

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

_____)	
W.W., Appellant)	
)	
and)	Docket No. 22-0398
)	Issued: November 18, 2022
U.S. POSTAL SERVICE, POST OFFICE, Fayetteville, NC, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On January 22, 2022 appellant filed a timely appeal from a July 27, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0398.

On June 21, 2014 appellant, then a 38-year-old modified mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2014 she was struck in the right thigh by a wire cage cart while in the performance of duty. OWCP accepted the claim for lumbar sprain and right knee sprain. It subsequently expanded its acceptance of the claim to include an aggravation of right knee osteoarthritis and an aggravation of a bulging lumbar disc. OWCP paid appellant wage-loss compensation on the periodic rolls effective June 25, 2017.

On April 20, 2020 the employing establishment offered appellant a position as a full-time modified parcel post distribution machine operator and request that she report to work on April 27, 2020.

In an April 28, 2020 memorandum of telephone call (Form CA-110), the employing establishment advised that appellant had refused the job offer and had not reported to work on April 27, 2020.

On April 28, 2020 OWCP advised appellant that the offered position was suitable and afforded her 30 days to accept the position or provide reasons for her refusal.

On May 16, 2020 R.V., a supervisor/manager, amended the April 20, 2020 job offer to reflect that appellant would perform the duties of the offered position up to six hours per day. R.V. initialed the changes and signed the job offer. Appellant accepted the offered position.

On May 18, 2020 appellant provided OWCP with the May 16, 2020 job offer modified by R.V. She related that the plant manager had also agreed to her modified hours.

In separate correspondence dated May 18, 2020, appellant related that after R.V. and the plant manager modified her work hours, she had accepted the offer and returned to work for two days. She indicated that she subsequently received a call advising her not to return to work and indicating that her work hours would not be changed.

On June 1, 2020 OWCP notified appellant that her reasons for refusing the position that was offered on April 20, 2020 were not valid and provided her 15 days to accept that position or have her entitlement to compensation benefits terminated. It advised her that the position offered on April 20, 2020 remained available.

In a July 1, 2020 Form CA-110, OWCP requested that the employing establishment advise whether the original position offered was permanent. In a July 10, 2020 response, the employing establishment specified that the job that was offered on April 20, 2020 was permanent.

By decision dated July 10, 2020, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award effective July 8, 2020 under 5 U.S.C. § 8106(c) as she had refused an offer of suitable work. It found that she had signed a job offer on May 15, 2020 that had been modified without the approval of the employing establishment.

On July 11, 2021 appellant requested reconsideration.

By decision dated July 27, 2021, OWCP denied appellant's request for reconsideration finding that it was untimely and failed to demonstrate clear evidence of error. It noted that she had not signed her appeal request letter and that it was not received until July 11, 2021, more than one year after the July 10, 2020 decision.

The Board has duly considered the matter and finds that appellant's request for reconsideration was timely filed. 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.¹ OWCP's procedures further provide that 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 legal holiday.² One year following OWCP's July 10, 2020 merit decision was July 10, 2021, which was a Saturday. Accordingly, appellant had until Monday, July 12, 2021 to request reconsideration. Because OWCP received her

¹ 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 2.1602.4a (September 2020).

² Federal (FECA) Procedure Manual, *id.*

reconsideration request on July 11, 2021, the Board finds that it was timely filed.³ The clear evidence of error standard utilized by OWCP in its July 27, 2021 decision is appropriate only for untimely reconsideration requests.⁴ Therefore, the Board will set aside OWCP's July 27, 2021 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

IT IS HEREBY ORDERED THAT the July 27, 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: November 18, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

³ See *Order Remanding Case, B.W.*, Docket No. 20-1512 (issued August 24, 2021); *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *C.B.*, Docket No. 13-1732 (issued January 28, 2014); *Steven E. Pratt*, Docket No. 93-443 (issued February 2, 1994).

⁴ See 20 C.F.R. § 10.607(b); *see also id.*