

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

_____)	
R.G., Appellant)	
)	
and)	Docket No. 21-0676
)	Issued: January 6, 2022
U.S. POSTAL SERVICE, DAYTON)	
PROCESSING & DISTRIBUTION)	
CENTER/FACILITY, Dayton, Ohio, Employer)	
_____)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 29, 2021 appellant filed a timely appeal from a February 24, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0676.

On June 5, 2019 appellant, then a 54-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2019 he injured his back when pushing large heavy containers of mail while in the performance of duty.²

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 The claim form indicates that appellant stopped work in May 2019, but the exact date is illegible.

After further development, OWCP denied the claim by decision dated September 4, 2019, finding that the evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted April 17, 2019 employment incident.

On September 16, 2019 appellant requested reconsideration. By decision dated December 13, 2019, OWCP denied modification of the September 4, 2019 decision.

On December 14, 2020 appellant, through counsel, requested reconsideration of the December 13, 2019 decision and submitted additional medical evidence.

By decision dated February 24, 2021, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered the matter and finds that appellant's December 14, 2020 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.³ 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.⁴ One year following OWCP's December 13, 2019 merit decision was Sunday, December 13, 2020. As the last day of the one-year filing period fell on a Sunday, appellant had until Monday, December 14, 2020 to timely request reconsideration. Because OWCP received appellant's request on December 14, 2020, the Board finds that it was timely filed.⁵ The clear evidence of error standard utilized by OWCP in its February 24, 2021 decision is appropriate only for untimely reconsideration requests.⁶ Therefore, the Board will set aside OWCP's February 24, 2021 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

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 Federal (FECA) Procedure Manual, *id.*

⁵ *L.T., Order Remanding Case*, Docket No. 21-0322 (issued June 28, 2021); *D.P., Order Remanding Case*, Docket No. 20-0928 (issued December 17, 2020).

⁶ *See* 20 C.F.R. § 10.607(b).

IT IS HEREBY ORDERED THAT the February 24, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 6, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board