

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

L.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bakersfield, CA, Employer**

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**Docket No. 16-1088
Issued: August 10, 2016**

Appearances:
Sally F. LaMacchia, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On April 27, 2016 appellant, through counsel, filed a timely application for review of a January 21, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as the request was untimely filed and the evidence failed to establish clear evidence of error. The appeal was docketed as No. 16-1088.

The Board notes that on October 24, 2014 an OWCP hearing representative affirmed a March 11, 2014 decision which found that appellant had not established cervical disc disease, chronic pain syndrome, and bilateral shoulder conditions causally related to her federal employment. On October 26, 2015 counsel requested reconsideration and submitted additional medical evidence in support of the request. OWCP received the reconsideration request on October 26, 2015.

The Board has considered the matter and finds that the October 26, 2015 request constituted a timely request for reconsideration. Section 10.607(a) of the implementing regulations provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.² In computing the time for requesting

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 20 C.F.R. § 10.607(a).

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.³ In this case, the last OWCP merit decision was dated October 24, 2014, and one year after this decision was Saturday, October 24, 2015. It is well established that, when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day.⁴ As October 24, 2015 was a Saturday, appellant had until October 26, 2015 to request reconsideration. Because appellant's request for reconsideration was received on October 26, 2015, the Board finds that it was timely filed.

Because appellant filed a timely reconsideration request, OWCP should have reviewed her request under the standard for a timely request.⁵ The clear evidence of error standard utilized by OWCP in its January 21, 2016 decision is appropriate only for untimely reconsideration requests.⁶ The Board will set aside OWCP's January 21, 2016 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the January 21, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: August 10, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

³ *Debra McDavid*, 57 ECAB 149 (2005); see *Donna M. Campbell*, 55 ECAB 241 (2004); *Angel M. Lebron, Jr.*, 51 ECAB 488 (2000); *John B. Montoya*, 43 ECAB 1148 (1992).

⁴ *J.L.*, Docket No. 14-0703 (issued September 16, 2014).

⁵ See 20 C.F.R. § 10.606(b)(3).

⁶ *Id.* at § 10.607(b).