

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

S.I., Appellant)	
)	
and)	Docket No. 19-0024
)	Issued: August 15, 2019
DEPARTMENT OF THE NAVY, NAVAL)	
SHIPYARD, Portsmouth, VA, Employer)	
)	

Appearances:
Appellant, pro se
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
JANICE B. ASKIN, Judge

On October 2, 2018 appellant filed a timely appeal from an April 25, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0024.

On March 4, 2016 appellant, then a 36-year-old shipwright, filed a traumatic injury claim (Form CA-1) for a lower back injury that allegedly arose on February 26, 2016 while in the performance of duty. By decision dated April 14, 2016, OWCP denied the claim based on his failure to meet his burden of proof to establish the medical component of fact of injury. Appellant timely requested reconsideration. By decision dated December 5, 2016, OWCP found that, while appellant established fact of injury, he had not met his burden of proof to establish that his medical condition was causally related to the accepted employment incident. Accordingly, it modified its prior decision, but continued to deny appellant's traumatic injury claim. On March 16, 2018 appellant requested reconsideration of OWCP's December 5, 2016 decision.¹ By decision dated April 25, 2018, OWCP denied further merit review pursuant to 5 U.S.C. § 8128(a).

Section 10.607(a) of the implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for

¹ Appellant submitted the appeal request form that accompanied OWCP's December 5, 2016 merit decision.

which review is sought.² In this case, appellant's request for reconsideration was not received until March 16, 2018, which was more than one year from the December 5, 2016 OWCP decision. OWCP will consider an untimely request for reconsideration only if the request demonstrates clear evidence of error on the part of OWCP in its most recent merit decision.³ The application must establish, on its face, that such decision was erroneous.⁴

The Board has duly considered the matter and finds that appellant's March 16, 2018 request for reconsideration was untimely filed. Because appellant filed an untimely reconsideration request, the case will be remanded to OWCP for application of the correct standard for reviewing untimely reconsideration requests, the clear evidence of error standard.⁵ After such further development as OWCP deems necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the April 25, 2018 decision is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 15, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

² 20 C.F.R. § 10.607(a).

³ *Id.* at § 10.607(b).

⁴ *Id.*

⁵ *Id.*; see *C.B.* Docket No. 17-0933 (issued July 17, 2017); *A.B.*, Docket No. 15-0521 (issued June 13, 2016).