

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

C.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Metro, GA, Employer**

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**Docket No. 18-0994
Issued: February 22, 2019**

Appearances:
C.B. Weiser, 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
ALEC J. KOROMILAS, Alternate Judge

On April 16, 2018 appellant, through counsel, filed a timely appeal from a December 7, 2017 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. The Clerk of the Appellate Boards assigned Docket No. 18-0994.

OWCP accepted that on August 10, 2011 appellant sustained contusion of her scalp, neck sprain, and back sprain, lumbar region.

By decision dated June 24, 2013, OWCP denied appellant's claim for compensation for the period August 16, 2011 and continuing. Appellant requested an oral hearing. By decision dated February 12, 2014, a hearing representative offered the June 24, 2013 decision. It also denied expansion of the claim to include any additional conditions.

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.

Appellant subsequently requested reconsideration. On October 24, 2014 OWCP issued a decision denying modification of its February 12, 2014 decision. It found that the additional medical evidence submitted failed to establish that appellant sustained an additional cervical condition as a result of an August 10, 2011 employment incident.² Consequently, OWCP also determined that the medical evidence of record was insufficient to establish that appellant was entitled to wage-loss compensation for total disability commencing August 15, 2011 due to her accepted August 10, 2011 employment injury.

Appellant, through counsel, requested reconsideration on October 26, 2015 and submitted additional evidence in support of her request. By decision dated December 7, 2017, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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 by OWCP within one year of the date of the decision for which review is sought.³ 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.⁴ To be within the one year time limitation of the October 24, 2014 OWCP decision, appellant's request for reconsideration needed to be received by OWCP by October 24, 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.⁵ 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.⁶

Because appellant filed a timely reconsideration request, OWCP should have reviewed her request under the standard for timely reconsideration requests.⁷ The clear evidence of error standard utilized by OWCP in its December 7, 2017 decision is appropriate only for untimely

² OWCP accepted that on August 10, 2011 appellant, then 54-year-old mail processing clerk, sustained a neck sprain, lumbar sprain, and head contusion when a shelf fell and hit her while in the performance of duty.

³ 20 C.F.R. § 10.607(a). The one year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁴ *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).

⁵ *J.L.*, Docket No. 14-0703 (issued September 16, 2014).

⁶ See *D.R., Order Remanding Case*, Docket No. 16-1654 (issued January 4, 2017).

⁷ See 20 C.F.R. § 10.606(b)(3).

reconsideration requests.⁸ The Board will set aside OWCP's December 7, 2017 decision and remand the case for an appropriate final decision on appellant's timely request for reconsideration.

IT IS HEREBY ORDERED THAT the December 7, 2017 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: February 22, 2019
Washington, DC

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

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

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

⁸ *Id.* at § 10.607(b).