONCLUSION

The Board finds that OWCP improperly found appellant had submitted an untimely application for reconsideration.

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<sup>7</sup> 20 C.F.R. § 10.607.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (October 2011). This section provides that, for decisions prior to August 29, 2011, the application for reconsideration must be mailed within one year.

<sup>9</sup> See *C.K.*, Docket No. 10-1665 (issued May 25, 2011).

<sup>10</sup> *Supra* note 8, Chapter 2.1602.3 (October 2011) (letter format is acceptable, and should contain sufficient detail to discern the decision being contested); see also *E.R.*, Docket No. 13-1800 (issued February 21, 2014).

<sup>11</sup> See *J.P.*, Docket No. 12-1596 (issued March 27, 2013); 20 C.F.R. § 10.607(b).

<sup>12</sup> See *E.B.*, Docket No. 12-84 (issued May 15, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 10, 2014 is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: April 3, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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