

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

P.M., Appellant)	
)	
and)	Docket No. 19-0639
)	Issued: July 26, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Raleigh, NC, 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 January 22, 2019 appellant filed a timely appeal from a July 27, 2018 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-0639.

On January 27, 2014 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) for an emotional condition (severe depression, anxiety, and post-traumatic stress disorder) which allegedly arose in the performance of duty on or about February 7, 2011.

After further development of the case record, OWCP denied the claim by decision dated March 24, 2014. It found that appellant had not established fact of injury. By decision dated January 29, 2015, a representative of OWCP's Branch of Hearings and Review found that appellant established fact of injury, but failed to establish a compensable employment factor.

¹ Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when "received" by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers' date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's July 27, 2018 decision was January 23, 2019. The current appeal was postmarked January 22, 2019, and the Clerk of the Appellate Boards received it on January 28, 2019. Accordingly, the appeal is timely based on the January 22, 2019 postmark. *Id.*

Therefore, she affirmed the prior denial as modified. By merit decisions dated April 29, 2016 and July 21, 2017, OWCP denied modification of its prior decision.

On July 23, 2018 appellant requested reconsideration of OWCP's July 21, 2017 merit decision. By decision dated July 27, 2018, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has considered the matter and finds that appellant's July 23, 2018 request for reconsideration was timely filed. 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.² The one-year period begins on the day after the date of the original contested decision. When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, a Sunday, or a legal holiday.³ In this case, one year from OWCP's July 21, 2017 merit decision was July 21, 2018. Because the last day of the filing period fell on a Saturday, the period extends to the next business day, which was Monday, July 23, 2018.⁴ OWCP received appellant's request for reconsideration on July 23, 2018. Therefore, the request is considered timely and subject to the standard for reviewing timely requests for reconsideration pursuant to 20 C.F.R. § 10.606(b)(3).⁵ As OWCP applied the incorrect standard in its July 27, 2018 decision, that decision must be set aside.⁶ The Board therefore remands the case for review of appellant's July 23, 2018 reconsideration request under the proper standard for a timely reconsideration request, followed by an appropriate decision.

² 20 C.F.R. § 10.607(a).

³ *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016).

⁴ *Id.*; *see also C.J.*, Docket No. 18-0994 (issued February 22, 2019).

⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606(b)(3). When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review of the merits. 20 C.F.R. § 10.608(a), (b).

⁶ The clear evidence of error standard utilized by OWCP in its July 27, 2018 decision is appropriate only for untimely reconsideration requests. *See* 20 C.F.R. § 10.607(b).

IT IS HEREBY ORDERED THAT the July 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: July 26, 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