

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

M.C., Appellant)	
)	
and)	Docket No. 19-1230
)	Issued: January 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Orlando, FL, Employer)	
)	

Appearances:
Wayne Johnson, 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
JANICE B. ASKIN, Judge

On May 13, 2019 appellant, through counsel, filed a timely appeal from a November 14, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1230.

On August 11, 2016 appellant, then a 53-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she had injured her left knee on that date when lifting a tray of mail while in the performance of duty. Her left knee diagnosis included contusion, bursitis, joint effusion, cruciate ligament strain, meniscal tear, and internal derangement.

By decision dated February 2, 2017, OWCP found that appellant had not established that the August 11, 2016 employment incident occurred as alleged. Appellant timely requested reconsideration and submitted additional factual and medical evidence. By decision dated June 8, 2017, OWCP modified its prior decision, finding that appellant had established both the factual

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.

and medical components of fact of injury. However, appellant's claim remained denied because the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted August 11, 2016 employment incident.

On July 14, 2017 appellant requested reconsideration. By decision dated August 18, 2017, OWCP denied modification to its June 8, 2017 decision finding that the evidence of record was insufficient to establish causal relationship between the accepted August 11, 2016 employment incident and appellant's diagnosed conditions.

On August 20, 2018 appellant, through counsel, requested reconsideration. By decision dated November 14, 2018, OWCP denied appellant's request for reconsideration finding that the request was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's August 20, 2018 request constituted a timely request for reconsideration. Section 10.607(a) of OWCP's implementing regulations provides that a request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.² When determining the one-year period for requesting reconsideration, the last day of the period should be included unless it is a Saturday, Sunday or a legal holiday.³ One year following OWCP's August 18, 2017 merit decision was Saturday, August 18, 2018. As the last day of the one-year filing period fell on a weekend, appellant had until the close of business on Monday, August 20, 2018 to timely request reconsideration. Because OWCP received appellant's request on August 20, 2018, the Board finds that it was timely filed. The clear evidence of error standard utilized by OWCP in its November 14, 2018 decision is appropriate only for untimely reconsideration requests.⁴ Therefore, the Board will set aside OWCP's November 14, 2018 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

² 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).

³ Federal (FECA) Procedure Manual, *id.*

⁴ *See* 20 C.F.R. § 10.607(b).

IT IS HEREBY ORDERED THAT the November 14, 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: January 6, 2020
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