

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

_____)
D.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Orleans, LA, Employer)

) **Docket No. 16-1654**
) **Issued: January 4, 2017**
)

Appearances:
*William M. McGoey, Esq., for the appellant*¹
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 August 9, 2016 appellant, through counsel, filed a timely appeal from a March 9, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as the request was untimely filed and failed to demonstrate clear evidence of error. The appeal was docketed as No. 16-1654.

On January 23, 2015 OWCP issued a merit decision finding that appellant had not established a compensable factor of employment. Appellant, through counsel, requested reconsideration on January 25, 2016 and submitted additional evidence in support of the request.

The Board has considered the matter and finds that the January 25, 2016 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 reconsideration, the last day of the period shall be included unless it is a Saturday, a Sunday, or a

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).

legal holiday.³ In this case, the last OWCP merit decision was dated January 23, 2015. To be timely, the request for reconsideration needed to be filed within one year of January 23, 2015 which was a Saturday. 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 January 23, 2016 was a Saturday, appellant had until January 25, 2016 to request reconsideration. Because appellant's request for reconsideration was received on January 25, 2016, 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 timely reconsideration requests.⁵ The clear evidence of error standard utilized by OWCP in its March 9, 2016 decision is appropriate only for untimely reconsideration requests.⁶ The Board will set aside OWCP's March 9, 2016 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the March 9, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this order of the Board.

Issued: January 4, 2017
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).