

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

_____)
R.J., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Oakland, CA, Employer)
_____)

Docket No. 22-1261
Issued: March 15, 2023

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On August 22, 2022 appellant filed a timely appeal from a February 25, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1261.

On September 21, 2020 appellant, then a 64-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed swelling, mild pain, and loss of range of motion in his left knee due to factors of his federal employment, including walking while delivering mail or parcels. He noted that he first became aware of his condition on August 13, 2020 and first realized its relation to his federal employment on September 4, 2020. Appellant stopped work on September 8, 2020. He submitted a narrative statement describing his employment duties and medical evidence.

By decision dated December 4, 2020, OWCP denied appellant's occupational disease claim, finding that he had not established that his diagnosed left knee condition was causally related to the accepted factors of his federal employment.

On December 6, 2021 appellant requested reconsideration. He submitted a narrative statement and additional medical evidence.

By decision dated February 25, 2022, 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 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 December 4, 2020 merit decision was December 4, 2021, which was a Saturday. Accordingly, appellant had until Monday, December 6, 2021 to request reconsideration. Because OWCP received his reconsideration request on December 6, 2021 the Board finds that it was timely filed.³ The clear evidence of error standard utilized by OWCP in its February 25, 2022 decision is appropriate only for untimely reconsideration requests.⁴ Therefore, the Board will set aside OWCP's February 25, 2022 decision and remand the case for an appropriate decision applying the correct standard for timely requests for reconsideration.

¹ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the originally 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.*

³ See *Order Remanding Case, K.G.*, Docket No. 21-1430 (issued June 9, 2022); *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).

IT IS HEREBY ORDERED THAT the February 25, 2022 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: March 15, 2023
Washington, D

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

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

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