

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

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**C.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Aurora, IL, Employer**

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**Docket No. 16-1459  
Issued: December 22, 2016**

*Appearances:*

*David A. Teegarden, for the appellant<sup>1</sup>  
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 July 1, 2016 appellant, through her representative, filed a timely appeal from a May 19, 2016 decision of the Office of Workers' Compensation Programs (OWCP), which found that her reconsideration request was untimely filed and failed to demonstrate clear evidence of error. The appeal was docketed as No. 16-1459.

In a February 20, 2015 decision, OWCP denied appellant's claim for a traumatic right knee injury. Appellant subsequently requested reconsideration on February 22, 2016. She also submitted additional evidence. By decision dated May 19, 2016, OWCP denied her request for reconsideration finding that it was not timely 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 provides that an application for reconsideration must be received within one year of the date of OWCP decision

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<sup>1</sup> 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.

for which review is sought.<sup>2</sup> In this case, the last merit decision was dated February 20, 2015 and appellant's request for reconsideration was received by OWCP on Monday, February 22, 2016. In computing the time for requesting reconsideration, the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday.<sup>3</sup> As February 20, 2016 was a Saturday, appellant had until Monday, February 22, 2016 to request reconsideration. Thus, her request was timely received by OWCP.

Because appellant filed a timely reconsideration request, OWCP should have reviewed her request under the standard for a timely request,<sup>4</sup> as opposed to the standard for untimely requests.<sup>5</sup> The clear evidence of error standard utilized by OWCP in its May 19, 2016 decision is appropriate only for untimely reconsideration requests. The Board will set aside OWCP's May 19, 2016 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

**IT IS HEREBY ORDERED THAT** the May 19, 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: December 22, 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

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<sup>2</sup> 20 C.F.R. § 10.607(a). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

<sup>3</sup> *Debra McDavid*, 57 ECAB 149 (2005).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3).

<sup>5</sup> Section 10.607(b) 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. The reconsideration request must establish that OWCP's decision was, on its face, erroneous. *Id.* at § 10.607(b).